

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joshua M. McMurchie)	File No.: EB-FIELDWR-12-00003285
)	NAL/Acct. No.: 201232920002
Prineville, Oregon)	FRN: 0021913389
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 17, 2012

Released: July 18, 2012

By the Resident Agent, Portland Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Joshua M. McMurchie apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on the frequency 97.9 MHz in Prineville, Oregon. We conclude that Mr. McMurchie is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On October 18, 2011, in response to a complaint from a local broadcaster, an agent from the Enforcement Bureau's Portland Resident Agent Office (Portland Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 97.9 MHz to Mr. McMurchie's residence in Prineville, Oregon. The agent determined that the signals on 97.9 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. Commission records showed no authorization issued to Mr. McMurchie or to anyone for operation of a broadcast station at or near this address. Accompanied by a police officer from the Prineville Police Department, the agent inspected the unlicensed radio station and issued a Notice of Unlicensed Operation (NOUO), which was left with another resident at the house.³

¹ 47 U.S.C. § 301.

² Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 μ V/m at three meters. 47 C.F.R. § 15.239.

³ *Joshua McMurchie*, On-Scene Notice of Unlicensed Operation, issued October 18, 2011 (on file in EB-11-PO-0135). Although the station was in operation, Mr. McMurchie was not at the residence at the time of the inspection. The Portland Office also mailed Mr. McMurchie a formal NOUO, via Certified Mail, Return Receipt Requested, informing him that his operation of an unlicensed broadcast station was in violation of the Act and that such operations must cease immediately. *Joshua McMurchie*, Notice of Unlicensed Operation, issued October 27, 2011 (on file in EB-11-PO-0135). The Portland Office subsequently received the Postal Return Receipt (PS Form 3811) for this NOUO, which was signed by Mr. McMurchie on October 29, 2011.

3. On May 3, 2012, in response to a subsequent complaint, an agent from the Portland Office again used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 97.9 MHz to Mr. McMurchie's residence. The agent determined that the signals on 97.9 MHz exceeded the limits for operation under Part 15 of the Rules,⁴ and therefore required a license. Commission records still showed no authorization issued to Mr. McMurchie or to anyone for operation of a broadcast station at or near this address. Accompanied by a police officer of the Prineville Police Department, the Portland agent inspected Mr. McMurchie's station and again found a broadcast transmitter operating in a room in the residence. Mr. McMurchie acknowledged his operation of the unlicensed radio station on frequency 97.9 MHz to the Portland agent and offered to surrender the transmitter. The agent advised Mr. McMurchie that he had repeatedly violated Section 301 of the Act by operating an unlicensed radio station on frequency 97.9 MHz in Prineville, Oregon.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁵ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁰

A. Unlicensed Broadcast Operations

5. The evidence in this case is sufficient to establish that Mr. McMurchie violated Section 301 of the Act. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in

⁴ See *supra* note 2.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,]. . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

⁸ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

accordance with the Act and with a license granted under the provisions of the Act.¹¹ On October 18, 2011, and May 3, 2012, an unlicensed radio station on the frequency 97.9 MHz was in operation at Mr. McMurchie's residence. On May 3, 2012, Mr. McMurchie admitted to the Portland agent that he owned and operated the unlicensed radio station. A review of the Commission's records revealed that Mr. McMurchie did not have a license to operate a radio station at this location. Because Mr. McMurchie consciously operated the station, and did so on more than one day, the apparent violations of the Act were both willful and repeated. Based on the evidence before us, we find that Mr. McMurchie apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Proposed Forfeiture Amount

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹² In doing so, we find that the violation warrants a proposed forfeiture above the base amount. The fact that Mr. McMurchie repeatedly operated an unlicensed station when he knew that such actions were unlawful demonstrates a deliberate disregard for the Act and the Commission's requirements. Thus, we find that an additional upward adjustment of \$5,000 in the forfeiture amount is warranted.¹³ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. McMurchie is apparently liable for a total forfeiture in the amount of \$15,000. We further caution Mr. McMurchie that future violations may be subject to more severe enforcement action, including but not limited to larger monetary forfeitures, criminal prosecution, and the *in rem* seizure of his equipment.¹⁴

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Joshua M. McMurchie is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Section 301 of the Act.¹⁵

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Joshua M. McMurchie **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Joshua M. McMurchie will also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance

¹¹ 47 U.S.C. § 301.

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See, e.g., *Robert Brown*, Memorandum Opinion and Order, DA 12-929, 2012 WL 2391969 (Enf. Bur. rel. June 22, 2012) (upholding a \$15,000 forfeiture for violations of Section 301); *Lloyd Morris*, Memorandum Opinion and Order, DA 12-930, 2012 WL 2391973 (Enf. Bur. rel. June 22, 2012) (same).

¹⁴ See 47 U.S.C. §§ 401, 501, 503, 510.

¹⁵ 47 U.S.C. § 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

Advice) must be submitted.¹⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.¹⁸ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington 98666-1469, and include the NAL/Acct. No. referenced in the caption. Joshua M. McMurchie also shall e-mail the written response to WR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁷ See 47 C.F.R. § 1.1914.

¹⁸ 47 C.F.R. §§ 1.16, 1.80(f)(3).

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail, to Joshua M. McMurchie at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Resident Agent Office
Western Region
Enforcement Bureau