

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

In the Matter of	)	
	)	
Damian Anthony Ojouku Allen	)	File No.: EB-FIELDSCR-12-00001027
	)	NAL/Acct. No.: 201232600013
Pompano Beach, FL	)	FRN: 0021896410
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 16, 2012

Released: July 16, 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 Damian Anthony Ojouku Allen apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),<sup>1</sup> by operating an unlicensed radio transmitter on the frequency 101.1 MHz in Pompano Beach, Florida. We conclude that Mr. Allen is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. On October 20, 2011 and February 27, 2012, agents from the Enforcement Bureau’s Miami Office (Miami Office) used direction-finding techniques to locate the source of radio frequency transmissions on the frequency 101.1 MHz to an FM transmitting antenna mounted on an antenna structure at a commercial property in Pompano Beach, Florida. On both dates, the agents heard the station engaged in live broadcasts. Specifically, during the October 20, 2011 investigation, the agents heard a live disc jockey (DJ), self-identified as DJ “Mikey Mike,” promote an event called the “Mikey Mike Birthday Splash.” The agents determined that the signals on 101.1 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules),<sup>2</sup> and therefore required a license. Commission records showed no authorization was issued to Mr. Allen or to anyone else for operation of an FM broadcast station at or near this address.

3. On February 27, 2012, agents from the Miami Office, accompanied by the commercial property owner, observed radio transmitting equipment, including a power amplifier, which was connected via coaxial cable to an FM transmitting antenna that was installed in a storage room. The property owner told the agents that he rented the storage space to two men named “Damian” and “Mike,” and then retrieved the renters’ contact phone number, which he then dialed. An agent spoke by phone to

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 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 µV/m at three meters. 47 C.F.R. § 15.239.

an individual, whom the property owner identified as “Mike.”<sup>3</sup> During the phone conversation, Mike asked the agent what would happen to the radio equipment. Shortly after the telephone conversation ended, it appeared to the agents that Mike must have immediately contacted Mr. Allen about the radio equipment, since Mr. Allen showed up at the station, told the agents that the transmission equipment was his, and then removed the equipment from the location.

### 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.<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>7</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>8</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

#### A. Unlicensed Broadcast 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.<sup>10</sup> For the purposes of Section 301, the word “operate” has been interpreted to mean both the technical operation of the station, as well as “the general conduct or management of a station as a whole, as distinct from the specific

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<sup>3</sup> The Enforcement Bureau has taken separate action against Michael William Downer. *See Michael William Downer*, EB-FIELDSCR-12-00001027, Notice of Apparent Liability for Forfeiture, DA 12-1094 (Enf. Bur. July 16, 2012).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 . . .”).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> 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.

<sup>10</sup> 47 U.S.C. § 301.

technical work involved in the actual transmission of signals.”<sup>11</sup> In other words, the use of the word “operate” in Section 301 captures not just the “actual, mechanical manipulation of radio apparatus,”<sup>12</sup> but also operation of a radio station generally.<sup>13</sup> To determine whether an individual is involved in the general conduct or management of the station, we can consider whether such individual exercises control over the station, which the Commission has defined to include “. . . any means of actual working control over the operation of the [station] in whatever manner exercised.”<sup>14</sup>

6. We find that the record evidence in this case is sufficient to establish that Mr. Allen violated Section 301 of the Act. On October 20, 2011 and February 27, 2012, agents from the Miami Office determined that an unlicensed radio station on the frequency 101.1 MHz operated from a commercial building in Pompano Beach, Florida. During both dates, the agents heard the station engaged in live broadcasts. A review of the Commission’s records revealed that no license or authorization was issued to anyone to operate a radio station on 101.1 MHz at this location. Under Section 301, Mr. Allen can be said to have “operated” the unlicensed radio station on 101.1 MHz because the evidence shows that Mr. Allen exercised control over the general conduct or management of the station. According to the commercial building owner, Mr. Allen and another individual (i.e., Michael William Downer, aka DJ “Mikey Mike”) were leasing space in the building that housed the station, and the rented space appeared to the agents to be used primarily for the purpose of operating the unlicensed station. In addition, on February 27, 2012, Mr. Allen admitted to the agents that he owned the transmitting equipment, and then personally disconnected and removed the equipment from the location. The foregoing facts indicate that Mr. Allen consciously operated and/or otherwise was involved in the general conduct or management of the unauthorized station and did so on more than one day. We therefore conclude, based on the evidence before us, that Mr. Allen apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.<sup>15</sup>

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<sup>11</sup> See *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948) (comparing the use of the words “operate” and “operation” in Sections 301, 307, and 318 of the Act, and concluding that the word “operate” as used in Section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* See also 47 U.S.C § 307(c)(1).

<sup>14</sup> See *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *recons. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

<sup>15</sup> The fact that someone else in addition to Mr. Allen may have been involved in the station’s operations does not make Mr. Allen any less of a participant in the station’s unlicensed operations. We have previously held that, because Section 301 of the Act provides that “no person shall use or operate” radio transmission equipment, the liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation. 47 U.S.C. § 301 (emphasis added); see, e.g., *Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418, at para. 11 (Enf. Bur. 2005); *Robert Brown*, EB-10-BS-0050, Memorandum Opinion and Order, DA 12-929, 2012 WL 2391969 (Enf. Bur. June 22, 2012), *aff’g*, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur. 2011), *aff’g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010); *Lloyd Morris*, EB-09-BS-0046, Memorandum Opinion and Order, DA 12-930, 2012 WL 2391973 (Enf. Bur. June 22, 2012), *aff’g*, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur. 2011), *aff’g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010).

## B. Proposed Forfeiture Amount

7. 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.<sup>16</sup> 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.<sup>17</sup> In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. Commission records show that the Miami Office previously issued several *Notices of Unlicensed Operation* to Mr. Allen for operation of unlicensed stations on 102.1 MHz at other locations in Florida.<sup>18</sup> The fact that Mr. Allen continued to operate an unlicensed station after being put on notice multiple times that his unlicensed operation of a radio station contravened the Act, the Commission's rules, and related Commission orders demonstrates a deliberate disregard for the Commission's requirements. Thus, we find that an additional upward adjustment of \$10,000 in the forfeiture amount is warranted.<sup>19</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Allen is apparently liable for a forfeiture in the amount of \$20,000.

## IV. ORDERING CLAUSES

8. 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, Damian Anthony Ojouku Allen is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 301 of the Act.<sup>20</sup>

9. **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, Damian Anthony Ojouku Allen **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. Damian Anthony Ojouku Allen will also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance

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<sup>16</sup> *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.

<sup>17</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>18</sup> See *Damian Anthony Ojouku Allen*, Notice of Unlicensed Operation (Enf. Bur. June 2, 2010) (on file in EB-10-MA-0088); *Damian Anthony Ojouku Allen and Michael Downer*, Hand-delivered Notice of Unlicensed Operation (Enf. Bur. May 21, 2010) (on file in EB-10-MA-0088); *Damien Allen and Michael Downer*, Hand-delivered Notice of Unlicensed Operation (Enf. Bur. July 1, 2010) (on file in EB-10-MA-0123).

<sup>19</sup> See, e.g., *Whisler Fleurinor*, Forfeiture Order, 26 FCC Rcd 14437 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur. 2011) (imposing a \$20,000 forfeiture for violations of Section 301); *Nounone Lubin*, Forfeiture Order, 26 FCC Rcd 7758 (Enf. Bur. 2011), *aff'g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (imposing a \$20,000 forfeiture for violations of Section 301).

<sup>20</sup> 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.<sup>21</sup> 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.

11. 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.<sup>22</sup> 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](mailto:ARINQUIRIES@fcc.gov).

12. 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.<sup>23</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152-0617, and include the NAL/Acct. No. referenced in the caption. Damian Anthony Ojouku Allen also shall e-mail the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

13. 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.

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<sup>21</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>22</sup> See 47 C.F.R. § 1.1914.

<sup>23</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. **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 Damian Anthony Ojouku Allen at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena  
Resident Agent  
Miami Office  
South Central Region  
Enforcement Bureau