

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Andrew O. Turner	)	File No.: EB-FIELDSCR-15-00018593
	)	NAL/Acct. No.: 201632600001
Miami Gardens, FL	)	FRN: 0025070996

**FORFEITURE ORDER**

**Adopted: April 12, 2016**

**Released: April 12, 2016**

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$15,000 against Andrew O. Turner for operating an unlicensed FM radio station on 95.9 MHz in Broward County, FL. Mr. Turner does not deny that he operated an unlicensed station, but argues that he did not intend to cause harm or undermine the Commission's authority, and that he does not have the funds to pay the forfeiture. After reviewing Mr. Turner's response to the NAL, we find no reason to cancel, withdraw or reduce the proposed penalty, and we therefore assess the \$15,000 forfeiture the Bureau previously proposed.

**II. BACKGROUND**

2. In response to a complaint, on January 26, March 7, August 17, and September 9, 2015, agents from the Enforcement Bureau's Miami Office (Miami Office) and Tampa Office (Tampa Office) identified and located the source of unlicensed transmissions on the frequency 95.9 MHz originating from residences in Broward County, FL. Agents determined that Mr. Turner operated the unlicensed stations.<sup>1</sup> Mr. Turner was warned of the unlicensed operations by the Commission in writing on March 7 and August 17, 2015.<sup>2</sup>

3. On November 20, 2015, the Enforcement Bureau's Miami Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) proposing a \$15,000 forfeiture against Mr. Turner for his apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (*Act*)<sup>3</sup> by operating an FM broadcast transmitter without Commission authorization.

4. On December 16, 2015, Mr. Turner filed a response to the *NAL*.<sup>4</sup> Mr. Turner requests cancellation of the proposed forfeiture. While Mr. Turner does not deny operating the unlicensed station, he states that he "had no intentions of creating or causing danger intentional or unintentional," nor did he

<sup>1</sup> The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. *Andrew O. Turner, Miami Gardens, FL*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 13403 (Enf. Bur., South Central Region, 2015) (*NAL*).

<sup>2</sup> See *Andrew O. Turner*, Notice of Unlicensed Operation (Enf. Bur. Mar. 7, 2015) (on file in EB-FIELDSCR-15-00018593); *Andrew Turner/WBIG Station*, Notice of Unlicensed Operation (Enf. Bur. Aug. 17, 2015) (on file in EB-FIELDSCR-15-00018593).

<sup>3</sup> 47 U.S.C. § 301.

<sup>4</sup> *Andrew O. Turner*, Response to Notice of Apparent Liability (Dec. 16, 2015) (on file in EB-FIELDSCR-15-00018593) (*NAL Response*).

“deliberately intend to undermine the commissions’ authority.”<sup>5</sup> Mr. Turner maintains that his broadcasts benefit his community, and asks the Commission to cancel the forfeiture in light of those community benefits.<sup>6</sup> He also argues that his ministry is nonprofit and he has insufficient funds to pay the forfeiture.<sup>7</sup>

### III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>8</sup> Section 1.80 of the Commission’s rules (Rules),<sup>9</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>10</sup> When we assess forfeitures, Section 503(b)(2)(E) requires that we 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 such other matters as justice may require.”<sup>11</sup> As discussed below, we have fully considered Mr. Turner’s response to the *NAL*, but we find none of them persuasive. We therefore affirm the \$15,000 forfeiture proposed in the *NAL*.

#### A. The Commission of an Act, Irrespective of Any Intent to Violate the Law, Qualifies as Willful Under Section 312 of the Act

6. Mr. Turner does not contest the facts recited in the *NAL*. Instead, he requests cancellation of the proposed forfeiture because he did not intend to cause or create danger nor did he intend to violate the Act.<sup>12</sup> 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>13</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>14</sup> The legislative history to Section 312(f)(1) of the Act makes clear that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>15</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>16</sup> Mr. Turner does not deny that he operated the station. Therefore, we find that his operation of

---

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> *NAL* Response at 1.

<sup>13</sup> 47 U.S.C. § 503(b).

<sup>14</sup> 47 U.S.C. § 312(f)(1).

<sup>15</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>16</sup> *See, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

the station was willful, according to the Act. Even if we were to accept that the operation on the unlicensed station was not “willful,” it was nevertheless repeated.<sup>17</sup>

**B. Mr. Turner’s Community Service Does Not Warrant Forfeiture Cancellation or Reduction**

7. Mr. Turner discusses a number of benefits he claims his broadcasts provide for the community, and asks us to consider those benefits while determining whether cancellation of the forfeiture proposed in the NAL is warranted.<sup>18</sup> We have taken those benefits into account, and we conclude that they do not provide justification for any cancellation or reduction of the proposed forfeiture amount. Assuming for the sake of argument that Mr. Turner’s broadcasts provide the services he claims, it is well established that such community service does not excuse violations of the Communications Act or the Commission’s rules, and does not provide a mitigating factor with respect to such violations.<sup>19</sup> Moreover, Mr. Turner could have performed his public service under Section 15.239 of the Commission’s Rules, which authorizes low power unlicensed transmissions, but he chose not to do so.<sup>20</sup> Accordingly, we find that Mr. Turner’s service to his community does not warrant cancellation or reduction of the proposed forfeiture amount.

**C. Mr. Turner Did Not Demonstrate an Inability to Pay Warranting Forfeiture Cancellation or Reduction**

8. We decline to cancel or reduce the forfeiture amount based on Mr. Turner’s alleged inability to pay. The *NAL* specifically stated that a cancellation or reduction of the proposed forfeiture based on inability to pay will not be considered unless the petitioner provides (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>21</sup> Mr. Turner did not submit any documentation in support of his request for a reduction based on inability to pay. We therefore have no basis for assessing Mr. Turner’s inability to pay claim. We find that a forfeiture in the amount of \$15,000 is warranted.<sup>22</sup>

9. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$15,000 properly reflects the seriousness, duration, and scope of Mr. Turner’s violations.

---

<sup>17</sup> See *S. Cal Broad. Co.*, 6 FCC Rcd at 4388, para. 5; see also *Infinity Broadcasting Corporation of Florida*, Order on Review, 24 FCC Rcd 4270, 4279, para. 25 (2009).

<sup>18</sup> NAL Response at 1.

<sup>19</sup> *MRJ, Inc., WWYO Pineville, West Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 8528, 8530, para. 10 (Enf. Bur., 2004) (“The fact that MRJ may perform useful service in the community does not mitigate its violations”), cited in *Michael S. Selvanto*, Forfeiture Order, 19 FCC Rcd 15337, 15339, para. 10 (Enf. Bur., 2004) (*Selvanto Forfeiture Order*). See also *Radio Beaumont, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 904, 904, paras. 3-4 (1975) (broadcasters are expected to serve their communities as well as comply with the Commission’s rules), cited in *Texas Soaring Association, Inc. Midlothian, Texas*, Forfeiture Order, 28 FCC Rcd 10740, 10742 n.22 (Enf. Bur., Spectrum Enf. Div., 2013).

<sup>20</sup> 47 C.F.R. § 15.239; *Selvanto Forfeiture Order*, 19 FCC Rcd at 15339, para. 10.

<sup>21</sup> *NAL*, 30 FCC Rcd at 13407-08, para. 16.

<sup>22</sup> See, e.g., *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1043, para. 11 (2007) (in assessing an inability to pay claim, the Commission requires the claimant to provide reliable and objective documentation that reflects its current overall financial status).

10. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Turner willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.<sup>23</sup> We decline to cancel or reduce the \$15,000 forfeiture proposed in the *NAL*.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>24</sup> and Section 1.80 of the Commission's Rules,<sup>25</sup> Andrew O. Turner **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willfully and repeatedly violating Section 301 of the Act.<sup>26</sup>

12. Payment of the forfeiture should be made in the manner provided for in Section 1.80 of the Commission's Rules within thirty (30) calendar days after the release of this Forfeiture Order.<sup>27</sup> 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.<sup>28</sup>

13. 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. Andrew O. Turner shall send electronic notification of payment to Steven Spaeth at [steven.spaeth@fcc.gov](mailto:steven.spaeth@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>29</sup> When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

14. 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

---

<sup>23</sup> 47 U.S.C. § 301.

<sup>24</sup> 47 U.S.C. § 503(b).

<sup>25</sup> 47 C.F.R. § 1.80.

<sup>26</sup> 47 U.S.C. § 301.

<sup>27</sup> 47 C.F.R. § 1.80(h).

<sup>28</sup> 47 U.S.C. § 504(a).

<sup>29</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

---

Street, SW, Room 1-A625, Washington, D.C. 20554.<sup>30</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Andrew O. Turner at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage  
Regional Director  
South Central Region  
Enforcement Bureau

---

<sup>30</sup> See 47 C.F.R. § 1.1914.