

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Kedner Maxime
Oakland Park, FL
File No.: EB-FIELDSCR-15-00020432
NAL/Acct. No.: 201632600002
FRN: 0025807728

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 12, 2016

Released: August 12, 2016

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$15,000 against Kedner Maxime for operating an unlicensed radio station on the frequencies 89.1 and 102.1 MHz from two locations in Broward County, Florida. The Commission previously warned Mr. Maxime that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Maxime’s deliberate disregard of the Commission’s warnings warrants a significant penalty. Commission action in this area is essential because unlicensed radio stations create a danger of interference to licensed communications and undermine the Commission’s authority over FM broadcast radio operations.

II. BACKGROUND

2. On July 14, 2015, the Enforcement Bureau’s Miami Office (Miami Office) received a complaint from the Federal Aviation Administration (FAA) that an unidentified FM broadcast station in the Broward County, Florida area was operating on 102.1 MHz and also was transmitting a spurious signal on a frequency assigned to U.S. military aeronautical operations.

3. On July 15, 2015, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on the frequency 102.1 MHz to an FM transmitting antenna at a church building in Ft. Lauderdale, Florida. The agents also observed a spurious signal on the U.S. military aeronautical frequency originating from the same antenna. The agents took field strength measurements of the station’s signal and determined that the transmissions on 102.1 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules),<sup>1</sup> and therefore required a license. The agents consulted the Commission’s records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near Ft. Lauderdale, Florida. No one was present at the church at the time the agents located the station and made field strength measurements. The agents observed a sign at the church indicating “Kedner Maxime” as the church pastor. Public records showed that Mr. Maxime was a registered agent and president of “N.E.W. Community Development Center, Inc.”,<sup>2</sup> a Florida corporation that owns the church.<sup>3</sup> Agents went to the address listed for the corporation

1 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.

2 Florida Department of State, Division of Corporations Homepage, www.sunbiz.org (last visited January 19, 2016).

3 Broward County, FL Property Appraiser Homepage, http://www.bcpa.net (last visited January 19, 2016).

and observed a sign on the door that read “Dr. Kedner Maxime.”

4. On three other occasions, July 20, July 23, and July 29, 2015, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on 102.1 MHz to an FM transmitting antenna located at the same church property in Ft. Lauderdale, Florida. On July 20 and July 29, the agents also observed spurious signals on the military aeronautical frequency as well as numerous other frequencies in the civilian aviation band, all emanating from the same antenna.

5. Later on July 29, 2015, the agents spoke to Mr. Maxime at his business office in Oakland Park, Florida. Mr. Maxime identified himself as Kedner Maxime. The agents advised Mr. Maxime that the unlicensed station at his church was operating in violation of Commission Rules, was causing interference to air traffic communications, and must cease operation. Mr. Maxime admitted that he had been operating the station at the church for about a month, and stated that he could turn it off. The agents then met Mr. Maxime at his church where Mr. Maxime unlocked and opened the main doors, as well as the door to a small storage room where the transmitter was located. Specifically, Mr. Maxime showed the agents a transmitter connected to an antenna coaxial cable. The transmitter was also connected to an audio mixer/computer on a table nearby. The readout on the transmitter showed 102.1 MHz. Mr. Maxime turned off the transmitter, disconnected cables, and removed the transmitter. Mr. Maxime voluntarily relinquished possession of the transmitter to agents. Agents issued to Mr. Maxime a hand-delivered Notice of Unlicensed Operation (NOUO), which he read and signed. The Notice directed Mr. Maxime to cease operating the unlicensed radio station on 102.1 MHz, and warned that continued unlicensed operation could result in additional enforcement action.<sup>4</sup>

6. On November 12, 2015, the Miami Office received a complaint of interference to a licensed FM broadcast station caused by the operation of an unlicensed FM broadcast station operating on the frequency 89.1 MHz in Broward County, Florida.

7. On November 17, 2015, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on 89.1 MHz to an FM transmitting antenna located on a two-story multi-unit commercial building in Oakland Park, Florida. The building contains the same address as Mr. Maxime’s business office. The agents once again took field strength measurements of the station’s signal, confirmed that the station required a license, and determined that no authorization had been issued to operate this station at or near Oakland Park, Florida.

8. On December 2, 2015, a Miami Office agent spoke by telephone to the property owner of the commercial building in Oakland Park, Florida. The property owner stated that Mr. Maxime leased two units on the property: the office on the first floor and another unit on the second floor. The owner stated that the radio station would almost certainly be located in the unit on the second floor which is directly below the FM transmitting antenna on the roof. The owner stated that Mr. Maxime had recently requested to place a small antenna on the roof.

9. Later on December 2, 2015, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on 89.1 MHz to an FM transmitting antenna located on the same two-story multi-unit commercial building in Oakland Park, Florida. The agents again took field strength measurements of the station’s signal, confirmed that the station required a license, and determined that no authorization had been issued to operate this station at or near Oakland Park, Florida.

10. Still on December 2, 2015, after taking measurements of the unlicensed station, the Miami agents met with the property owner outside the second floor unit. The agents and the property owner then went to Mr. Maxime’s office on the first floor and spoke to Mr. Maxime’s wife, who stated

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<sup>4</sup> *New Community Development Center, Inc./Kedner Maxime*, Notice of Unlicensed Operation (Enf. Bur. Jul. 29, 2015) (on file in EB-FIELDSCR-15-00020432).

Mr. Maxime was not present. The agents obtained from the property owner a copy of the lease for the second floor unit showing that Kedner Maxime and New Community Development Center, Inc. leased the unit. While the agents were at the management office, Mr. Maxime called the property owner. The agents returned to Mr. Maxime's first floor office and issued a hand-delivered NOUO to Mr. Maxime for unlicensed operation on 89.1 MHz. The Notice directed Mr. Maxime to cease operating the unlicensed radio station on 89.1 MHz in Oakland Park, Florida, and warned that continued unlicensed operation could result in additional enforcement action.<sup>5</sup>

### III. DISCUSSION

11. We find that Mr. Maxime apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act).<sup>6</sup> 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 without a license granted by the Commission. On July 15, July 20, July 23, July 29, November 17, and December 2, 2015, agents from the Miami Office determined that Mr. Maxime operated an unlicensed radio station at two locations in Broward County, Florida.<sup>7</sup> On July 29 and December 2, 2015, Mr. Maxime was warned by the Commission in writing that such unlicensed operations violated the Act.<sup>8</sup> As a result, we find Mr. Maxime apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.

12. 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>9</sup> Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Maxime of up to \$16,000 for each day of a continuing violation, up to a statutory maximum of \$122,500 for a single act or failure to act.<sup>10</sup> In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the

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<sup>5</sup> *Kedner Maxime*, Notice of Unlicensed Operation (Enf. Bur. Dec. 2, 2015) (on file in EB-FIELDSCR-15-00020432).

<sup>6</sup> 47 U.S.C. § 301.

<sup>7</sup> *See supra* paras. 3–10.

<sup>8</sup> *See supra* paras. 5 and 10.

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> *See* 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(7). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation this year. *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644 (Enf. Bur. 2016); *see also Inflation Adjustment of Monetary Penalties*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment "shall apply only to violations which occur after the date the increase takes effect," we apply the forfeiture penalties in effect at the time the apparent violations took place. 28 U.S.C. § 2461 note (6). Here, because the apparent violations at issue occurred before August 1, 2016, the applicable maximum penalties are based on the Commission's previous inflation adjustment that became effective on September 13, 2013. *See Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Red 10785 (Enf. Bur. 2013); *see also Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for those increases).

violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>11</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>12</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>13</sup>

13. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation without an instrument of authorization.<sup>14</sup> We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.<sup>15</sup> On July 29, 2015, Mr. Maxime was issued a warning explaining that unlicensed operation of a radio station violated the law and could subject him to further enforcement action, including a substantial monetary forfeiture. The fact that Mr. Maxime continued to operate an unlicensed station after being put on notice that his actions contravened the Act, the Rules, and related Commission orders demonstrates a deliberate disregard for the Commission’s authority and requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is warranted.<sup>16</sup> After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$15,000, for which Mr. Maxime is apparently liable.

#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>17</sup> and Section 1.80 of the Rules,<sup>18</sup> Kedner Maxime is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violations of Section 301 of the Act.<sup>19</sup>

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>20</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Kedner Maxime **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 18 below.

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

<sup>12</sup> 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</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, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>16</sup> See *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (Enf. Bur. 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) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and Rules); *Lloyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (Enf. Bur. 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) (same).

<sup>17</sup> 47 U.S.C. § 503(b).

<sup>18</sup> 47 C.F.R. § 1.80.

<sup>19</sup> 47 U.S.C. § 301.

<sup>20</sup> 47 C.F.R. § 1.80.

16. 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. Kedner Maxime 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>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 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 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.

17. 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, SW, Room 1-A625, Washington, DC 20554.<sup>22</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

18. 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> The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 266468, Weston, FL 33326, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to [steven.spaeth@fcc.gov](mailto:steven.spaeth@fcc.gov).

19. 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; 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.

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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).

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Kedner Maxime at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage  
Regional Director, Region Two  
Enforcement Bureau