

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

In the Matter of)	
)	
Whisler Fleurinor)	File No.: EB-11-MA-0123
)	NAL/Acct. No.: 201232600006
Fort Lauderdale, Florida)	FRN: 0020655106

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 1, 2012

Released: February 1, 2012

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Whisler Fleurinor 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 99.5 MHz in Fort Lauderdale, Florida. We conclude that Mr. Fleurinor is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

II. BACKGROUND

2. On March 4, 2011, the Enforcement Bureau's Miami Office (Miami Office) issued a Notice of Apparent Liability (*1st NAL*)² in the amount of \$20,000 to Mr. Fleurinor for willful and repeated operation of an unlicensed radio transmitter on the frequency 99.5 MHz from his commercial property in Fort Lauderdale, Florida. In his response to the *1st NAL*, Mr. Fleurinor did not dispute the Bureau's findings, but nevertheless requested cancellation or reduction of the forfeiture based on his inability to pay claim. The Bureau later reduced the forfeiture to \$500, which was based solely on Mr. Fleurinor's inability to pay the forfeiture.³ Mr. Fleurinor has since paid that forfeiture.

3. On August 10, November 3, and December 7, 2011, agents from the Miami Office used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 99.5 MHz to Mr. Fleurinor's commercial property in Fort Lauderdale, Florida, the same address which was identified in the *1st NAL*. Furthermore, on each of these dates, the agents determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission's rules (Rules), and therefore required a license.⁴ A review of Commission records showed that no authorization was issued to Mr. Fleurinor, or to anyone for any operation of an FM broadcast station on this frequency, at or near this

¹ 47 U.S.C. § 301.

² *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur., Miami Office 2011) (*1st NAL*).

³ *Whisler Fleurinor*, Forfeiture Order, 26 FCC Rcd 14437 (Enf. Bur., South Central Region 2011).

⁴ 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. Although the agents did not measure the field strength of the transmissions on December 7, 2011, there is no evidence to suggest that the field strength changed since November 3, 2011.

address.

III. DISCUSSION

4. Section 503(b) of the Act⁵ 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. 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 Operations

5. 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 accordance with the Act and with a license granted under the provisions of the Act.¹¹ On August 10, November 3, and December 7, 2011, agents from the Miami Office determined that Mr. Fleurinor operated an unlicensed radio station on the frequency 99.5 MHz from his commercial property in Fort Lauderdale, Florida. A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 99.5 MHz at this location. Because Mr. Fleurinor operated this station consciously and on more than one day, we find that the apparent violations were both willful and repeated. Based on the evidence before us, we find that Mr. Fleurinor 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,

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) (*Southern California Broadcasting Co.*).

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 *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹¹ 47 U.S.C. § 301.

the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹² 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.¹³ After consideration of those factors, we find that the violations in this case justify a \$15,000 upward adjustment from the base forfeiture amount. As the record reflects, Mr. Fleurinor previously received and paid the *1st NAL* for willfully and repeatedly operating an unlicensed radio transmitter on the same frequency from the same commercial property.¹⁴ The fact that Mr. Fleurinor would again commit the same violation—and multiples times after he had already been found to be in serious violation in the *1st NAL*—demonstrates not only the egregiousness of the violations here, but also his deliberate disregard for the Act and Commission’s rules. Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Fleurinor is apparently liable for a forfeiture of \$25,000.

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, Whisler Fleurinor is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) 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, Whisler Fleurinor **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 credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Whisler Fleurinor shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹² *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ On March 4, 2011, we issued a Notice of Apparent Liability for Forfeiture against Mr. Fleurinor for \$20,000, for multiple violations of Section 301. *See supra* note 2. The proposed forfeiture amount was found to be appropriate given the multiple violations and deliberate disregard for the Act and the Commission’s rules. Further, the facts in the *1st NAL* indicated that Mr. Fleurinor had been repeatedly informed about the violations since January 2008.

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

¹⁶ *See* 47 C.F.R. § 1.1914.

10. 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 1.16 and 1.80(f)(3) of the Rules.¹⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, Florida 33152, and include the NAL/Acct. number referenced in the caption. In addition, Whisler Fleurinor shall email the written response to SCR-Response@fcc.gov.

11. 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.

12. **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 regular mail to Whisler Fleurinor at his address of record and to his attorneys, Lewis H. Goldman, P.C., 45 Dudley Court, Bethesda, MD 20814, and Rocco G. Marucci, P.A., 116 Southeast 6th Court, Fort Lauderdale, FL 33301.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

¹⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).