

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

In the Matter of)	
)	File No.: EB-10-MA-0145
Willis Cernogg, Jr.)	
)	NAL/Acct. No.: 201232600003
Miami, Florida)	
)	FRN: 0021241344
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 25, 2011

Released: October 25, 2011

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Willis Cernogg, Jr. (“Mr. Cernogg”) 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 90.7 MHz in Miami, Florida. We conclude that Mr. Cernogg is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On January 21, March 24, and April 14, 2011, in response to a complaint, 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 90.7 MHz to a residence in Miami, Florida, shared by Mr. Cernogg and others. On January 21 and March 24, 2011, the agents determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s rules (“Rules”), and therefore required a license.² A review of the Commission’s records revealed that no license or authorization was issued to Mr. Cernogg or anyone else to operate a radio station on 90.7 MHz at this location.

3. On April 14, 2011, agents from the Miami Office inspected the radio station after the Miami Police Department (“MPD”) executed a search warrant and secured the residence. The agents observed that the station’s transmitter display read 90.7 MHz. A person who rented a room at the residence stated that Mr. Cernogg put the radio equipment in the locked area where MPD found it, and also provided Mr. Cernogg’s phone number. Subsequently, an agent from the Miami Office conducted an Internet search and found profile information for user “LadyLuckRadio907FMMiami” discussing an underground radio station on 90.7 FM in Miami³; and also found a Twitter user called “LADYLUCKRADIO” listing

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.

³ On April 14, 2011, an agent from the Miami Office found profile information for user “LadyLuckRadio907FMMiami” promoting “WE ARE THE SOUND TRACK TO THE REAL MIAMI...KEEP IT LOCKED IN UR RIDE 90.7 FM THE HOTTES [sic] STATION IN THE WORLD.” 90.7 FM Ladyluckradio.com

“ladyluckradio.net” and “club ladyluck 1610 NW 119TH”⁴ The domain name, ladyluckradio.net, was registered to Mr. Cernogg.⁵ The Florida Department of State’s Division of Corporations (“Division of Corporations”) lists Mr. Cernogg as the registered agent of a business called “Lady Luck Social Club, Inc.,” with principal and mailing addresses at 1610 NW 119th Street, Miami, Florida 33167, the same address partially listed on the Twitter account for “LADYLUCKRADIO.” The phone number for Mr. Cernogg listed on one of the documents for Lady Luck Social Club, Inc. filed with the Division of Corporations matches the contact phone number for Mr. Cernogg that Mr. Cernogg’s housemate gave the agents on April 14, 2011. The address for Mr. Cernogg listed in a document for Lady Luck Social Club, Inc. filed with the Division of Corporations also matches the address for Mr. Cernogg listed in the ladyluckradio.net domain name registration.⁶

III. DISCUSSION

4. 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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the section 503(b) context.¹⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹¹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹²

5. 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

website, available at <http://ladyluckradio.ning.com/profile/LadyLuckRadio907FMMiami> (last visited April 14, 2011).

⁴ See twitter.com/ladyluckradio (last visited April 15, 2011).

⁵ See www.networksolutions.com/whois-search/ladyluckradio.net (last visited April 15, 2011).

⁶ See *id.* See also Articles of Amendment to Articles of Incorporation for Lady Luck Social Club, Inc. filed with the Florida Department of State’s Division of Corporations, Sept. 21, 2011.

⁷ 47 U.S.C. § 503(b).

⁸ 47 U.S.C. § 312(f)(1).

⁹ 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”).

¹⁰ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹¹ 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).

¹² *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

accordance with the Act and with a license granted under the provisions of the Act.¹³ For the purposes of section 301, the word “operate” has been interpreted to mean both the technical operation of the station, as well as “the general conduct or management of a station as a whole, as distinct from the specific technical work involved in the actual transmission of signals.”¹⁴ In other words, the use of the word “operate” in section 301 of the Act captures not just the “actual, mechanical manipulation of radio apparatus,”¹⁵ but also operation of a radio station generally.¹⁶ To determine whether an individual is involved in the general conduct or management of the station, we can consider whether such individual exercises control over the station, which the Commission has defined to include “. . . any means of actual working control over the operation of the [station] in whatever manner exercised.”¹⁷

6. The facts of this case demonstrate that Mr. Cernogg exercised sufficient control over the general conduct and management of the station, tantamount to operating the station, for purposes of section 301 of the Act. On January 21, March 24, and April 14, 2011, agents from the Miami Office determined that an unlicensed radio station on the frequency 90.7 MHz operated from Mr. Cernogg’s residence in Miami, Florida.¹⁸ A review of the Commission’s records revealed that Mr. Cernogg did not have a license to operate a radio station on this frequency at this location. The agents also did not find any evidence to suggest that anyone else living in the residence was involved in the operation or management of the station. There is publicly available information showing that Mr. Cernogg actively marketed the unlicensed station, and used the unlicensed station to cross-promote his other businesses (e.g., a club called the “Lady Luck Social Club”) and provide commercial advertisements under the guise of a legitimate commercial radio station. Specifically, the unlicensed station in Miami operating on the frequency 90.7 MHz was advertised on the Internet with variations of the phrase “Lady Luck Radio.” Mr. Cernogg registered the domain name for the ladyluckradio.net webpage and, according to the Division of Corporations’s records, is the registered agent for “Lady Luck Social Club, Inc.” An address associated with Mr. Cernogg is listed on the Twitter account for “LADYLUCKRADIO.” Mr. Cernogg paid utilities for the residence for a period of time and, according to another resident living in the same house, placed the radio equipment in a locked area to ensure its safekeeping.

7. Mr. Cernogg’s apparent violations of section 301 of the Act were “willful” because he operated the station consciously and deliberately. Moreover, because Mr. Cernogg operated the station on more than one day, we find the apparent violation was also repeated. Therefore, based on the evidence before us, we find that Mr. Cernogg apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission equipment without the required Commission authorization.

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 \$10,000.¹⁹ In assessing

¹³ 47 U.S.C. § 301.

¹⁴ See *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948) (comparing the use of the words “operate” and “operation” in sections 301, 307, and 318 of the Act and concluding that the word “operate” as used in section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

¹⁵ *Id.*

¹⁶ *Id.* See 47 U.S.C § 307(c)(1).

¹⁷ See *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *recon. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

¹⁸ The address of the shared residence is listed as a former address where Mr. Cernogg paid utilities, <http://www.lexisnexis.com/government/solutions/investigative/>, Utility Locator database (last visited Sept. 13, 2011).

¹⁹ *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*”), *recon. denied*,

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.²⁰ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Cernogg is apparently liable for a forfeiture of \$10,000.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204(b), 0.311, 0.314, and 1.80 of the Commission's rules, Willis Cernogg, Jr. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 301 of the Act.²¹

10. **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, Willis Cernogg, Jr. **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 credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account number and FRN number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Willis Cernogg, Jr. shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. 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.²³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, Florida 33152 and include the NAL/Account number referenced in the caption. In addition, Willis Cernogg, Jr. shall email the written response to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim

¹⁵ FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 503(b)(2)(E).

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

²² See 47 C.F.R. § 1.1914.

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).

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.

14. **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 regular mail, to Willis Cernogg, Jr. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau