

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

In the Matter of)
Nelson Quintanilla) File No. EB-FIELDWR-15-00019621^1
Panorama City, California) NAL/Acct. No. 201732900002
) FRN: 0026071530
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 7, 2016

Released: December 8, 2016

By the Regional Director, Region Three, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Nelson Quintanilla (Quintanilla) for operating an unlicensed radio station on 95.1 MHz in Panorama City, California. The Commission has repeatedly warned Mr. Quintanilla that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Quintanilla’s deliberate disregard of the Commission’s warning 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 January 8, 2015, the Enforcement Bureau’s Los Angeles Field Office (Los Angeles Office) received a complaint that an unlicensed FM broadcast station was operating on 95.1 MHz in Panorama City, California. On March 6, 2015, an agent from the Los Angeles Office used mobile direction-finding techniques to identify the source of radio frequency transmissions on the frequency 95.1 MHz as an FM antenna mounted on a guyed structure located on the roof of the Ministerio Internacional Luz A Las Naciones church at 14526 Blythe Street, Panorama City, California (Transmission Site). The agent photographed the FM antenna. The agent then took field strength measurements of the station’s signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Commission’s rules (Rules) and therefore required a license.^2 The agent consulted the Commission’s records and confirmed that the Commission had not authorized an FM broadcast station to operate on 95.1 MHz at or near the Transmission Site. The agent then consulted

^1 The investigation began under File No. EB-FIELDWR-15-00018710 and was subsequently assigned File No. EB-FIELDWR-15-00019621. Any future correspondence with the Commission concerning this matter should reflect the most recently assigned case number.

^2 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 micro volts per meter (“µV/m”) at three meters. 47 CFR § 15.239. Measurements taken on March 6, 2015, showed that the station’s field strength significantly exceeded the levels permitted under Part 15.

public records and determined that the Transmission Site was owned by Aurelio Gutierrez. On April 13, 2015, the Los Angeles Office issued a Notice of Unlicensed Operation to Mr. Gutierrez (Gutierrez NOUO).³ The Gutierrez NOUO informed Mr. Gutierrez that an unlicensed radio station was operating on 95.1 MHz at the Transmission Site and warned him that continued unlicensed operations could result in additional enforcement action. The Los Angeles Office did not receive a response to the Gutierrez NOUO. On May 28, 2015, an agent in the Los Angeles Office performed another search of public records and identified a different owner of the Transmission Site, Calliopi Ash Trust (Trust). That same day the Los Angeles Office issued a Notice of Unlicensed Operation to the Trust (Trust NOUO).⁴ The Trust NOUO informed the Trust that an unlicensed radio station was operating on 95.1 MHz at the Transmission Site and warned it that continued unlicensed operations could result in additional enforcement action.

3. On June 12, 2015, an agent from the Los Angeles Office observed that an unlicensed station continued to operate on 95.1 MHz in Panorama City, California. Using direction finding techniques, the agent determined that the station on 95.1 MHz continued to operate from the Transmission Site. On June 15, 2015, the agent contacted the owner of the Transmission Site to advise that the unlicensed station operating on 95.1 MHz was still present. A representative of the Transmission Site's owner advised the agent that she would contact the tenant, who had previously informed the owner that he was no longer operating the unlicensed station from the Transmission Site. On June 16, 2015, Mr. Quintanilla contacted the Los Angeles Office by telephone and admitted that he was the operator of the station transmitting on 95.1 MHz from the Transmission Site. During this conversation, Mr. Quintanilla told the agent that the station was no longer operating. On July 22, 2015, however, an agent from the Los Angeles Office returned to the Transmission Site, took field strength measurements of the station's signal, and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules (and thus required a license from the Commission).⁵

4. On January 8, 2016, the Los Angeles Office received a complaint that an unlicensed station was once again operating on 95.1 MHz in Panorama City, California. On February 26, 2016, two agents from the Los Angeles Office investigated the complaint and, using mobile direction-finding techniques, identified the source of the radio frequency transmissions on 95.1 MHz as the FM antenna located at the Transmission Site and first observed on March 6, 2015. That same day, the agents took field strength measurements of the station's signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license.⁶ The agents consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 95.1 MHz at or near the Transmission Site.

5. On June 17, 2016, an agent from the Los Angeles Office observed that an unlicensed station continued to operate on 95.1 MHz in Panorama City, California. On July 8, 2016, two agents from the Los Angeles Office used mobile direction-finding techniques to identify the source of the radio frequency transmissions on 95.1 MHz as the FM antenna located at the Transmission Site and first observed on March 6, 2015. The agents then called the telephone number located on an outdoor sign at the Transmission Site and spoke with Mr. Quintanilla. The agents again issued a verbal warning that unlicensed operations on 95.1 MHz must cease immediately and that further unlicensed operations could expose Mr. Quintanilla to significant monetary penalties.

³ *Aurelio Gutierrez*, Notice of Unlicensed Operation (Los Angeles Field Office, EB, April 13, 2015).

⁴ *Calliopi Ash Trust*, Notice of Unlicensed Operation (Los Angeles Field Office, EB, May 28, 2015).

⁵ 47 CFR § 15.239. Measurements taken on June 22, 2015 showed a field strength that exceeded the permissible level for a non-licensed Part 15 transmitter.

⁶ 47 CFR § 15.239. Measurements taken on February 26, 2016, showed a field strength that exceeded the permissible level for a non-licensed Part 15 transmitter.

6. On August 29, 2016, in response to a complaint that an unlicensed station was still operating on 95.1 MHz in Panorama City, California, an agent from the Los Angeles Office traveled to the Transmission Site to investigate. There, the agent observed an unmodulated carrier signal on 95.1 MHz and confirmed that the signal was emanating from the FM antenna located at the Transmission Site. The agent then took field strength measurements of the station's signal and determined that the transmissions on 95.1 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license.⁷ On October 4, 2016, two agents from the Los Angeles Office returned to the Transmission Site, and, after confirming that an unlicensed station continued to operate on 95.1 MHz, issued an on-scene Notice of Unlicensed Radio Operation to Mr. Quintanilla (First Quintanilla NOUO).⁸ The First Quintanilla NOUO stated that an unlicensed radio station was operating on 95.1 MHz at the Transmission Site and warned Mr. Quintanilla that continued unlicensed operations could result in additional enforcement action. On October 17, 2016, the Los Angeles Office issued to Mr. Quintanilla a Notice of Unlicensed Operation (Second Quintanilla NOUO).⁹ The Los Angeles Office did not receive a response to either the First Quintanilla NOUO or the Second Quintanilla NOUO.

III. DISCUSSION

7. We find that Mr. Quintanilla willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (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 without a license granted by the Commission.¹⁰ Here, agents from the Los Angeles Office determined that Mr. Quintanilla operated an unlicensed FM broadcast station on 95.1 MHz from the Transmission Site on March 6, 2015; June 22, 2015; February 26, 2016; and August 29, 2016.

8. Over the course of the past two years, the Los Angeles Office has issued both verbal and written warnings to Mr. Quintanilla to explain that operating the unlicensed FM broadcast station operating on 95.1 MHz at the Transmission Site violated the Act and continued unlicensed operation could result in significant monetary penalties. Yet, despite these repeated warnings, Mr. Quintanilla has continued to operate on 95.1 MHz from the Transmission Site, in apparent willful and repeated violation of Section 301 of the Act.

9. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."¹¹ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Quintanilla of up to \$18,936 for each day of a continuing violation, up to a statutory maximum of \$142,021 for a single act or failure to act.¹² In exercising our forfeiture authority,

⁷ 47 CFR § 15.239. Measurements taken on August 29, 2016 showed a field strength that exceeded the permissible level for a non-licensed Part 15 transmitter.

⁸ *Nelson Quintanilla*, Notice of Unlicensed Radio Operation (Los Angeles Field Office, EB, Oct. 4, 2016). Mr. Quintanilla signed the First Quintanilla NOUO to acknowledge receipt.

⁹ *Nelson Quintanilla*, Notice of Unlicensed Operation (Los Angeles Field Office, EB, Oct. 17, 2016). The Los Angeles Office initially sent an NOUO to Mr. Quintanilla on October 17, 2016 and sent him an amended version on October 19, 2016.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 U.S.C. § 503(b).

¹² See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). 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 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461

(continued....)

we must consider 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.”¹³ 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.¹⁴ 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.¹⁵ Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation without an instrument of authorization for each violation or each day of a continuing violation.¹⁶

10. Through its investigation, the Enforcement Bureau has determined that Mr. Quintanilla operated an unlicensed station on 95.1 MHz from the Transmission Site on February 26 and August 29, 2016, in apparent violation of Section 301 of the Act. In light of these findings, we propose a base forfeiture of \$10,000 for each of these apparent violations of Section 301 of the Act, for an aggregate base forfeiture in the amount of \$20,000. We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹⁷ In this regard, we note that the Commission has warned Mr. Quintanilla both verbally (on June 16, 2015 and July 8, 2016) and in writing (on October 4 and October 17, 2016) that unlicensed operations on 95.1 MHz from the Transmission Site were unlawful and could subject Mr. Quintanilla to further enforcement action, including a substantial monetary forfeiture. Here, Mr. Quintanilla continued to operate his unlicensed broadcast station after being notified on several occasions by the Commission that his actions contravened the Act, the Rules, and related Commission decisions and orders, thereby demonstrating a deliberate disregard for the Commission's authority and requirements. Based on the record in this case, and after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we find that an upward adjustment is warranted and propose a total forfeiture of \$25,000 for which Mr. Quintanilla is apparently liable.

IV. CONCLUSION

11. We have determined that Mr. Quintanilla apparently willfully and repeatedly violated Section 301 of the Act. As such, Mr. Quintanilla is apparently liable for a forfeiture of \$25,000.

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note) (the 2015 Inflation Adjustment Act), requires the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). See 28 U.S.C. § 2461 note (6).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8); *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).

¹⁵ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹⁶ 47 CFR § 1.80(b).

¹⁷ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁸ and Section 1.80 of the Rules,¹⁹ Nelson Quintanilla is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful and repeated violations of Section 301 of the Act.²⁰

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²¹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Nelson Quintanilla **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 16 below.

14. 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. Nelson Quintanilla shall send electronic notification of payment to WR-Response@fcc.gov and Matthew.Gibson@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.²² 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.

15. 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 20554.²³ 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.

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 CFR § 1.80.

²⁰ 47 U.S.C. § 301.

²¹ 47 CFR § 1.80.

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 CFR § 1.1914.

16. 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.²⁴ The written statement must be mailed to the Federal Communications Commission, Los Angeles Field Office, 18000 Studebaker Road, Suite 660, Cerritos, California 90703 and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to WR-Response@fcc.gov and Matthew.Gibson@fcc.gov.

17. 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.

18. **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 Nelson Quintanilla at 14526 Blythe Street, Panorama City, California.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley
Regional Director, Region Three
Enforcement Bureau

²⁴ 47 CFR §§ 1.16, 1.80(f)(3).