

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

In the Matter of)	
)	
Damian Anthony Ojouku Allen)	File No.: EB-FIELDSCR-13-00010442
)	NAL/Acct. No.: 201432600003
Fort Lauderdale, Florida)	FRN: 0021896410

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 26, 2014

Released: March 26, 2014

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

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Damian Anthony Ojouku Allen for apparently operating a pirate radio station in Fort Lauderdale, Florida. The Commission warned Mr. Allen several times that pirate operations are illegal and previously imposed a penalty on him for operating a pirate radio station in Pompano Beach, Florida on the same unauthorized frequency. The fact the Mr. Allen would commit the same violation on the same frequency demonstrates a deliberate disregard for the Commission's authority and its rules, warranting a significant \$25,000 penalty.

2. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that Mr. Allen 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 101.1 MHz in Fort Lauderdale, Florida.

II. BACKGROUND

3. On August 7, September 6, and September 11, 2013, 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 located on the rooftop of a commercial property in Fort Lauderdale, Florida. On August 7 and September 6, 2013, the agents took field strength measurements of the station's signal and determined that the transmissions on 101.1 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),² and therefore required a license. According to the Commission's records, no authorization has been issued to Mr. Allen, or to anyone else, for the operation of an FM broadcast station at or near the Fort Lauderdale commercial property.

4. On September 6, 2013, while monitoring the unlicensed station, agents from the Miami Office heard the station identify itself on the air as "NRG Online Radio" and reference the website "nrgonlineradio.com." Evidence obtained from the Internet identifies Mr. Allen as "DJ Undisputed" for 101.1 FM. On September 11, 2013, the agents traced a coaxial cable from the transmitting antenna mounted

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 µV/m at three meters. 47 C.F.R. § 15.239.

on the FM antenna structure on the roof of the commercial property in Fort Lauderdale into a suite leased by Mr. Allen. The agents also consulted the Commission's records and determined that the Miami Office previously assessed a \$20,000 forfeiture against Mr. Allen for operating an unlicensed radio station on the frequency 101.1 MHz in Pompano Beach, Florida after being warned several times in writing that such action violated the Act.³

5. Detectives with the Fort Lauderdale Police Department, working with FCC agents from the Miami Office, arrested Mr. Allen for operating an unlicensed FM radio station and seized his transmitting equipment. Mr. Allen pleaded guilty to a third degree felony under Florida state law.⁴

III. DISCUSSION

6. 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

³ *Damian Anthony Ojouku Allen*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7956 (Enf. Bur. 2012), *aff'd*, Forfeiture Order, 27 FCC Rcd 14001 (Enf. Bur. 2012). 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. 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).

⁴ See Broward County Case Number 13012904CF10A, State Reporting Number: 062013CF012904A88810.

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., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (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

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A. Unlicensed Broadcast Operations

7. We find that the record evidence in this case is sufficient to establish that Mr. Allen 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 accordance with the Act and with a license granted under the provisions of the Act.¹¹ On August 7, September 6, and September 11, 2013, agents from the Miami Office determined that an unlicensed radio station on the frequency 101.1 MHz operated from a suite in a commercial property in Fort Lauderdale, Florida, leased by Mr. Allen. Internet evidence identifies Mr. Allen as a DJ for an unlicensed station operating on 101.1 MHz (FM), and he has a history of operating an unlicensed radio station on 101.1 MHz in the Broward County area.¹² A review of the Commission's records revealed that no license or authorization was issued to Mr. Allen, or to anyone else, to operate a radio station on 101.1 MHz at this location. Based on the totality of the evidence before us, we find that Mr. Allen apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

B. Proposed Forfeiture

8. 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 \$10,000.¹³ 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.¹⁴ In doing so, we find that the violation in this case justifies a \$15,000 upward adjustment from the base forfeiture amount.¹⁵ As the record reflects, the Miami Office previously assessed a forfeiture against Mr. Allen for operating an unlicensed radio station on the frequency 101.1 MHz in Pompano Beach, Florida after being warned several times in writing that such action violated the Act.¹⁶ The fact that Mr. Allen would again commit the same violation, multiple times, on the same

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commission or omission is continuous, for more than one day." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹¹ 47 U.S.C. § 301.

¹² See *supra* para. 4.

¹³ *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.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See, e.g., *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 489 (Enf. Bur. 2012) (proposing \$25,000 forfeiture for repeat unlicensed operations in violation of Section 301 of the Act after receiving Notice of Apparent Liability and Forfeiture Order for unauthorized operations on same frequency), *aff'd*, Forfeiture Order, 28 FCC Rcd 1087 (Enf. Bur. 2013); see also *Gary M. Feldman*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 1309 (Enf. Bur. 2013) (proposing \$25,000 forfeiture for repeat unlicensed operations in violation of Section 301 of the Act after receiving Notice of Apparent Liability and Forfeiture Order for unauthorized operations on different frequency), *aff'd*, Forfeiture Order, 28 FCC Rcd 7072 (Enf. Bur. 2013); *Fabrice Polynice*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15079 (Enf. Bur. 2012) (proposing \$25,000 forfeiture for repeat unlicensed operations in violation of Section 301 of the Act after conviction under Florida law for operating an unlicensed station), *aff'd*, Forfeiture Order, 28 FCC Rcd 4297 (Enf. Bur. 2013).

¹⁶ See *supra* note 3. The Bureau may rely on the underlying facts of non-final, non-adjudicated forfeiture

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frequency, after being warned repeatedly that such actions violates the Act, demonstrates not only the egregiousness of the violations here, but also his deliberate disregard for the Act and the 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. Allen is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Damian Anthony Ojouku Allen 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.¹⁷

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the 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.

11. 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. Mr. Allen shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ 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.

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proceedings to show a pattern of non-compliant behavior in a forfeiture proceeding. *See Forfeiture Policy Statement*, 12 FCC Rcd at 17103, para. 34.

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

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

12. Any request for making full payment over time 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. 20554.¹⁹ 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.

13. 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.²⁰ 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 Allen also shall e-mail the written response to SCR-Response@fcc.gov.

14. 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 principles (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.

15. **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

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).