

Federal Communications Commission

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

In the Matter of)	
)	
Nicolas Paula)	File Number: EB-07-NY-067
)	
Bronx, New York)	NAL/Acct. No: 200832380001
)	
)	FRN: 0016 3880 01

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 6, 2007

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Nicolas Paula apparently willfully and repeatedly violated Sections 301 of the Communications Act of 1934, as amended ("Act"), by operating an unlicensed radio transmitter on the frequency 94.5 MHz, and willfully violated Section 303(n) of the Act by failing to permit a station inspection.¹ We conclude, pursuant to Section 503(b) of Act,² that Nicolas Paula is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

II. BACKGROUND

2. In February, 2007, the FCC's Enforcement Bureau received several complaints from New York City area radio broadcasters of an unlicensed station operating on 94.5 MHz. The complaints were subsequently forwarded to the Enforcement Bureau's New York Office for further investigation.

3. On March 3, 2007, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 94.5 MHz in Bronx, New York. The agents observed a radio broadcast on 94.5 MHz and identified the source of the transmissions as an FM broadcasting antenna mounted on the roof of an apartment building at 317 East 178th Street, Bronx, NY. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission's Rules ("Rules")³ and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for this operation on 94.5 MHz in Bronx, New York.

4. After completing the field strength measurements on March 3, 2007, the agents returned to 317 East 178th Street and observed the FM antenna mounted on the roof and antenna coaxial cable that

¹ 47 U.S.C. §§ 301, 303(n).

² 47 U.S.C. § 503(b).

³ 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 μ V/m at three meters. 47 C.F.R. § 15.239. Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed Part 15 transmitter.

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ran into a window of Apartment 5B of 317 East 178th Street. The agents rang the doorbell to apartment 5B and no one answered. The agents left a hand-delivered Notice of Unlicensed Operation (“NOUO”) under the door of Apartment 5B. The NOUO warned the resident that operation of the unlicensed radio station on 94.5 MHz violated 47 U.S.C. § 301; outlined the potential penalties for operating an unlicensed station in violation of 47 U.S.C. § 301, including seizure of the equipment, fines and imprisonment; and directed the operator of the station to terminate operation of the unlicensed station immediately. The NOUO offered the station operator ten days to reply. The New York Office did not receive a reply to the NOUO.

5. On March 14, 2007, a Commission agent, using a mobile direction-finding vehicle, monitored the frequency 94.5 MHz in Bronx, New York. The agents observed a radio broadcast on 94.5 MHz and identified the source of the transmissions as an FM broadcasting antenna mounted on the roof of an apartment building at 317 East 178th Street, Bronx, NY. The agent took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for this operation on 94.5 MHz in Bronx, New York.

6. After completing the field strength measurements on March 14, 2007, the agent returned to 317 East 178th Street and observed the FM antenna mounted on the roof and antenna coaxial cable that ran into a window of Apartment 5B of 317 East 178th Street. The agent went to Apartment 5B where he spoke to a resident of the apartment who identified himself as Nicolas Paula. Nicolas Paula stated that he was the operator of the station and owner of the transmitting equipment. Mr. Paula refused to turn off the transmitter and refused to allow inspection of the station. The agent orally warned Mr. Paula of the consequences of operating an unlicensed broadcast station and failing to permit an inspection.

7. On March 31, 2007, Commission agents, using a mobile direction-finding vehicle, monitored the frequency 94.5 MHz in Bronx, New York. The agents observed a radio broadcast on 94.5 MHz and identified the source of the transmissions as an FM broadcasting antenna mounted on the roof of an apartment building at 317 East 178th Street, Bronx, NY. The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for this operation on 94.5 MHz in Bronx, New York.

8. On April 6, 2007, the New York Office sent a Notice of Unlicensed Operation (NOUO), by First Class and Certified Mail Return Receipt Requested, to Nicolas Paula at 317 East 178th Street, Apartment 5B, Bronx, NY 10457. The NOUO warned Paula that operation of the unlicensed radio station on 94.5 MHz violated 47 U.S.C. § 301; outlined the potential penalties for operating an unlicensed station in violation of 47 U.S.C. § 301, including seizure of the equipment, fines and imprisonment; and directed the operator of the station to terminate operation of the unlicensed station immediately. The NOUO offered Paula ten days to reply. The New York Office did not receive a reply to the NOUO. On May 7, 2007, the certified letter was returned undelivered to the New York Office by the U.S. Postal Service. The letter sent by First Class Mail was not returned.

III. DISCUSSION

9. 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. The term “willful” as used in Section 503(b) of the Act has been

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interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

10. 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. On March 3, 14, and 31, Nicolas Paula operated radio transmission equipment on the frequency 94.5 MHz from his residence at 317 East 178th Street, Apartment 5B, Bronx, NY, without the required Commission authorization. Paula admitted to operating the station, but continued to operate the station notwithstanding the issuance of two Notices of Unlicensed Operation and an oral warning. We therefore find that Paula’s operation of his station without a license was willful. Because the unlicensed operation continued for more than one day, the violation was repeated.

11. Section 303(n) states that the Commission has authority to inspect all radio installations associated with stations required to be licensed to ascertain whether, in operation, they conform to the requirements of the rules and regulations of the Commission. On March 14, 2007, agents orally warned Paula that failure to allow an inspection of his station could subject him to enforcement action. Notwithstanding this warning, Paula refused to allow agents to inspect the station, therefore, his violation was willful.

12. Based on the evidence before us, we find that Nicolas Paula apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment on 94.5 MHz in Bronx, NY on March 3, 14, and 31, 2007 without a Commission authorization, and willfully violated Section 303(n) of the Act by failing to allow an inspection of his station on March 14, 2007.

13. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*, and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000, and the base forfeiture amount for failure to permit a station inspection is \$7,000.⁶ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Nicolas Paula is apparently liable for a \$17,000 forfeiture.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act. . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 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.”

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

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Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Nicolas Paula is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of Sections 301 and 303(n) of the Act.⁸

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Nicolas Paula **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

17. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and must include the NAL/Acct. No. referenced in the caption.

18. 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.

19. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.⁹

20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Nicolas Paula at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau

⁸ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 47 U.S.C. §§ 301, 303(n).

⁹ See 47 C.F.R. § 1.1914.