

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

In the Matter of)	
)	
Joaquim Barbosa)	File Number: EB-08-NY-034
)	NAL/Acct. No. 200832380005
Licensee of Amateur Radio Station N2KBJ,)	FRN 0017458753
Elizabeth, New Jersey)	
)	

FORFEITURE ORDER

Adopted: December 11, 2012

Released: December 11, 2012

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000) to Joaquim Barbosa, licensee of amateur radio station N2KBJ, in Elizabeth, New Jersey, for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating a radio transmitting equipment on the frequency 296.550 MHz without Commission authorization. As discussed below, we deny Mr. Barbosa's request for cancellation of the forfeiture, but grant, in part, his request for reduction.

II. BACKGROUND

2. As reflected in the Notice of Apparent Liability (*NAL*) issued in this case, the Commission received a complaint from an authorized United States (U.S.) government user that it was receiving harmful radio interference from an unauthorized station operating on the frequency 296.550 MHz—a frequency limited to U.S. military operations²—in the Elizabeth, New Jersey area.³ Agents from the Enforcement Bureau's New York Field Office responded to the complaint and, using mobile direction-finding techniques on February 6, 7, and 11, 2008, determined that the source of the transmissions was emanating from a residential home owned by Mr. Barbosa.⁴

3. On February 11, 2008, the agents, accompanied by Mr. Barbosa, conducted an inspection of the unauthorized station at the residence.⁵ During the inspection, the agents directly observed a transceiver whose display showed that it was set to transmit frequency on 296.550 MHz.⁶ The agents also

¹ 47 U.S.C. § 301.

² Pursuant to the Table of Allocations, the 267-322 MHz Band is allocated solely for Federal Government use for all operations within the United States. *See* 47 C.F.R. § 2.106. In the band 255–328.6 MHz, the fixed and mobile services are limited to the military services. *See id.*, Federal Government Footnote G27.

³ *See Joaquim Barbosa*, File No. EB-08-NY-034, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200832380005 (Enf. Bur. Feb. 26, 2008) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

⁴ *See id.* at 1, paras. 3-6.

⁵ *See id.* at 2, para. 6.

⁶ *Id.*

observed that the transmitter was connected to an antenna mounted on the back of the house.⁷ During the interview, Mr. Barbosa admitted to operating the station and the transmitting equipment for at least four months, and confirmed that he owned the equipment.⁸ Mr. Barbosa, who is licensed by the FCC as an Amateur Extra Class licensee (the highest level class), acknowledged knowing that the frequency 296.550 MHz was not a U.S. frequency authorized for use by amateur licensees and confirmed that he did not have a license to operate on the frequency.⁹ The agents advised Mr. Barbosa of the violation and issued him a Notice of Unlicensed Operation (*NOUO*).¹⁰

4. Following the inspection, on February 26, 2008, the Bureau issued the *NAL*, which found Mr. Barbosa in violation of Section 301 of the Act for willfully and repeatedly operating a radio transmission apparatus on the frequency 296.550 MHz without Commission authorization.¹¹ In the *NAL*, the Bureau proposed a \$20,000 monetary forfeiture for the violation, which included a \$10,000 upward adjustment mainly because of the egregiousness of the violation.¹²

5. On March 25, 2008, Mr. Barbosa filed a response to the *NAL*, requesting cancellation or, in the alternative, a reduction of the forfeiture.¹³ In his response, Mr. Barbosa acknowledges that he did, in fact, operate a radio transceiver on the frequency 296.550 MHz without a license.¹⁴ He contends, however, that cancellation or a substantial reduction of the proposed \$20,000 forfeiture is warranted nonetheless for several reasons: (1) he reasonably believed that he had authority to operate on the frequency 296.550 MHz; (2) his constitutional rights were violated; (3) the unlicensed operation did not cause harm or interference; (4) the forfeiture amount is not supported by case precedent; and (5) that there are other factors—such as his cooperation with the investigation, inability to pay, and prior history of overall compliance with the rules—that, when considered, justify cancellation or a reduction of the forfeiture.¹⁵ We address below each of these issues in turn.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁶ Section 1.80 of the Commission's rules (Rules),¹⁷ and the *Forfeiture Policy*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2, paras. 6-7.

¹⁰ *Id.* See *Joaquim Barbosa*, Notice of Unlicensed Operation (Enf. Bur., New York Office issued Feb. 11, 2008) (*NOUO*).

¹¹ See *NAL*, *supra* note 3. See also 47 U.S.C. § 301.

¹² See *NAL* at 3-4, para. 10. See also 47 U.S.C. § 503(b)(2)(E).

¹³ See Letter from Jonathan L. Kramer, Counsel for Joaquim Barbosa, to New York Office, Northeast Region, Enforcement Bureau (March 25, 2008) (on file in EB-08-NY-034) (*NAL Response*).

¹⁴ *Id.* at 1.

¹⁵ See *id.* at 1-17. In addition, Mr. Barbosa requests potential resolution of this matter through a settlement. See *id.* at 17. The Bureau's Northeast Region Office discussed the matter with Mr. Barbosa's counsel, Jonathan L. Kramer, but an agreement satisfactory to both sides could not be reached.

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80.

*Statement.*¹⁸ In examining Mr. Barbosa's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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.¹⁹ As discussed below, we have fully considered Mr. Barbosa's response to the *NAL* in light of these statutory factors and find that cancellation of the forfeiture is not warranted; however, we find that some reduction of the forfeiture is justified based on his overall history of compliance with the rules prior to the investigation.

A. Mr. Barbosa Engaged in Unlicensed Operation

7. We affirm the *NAL*'s finding that Mr. Barbosa willfully and repeatedly violated Section 301 of the Act.²⁰ It is undisputed that Mr. Barbosa operated a radio transmitter without an FCC license on the frequency 296.550 MHz—a frequency authorized exclusively for Federal Government use in the United States—in violation of Section 301. In this regard, Mr. Barbosa states that he “truthfully acknowledged to the FCC agent who conducted the enforcement visit on February 11, 2008[,] that he did operate a transceiver on 296.550 MHz.”²¹ Notwithstanding the admission, Mr. Barbosa contends that cancellation or forfeiture reduction is warranted because he reasonably believed that he otherwise had authority to operate the radio transmitting equipment using the frequency 296.550 MHz.²² Mr. Barbosa explains that his authority is not based on his status as an amateur licensee (which he readily acknowledges does not authorize him to operate on the U.S. government frequency), but based on the authority vested in him by a Brazilian man, who is authorized to operate the radio equipment using the frequency 296.550 MHz in Brazil.²³ Mr. Barbosa states: “the frequency was one [I] knew to be an authorized Brazilian frequency for satellite communications and that [I] was operating on that frequency in compliance with a Brazilian permit as authorized by the Brazilian permit holder.”²⁴ Mr. Barbosa further states that the Brazilian man who gave him the radio as a “gift[]” was a licensee under Brazilian authority, and that this individual showed him the Brazilian authorization and granted him permission to operate under his license to use the frequency.²⁵ He argues that, as such, he “honestly believed” that the “master authorization” he was shown authorized him to operate the radio using the frequency at issue and, therefore, he should not be penalized for relying on that information.²⁶

8. We find Mr. Barbosa's arguments unavailing. Even assuming for the sake of argument that Mr. Barbosa is authorized to operate the radio equipment under Brazilian authority, he is not authorized to operate any such equipment in the United States without Commission authorization and, therefore, is still in

¹⁸ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ 47 U.S.C. § 301. *See NAL*, *supra* note 3.

²¹ *NAL Response* at 1.

²² *See id.* at 6, 10-12.

²³ *See id.*

²⁴ *Id.* at 6.

²⁵ *Id.* at 11.

²⁶ *See id.*

violation of Section 301 of the Act.²⁷ We emphasize that Section 301 makes clear that operation of *any* radio station *within* the United States requires FCC authorization,²⁸ which Mr. Barbosa did not have.²⁹ We also find unpersuasive Mr. Barbosa's suggestion that the violation should be excused because he reasonably believed that he was authorized to operate the radio transmitter using the frequency 296.550 based on the Brazilian license held by the individual who gave him the radio. It is well established that the Commission does not consider ignorance of the law or even reliance on erroneous or misleading advice or information from third parties about licensing requirements as mitigating circumstances that can justify cancellation or reduction of a forfeiture; and we see no reason to depart from that long-established policy in this case.³⁰

9. We also remain unconvinced that Mr. Barbosa did not knowingly violate the Commission's rules, especially given his status as an Amateur Extra Class licensee, the highest amateur license class. Based on the examination process involved in pursuing an amateur license, amateur licensees are expected to have an understanding of radio operations and pertinent FCC regulations, including Part 97 of the FCC's Rules governing the Amateur Radio Service.³¹ Licensed amateur operators know that they are authorized to operate *only* on the frequencies listed in Section 97.301 of the Rules, as designated by their operator class and license.³² Pursuant to the Table of Allocations, the 267-322 MHz Band—the band that Mr. Barbosa was operating in—is allocated solely for Federal Government use, which we continue to believe Mr. Barbosa knew (or should have known) was not authorized for non-government use.³³

B. The FCC's Inspection Did Not Violate Mr. Barbosa's Constitutional Rights

10. The FCC's inspection of Mr. Barbosa's radio equipment was warranted, given that Mr. Barbosa's unauthorized use of the frequency 296.550 MHz was believed (and later confirmed) to be the source of harmful interference with a government communications system.³⁴ In his response to the *NAL*,

²⁷ We note that Mr. Barbosa has not presented (including in his *NAL Response*) any Brazilian license that specifically authorizes him to operate the radio equipment on the frequency 296.550 MHz, nor a copy of the Brazilian license held by the individual who supposedly granted him permission to operate under his Brazilian license.

²⁸ Under Section 301 of the Act, 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—and in this instance, an FCC license—granted under the provisions of the Act. See 47 U.S.C. § 301.

²⁹ To the extent Mr. Barbosa is arguing that he was operating under reciprocal operating authority (i.e., under Brazilian authority) under Section 97.107 of the Rules, 47 C.F.R. § 97.107, he is not eligible for such authority, given his status as a United States citizen. See *NAL Response* at 7 (“Mr. Barbosa became a United States citizen in 1999.”); Public Notice, “Amateur Service Reciprocal Operation” (rel. April 9, 1999) (“No United States citizen, regardless of any other citizenship also held, is eligible for reciprocal operating authority.”)

³⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991) (holding that ignorance of the law or inadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction), *pet. for recons. denied*, 7 FCC Rcd 3454 (1992). See also *Paisa 2 Car and Limousine Service, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 14423, 14424, para. 5 (Enf. Bur. 2011) (declining to cancel forfeiture based on licensee's claim that it did not know that it was operating on an unauthorized frequency); *Kenneth Paul Harris, Sr.*, 15 FCC Rcd 12933, 12935, para. 7 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that licensee's ignorance of the law did not excuse the unauthorized transfer of the station); *Lakewood Broadcasting Service, Inc.*, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements).

³¹ See 47 C.F.R. Part 97.

³² 47 C.F.R. § 97.301.

³³ See 47 C.F.R. § 2.106.

³⁴ See *NAL* at 1-2, paras. 2-5.

Mr. Barbosa argues that his constitutional rights under the Fourth and Fifth Amendments³⁵ were violated because the FCC agents conducted a search of his home on February 11, 2008 without a warrant, entered his home without his consent, and subjected him to an unlawful interrogation without the benefit of Miranda warnings.³⁶

11. We find no merit in Mr. Barbosa's arguments. First, the FCC inspection was not a criminal investigation, thereby making much of Mr. Barbosa's constitutional claims (such as the need for Miranda warnings) inapplicable.³⁷ Second, the inspection was authorized under Section 303(n) of the Act, which states that the Commission has the "authority to inspect *all* radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1)."³⁸ FCC agents are not required to obtain a warrant prior to conducting a radio station inspection.³⁹ Third, as a licensed amateur radio operator for more than 13 years, Mr. Barbosa knew or should have known that any radio equipment at his station must be made available for inspection at any time when requested by the FCC, and that his cooperation and truthful responses during an inspection are expected.⁴⁰ Finally, we find nothing in the record in this case to support Mr. Barbosa's suggestion that the agents conducted themselves in an improper manner. Indeed, even Mr. Barbosa confirms (in his response to the *NAL*) that the agents took the following actions during the inspection (none of which we find inappropriate): the FCC agents knocked on the door of his home, identified themselves as federal agents, showed him government identification, and handed him an FCC business card during the inspection;⁴¹ that he and his son led the agents inside and outside their home so

³⁵ U.S. Const. amend. IV, V.

³⁶ See *NAL Response* at 8, 13-15.

³⁷ We reject Mr. Barbosa's argument that the questioning by FCC agents was a "custodial interrogation" and that, therefore, he was entitled to receive a "Miranda Warning." "Custodial interrogation" is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). At the time of the inspection at his home, the FCC agents did not hold Mr. Barbosa in custody. The agents simply requested—as part of the fact-gathering process—the opportunity to ask questions and to inspect the radio equipment (located at his home) that the agents believed (and later confirmed) was causing the interference. See *id.* at 444, 477 (*Miranda* warnings are not required to be given during "general questioning of citizens in the fact-finding process."). As an amateur licensee, Mr. Barbosa knew (or should have known) that FCC agents have the authority to inspect all radio installations associated with his amateur station. See 47 U.S.C. § 303(n). Indeed, Mr. Barbosa cooperated with the inspection without any indication or suggestion of force by the agents. The facts show that Mr. Barbosa voluntarily led the agents to certain parts of his home where the antenna and radio were located, and also voluntarily responded to questions. There simply is nothing in the record to suggest that Mr. Barbosa (or any reasonable person in the same position for that matter) was not free to leave at anytime during the inspection; nor does Mr. Barbosa assert that he was forced in any way by the agents to remain on the premises.

³⁸ 47 U.S.C. § 303(n) (emphasis added).

³⁹ See *Norfolk Southern Railway Company*, Memorandum Opinion and Order, 11 FCC Rcd 519 (CIB 1996) ("The right to inspect a station is one of the cornerstones of the FCC's ability to ensure compliance with the Communications Act and the FCC regulations."). See also *Randall R. Gaines*, Revocation Order, 72 FCC 2d 871, 878, para. 13 (Rev. Board 1979) (search warrant is not required for an inspection of a CB radio station).

⁴⁰ See 47 C.F.R. § 97.103(c).

⁴¹ See *NAL Response* at 2-4. Mr. Barbosa also asserts in his response (*id.* at 4, 13-14) that one of the agents referred to the other agent as an FBI agent. Both FCC agents deny ever representing themselves (or referring to the other agent) as an FBI agent, and both confirmed that proper FCC identification was presented to Mr. Barbosa. Indeed, the business card that Mr. Barbosa was given and the resulting *NOUO* (see *supra* note 10) he was issued at the end of the inspection clearly reflect that he was dealing with the FCC (and not the FBI).

that the agents could inspect the radio equipment and antenna,⁴² that the agents took photographs of the equipment and asked him questions concerning his operations;⁴³ and that, at the end of the inspection, the agents handed him a “Notice of Unlicensed Radio Operation” that was signed by one of the agents.⁴⁴ Based on all the foregoing, we find that the inspection conducted by the agents was lawful and appropriate, and that Mr. Barbosa’s constitutional rights were not violated.⁴⁵

C. The Unlicensed Operation Caused Harmful Interference

12. Mr. Barbosa also argues that the forfeiture should be reduced because there is no evidence of actual interference or harm.⁴⁶ With respect to the record evidence, Mr. Barbosa is incorrect. The investigation in this case commenced specifically because an authorized U.S. government user reported harmful radio interference to its communications system.⁴⁷ It is self-evident that an unlicensed operation on unauthorized frequencies disrupts the operations of authorized licensees and often results in interference to authorized services.⁴⁸ The fact that Mr. Barbosa’s unauthorized use of the frequency was obstructing and interfering with government communications was sufficient to characterize the interference as harmful.⁴⁹ We also believe that any interference to any U.S. government user is serious because of the potential harm to the public’s safety and security. Furthermore, even if there was no finding of interference or harm, Mr. Barbosa still would not be entitled to a forfeiture reduction. It is fairly established that the absence of interference or the showing of any harm to the public does not, under the *Forfeiture Policy Statement* or Section 1.80(b), warrant a downward adjustment of the forfeiture.⁵⁰

⁴² See *NAL Response* at 4-5.

⁴³ See *id.* at 5-6.

⁴⁴ See *id.* at 6. Mr. Barbosa was also asked by the agents to sign the *NOUO* to confirm receipt.

⁴⁵ Mr. Barbosa also argues that, “to the extent the Commission relies on [his] ‘admissions,’ the Commission should also recognize that he is not a native English speaker and, therefore, his ability to respond more properly to questions at the time of the inspection, coupled with the agents failure to employ appropriate “safeguards,” should be considered in the overall forfeiture assessment. *Id.* at 13. We find this argument unpersuasive; and it is moot, in any event, given Mr. Barbosa’s written response to the *NAL* in which he admits to operating on the frequency 296.550 MHz without a license. *NAL Response* at 1. The record also shows that Mr. Barbosa understood the purpose of the inspection in spite of his asserted deficient English language proficiency. See *id.* at 15 (“[W]hen [the agents] were looking in the wrong place in Mr. Barbosa’s yard for the uplink antenna connected to the Alinco radio, Mr. Barbosa directed them to the correct location.”). In addition, none of the questions that the agents asked Mr. Barbosa were inappropriate.

⁴⁶ See *NAL Response* at 8-9, 16.

⁴⁷ See *NAL* at 1, para. 2.

⁴⁸ See 47 C.F.R. § 2.1(c) (defining “interference” as: “The effect of unwanted energy due to one or a combination of emissions, radiations, or inductions upon reception in a radiocommunication system, manifested by any performance degradation, misinterpretation, or loss of information which could be extracted in the absence of such unwanted energy.”).

⁴⁹ See *id.* (defining “harmful interference” as: “Interferences which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service . . .”).

⁵⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113; 47 C.F.R. § 1.80(b). See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21870-71, para. 14 (2002) (finding that a downward adjustment was not warranted on the ground that there was no indication that the unpainted antenna structure actually compromised air safety); *AGM-Nevada, LLC*, 18 FCC Rcd 1476, 1478-79, para. 8 (Enf. Bur. 2003) (finding that a downward adjustment was not warranted on the ground that the station’s unauthorized operations did not result in interference or other public harm); *WWC License LLC*, 16 FCC Rcd 19490, 19493, para. 10 (Enf. Bur. 2001) (finding that a downward (continued...))

D. The Proposed Forfeiture Amount Was Supported by Case Precedent

13. Contrary to Mr. Barbosa's assertion, the NAL's proposed \$20,000 forfeiture amount, which included a \$10,000 upward adjustment, is supported by case precedent.⁵¹ In *Raimundo P. Silva*, the Bureau also issued a \$20,000 forfeiture against an amateur licensee who admitted to operating radio equipment in the frequency band reserved for federal government use without a license for several months, but asserted (like Mr. Barbosa does here) that he was unaware that his unauthorized radio transmissions interfered with the federal government users' authorized operations.⁵² The Bureau found Mr. Silva's apparent willful and repeated unlicensed and unauthorized radio operation in the restricted federal government band "egregious," justifying a significant upward adjustment in the amount of \$10,000. Because the violation here is equally egregious, we find the \$10,000 upward adjustment in this case to be consistent with prior cases and justified.

E. Cooperation, Inability to Pay, and History of Overall Compliance

14. Mr. Barbosa also suggests that the forfeiture amount merits some reduction because he was cooperative with the FCC agents during the inspection and because he has been truthful in his responses to the Commission.⁵³ While we appreciate Mr. Barbosa's conduct in this investigation, Mr. Barbosa's cooperative conduct is not a basis to justify a forfeiture reduction.⁵⁴ The Commission expects all licensees to cooperate with its investigations and to provide truthful responses to any questions.

15. Although Mr. Barbosa is a "micro" business owner, he also contends that the forfeiture amount would present "a significant hardship" and, therefore, should be canceled or reduced.⁵⁵ Mr. Barbosa, however, did not provide any financial documents to support his request.⁵⁶ With respect to a claim of financial hardship, the Commission will not consider canceling or reducing a forfeiture in response to an inability to pay claim, unless the individual or entity making the request submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the individual's or entity's current financial status.⁵⁷ Also, any claim of inability

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adjustment was not warranted on the ground that the stations' operations without conditional authority supported valuable services and did not result in public harm).

⁵¹ *NAL Response* at 16.

⁵² See *Raimundo P. Silva*, EB-04-SF-150, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532960001 (Enf. Bur. July 25, 2005) (*Raimundo Silva*). See also *Jack Gerritsen Bell*, Forfeiture Order, 20 FCC Rcd 19256 (Enf. Bur. 2005) (affirming upward adjustment of proposed forfeiture against amateur licensee who interfered with other licensed users).

⁵³ *NAL Response* at 15.

⁵⁴ See *Five Star Parking d/b/a Five Star Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (Enf. Bur. 2008) (responsive and cooperative behavior from the subject of an investigation is expected and does not justify reduction or cancellation of a forfeiture).

⁵⁵ *NAL Response* at 12.

⁵⁶ In his response to the NAL, Mr. Barbosa states: "Mr. Barbosa reserves all the rights in this regard to respond to this issue once a final total forfeiture amount, if any, is known with finality." *Id.* We note that Bureau staff previously invited Mr. Barbosa to submit financial information to support his inability to pay claim, but Mr. Barbosa declined the request.

⁵⁷ *NAL* at 4-5, para. 15. Further, in general, an individual's or entity's gross revenues are the best indicator of its ability to pay a forfeiture. See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (Enf. Bur. 1992); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (Enf. Bur. 2000); (continued...)

to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.⁵⁸ Here, because Mr. Barbosa did not provide any financial or other documentation to support or corroborate his asserted financial status, we have no basis by which to evaluate Mr. Barbosa's inability to pay claim and, therefore, must deny the request.⁵⁹

16. Finally, Mr. Barbosa asserts that the proposed forfeiture amount should be reduced because of his overall history of compliance with the laws, including the Commission's rules.⁶⁰ We agree that a reduction of the forfeiture amount is warranted based on our review of the record and finding that Mr. Barbosa (prior to the investigation) has a history of overall compliance with the Commission's rules.⁶¹ Accordingly, after consideration of the entire record (including Mr. Barbosa's response to the NAL), the *Forfeiture Policy Statement*, and the factors set forth in Section 503(b)(2)(E) of the Act,⁶² we find that, although cancellation of the monetary forfeiture is not warranted, a reduction of the forfeiture amount from \$20,000 to \$16,000 is appropriate.

IV. ORDERING CLAUSES

17. 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(f)(4) of the Commission's rules, Joaquim Barbosa **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for violation of Section 301 of the Act.⁶³

18. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules by close of business on December 31, 2012.⁶⁴ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁶⁵ Joaquim Barbosa shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁶⁶ 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:

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Hoosier Broadcasting Corporation, Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2002). *See also* 47 C.F.R. 1.80(f)(3).

⁵⁸ *Id.*

⁵⁹ *See, e.g., Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur. 2005) (denying inability to pay claim because company failed to provide supporting financial documentation).

⁶⁰ *See NAL Response* at 12.

⁶¹ *See, e.g., Gila Electronics, Inc.*, Forfeiture Order, 27 FCC Rcd 400, 402, para. 9 (Enf. Bur. 2012) (reducing forfeiture based on history of compliance with the Rules); *Taylor Communications, Inc.*, Forfeiture Order, 26 FCC Rcd 12885, 12888, para. 10 (Enf. Bur. 2011) (reducing forfeiture based on history of compliance with the Rules).

⁶² 47 U.S.C. § 503(b)(2)(E). *See* 47 C.F.R. § 1.80(b)(5).

⁶³ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

⁶⁴ 47 C.F.R. § 1.80.

⁶⁵ 47 U.S.C. § 504(a).

⁶⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

19. 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. 20554.⁶⁷ 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.

20. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Joaquim Barbosa at his address of record and to his counsel, Jonathan L. Kramer, Kramer Telecom Law Firm, P.C., 2001 S. Barrington Avenue, Suite 306, Los Angeles, California 90025.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

⁶⁷ See 47 C.F.R. § 1.1914.