

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

In the Matter of
Iglesia el Remanente Fraternidad Elim, Inc.
Arleta, California
Belarmino Lara
Arleta, California
File No. EB-FIELDWR-15-00019600
NAL/Acct. No. 201732900001
FRN: 0026067942
FRN: 0026067959

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 Iglesia el Remanente Fraternidad Elim, Inc. (Iglesia el Remanente) and Belarmino Lara (Lara, and, together with Iglesia el Remanente, Station Operators) for operating an unlicensed radio station on 93.7 MHz in Arleta, California. The Commission has repeatedly warned the Station Operators that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. The Station Operators' 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 July 16, 2013, the Enforcement Bureau's Los Angeles Field Office (Los Angeles Office) received a complaint that an unlicensed FM broadcast station was operating on 93.7 MHz in the San Fernando Valley. On July 30, 2013, two agents from the Los Angeles Office used mobile direction-finding techniques to identify the source of radio frequency transmissions on the frequency 93.7 MHz as an FM antenna mounted on a guyed structure located on the roof of a single family home located at a single family home in Arleta, California (Transmission Site). The agents photographed the FM antenna and its coaxial cable leading into the building. The agents then took field strength measurements of the station's signal, determined that the transmissions on 93.7 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules), and therefore required a license. The agents consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to

1 The investigation began under File No. EB-FIELDWR-13-00010320 and was subsequently assigned File Nos. EB-FIELDWR-15-00018342 and then EB-FIELDWR-15-00019600. 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 ("uV/m") at three meters. 47 CFR § 15.239. Measurements taken on July 30, 2013, showed that the station's field strength significantly exceeded the levels permitted under Part 15.

operate on 93.7 MHz at or near the Transmission Site. The agents then consulted public records to confirm that the building located at the Transmission Site was owned by Mr. Lara and his wife. At the conclusion of the inspection on July 30, 2013, the agents left a Notice of Unlicensed Radio Operation under the front door of the Transmission Site (First Field Notice).³ On August 6, 2013, the Los Angeles Office issued a Notice of Unlicensed Operation (First NOUO) to Mr. Lara.⁴ Both the First Field Notice and the First NOUO informed Mr. Lara that an unlicensed radio station was operating on 93.7 MHz at the Transmission Site and warned him that continued unlicensed operations could result in additional enforcement action.

3. On August 9, 2013, Mr. Lara's adult children contacted the Los Angeles Office to obtain additional information about the First Field Notice and First NOUO. Over the course of several conversations with agents of the Los Angeles Office, Mr. Lara's children acknowledged that their father operated the unlicensed station located at the Transmission Site. Agents of the Los Angeles Office also advised that continued operation of the unlicensed station violates the Communications Act of 1934, as amended (Act) and could result in significant monetary penalties. On August 22, 2013, the Los Angeles Office was informed that Mr. Lara's station was no longer on the air, but the following day, the Los Angeles Office received a complaint that the station was still on the air, albeit without modulation. On September 4, 2013, Mr. Lara temporarily ceased operating the unlicensed station on 93.7 MHz at the Transmission Site.

4. On January 12, 2015, the Los Angeles Office received a complaint that an unlicensed FM broadcast station was operating on 93.7 MHz in the San Fernando Valley. On February 17, 2015, an agent from the Los Angeles Office used mobile direction-finding techniques to identify the source of radio frequency transmissions on the frequency 93.7 MHz as the FM antenna located at the Transmission Site and first observed on July 30, 2013. On March 6, 2015, the agent returned to the Transmission Site and, upon taking field strength measurements of the station's signal, determined that the transmissions on 93.7 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license.⁵ The agents consulted the Commission's records and confirmed that the Commission had not authorized an FM broadcast station to operate on 93.7 MHz at or near the Transmission Site. On April 13, 2015, the Los Angeles Office issued a Notice of Unlicensed Operation to Mr. Lara in his capacity as pastor of Iglesia el Remenente (Second NOUO).⁶ Although Mr. Lara did not respond to the Second NOUO, several days after the Los Angeles Office issued the Second NOUO, the complainant contacted the Los Angeles Office to advise that Mr. Lara's unlicensed FM broadcast station was no longer on the air.

5. On June 26, 2015, the Los Angeles Office received a report that Mr. Lara's unlicensed station had returned to air. On July 15, 2015, an agent from the Los Angeles Office used mobile direction-finding techniques to identify the source of radio frequency transmissions on the frequency 93.7 MHz as the FM antenna located at the Transmission Site and first observed on July 30, 2013. The agent then took field strength measurements of the station's signal and determined that the transmissions on 93.7 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license.⁷

6. Agents returned to the Transmission Site on February 26, 2016 and found that Mr. Lara's unlicensed station was still operating. The agents took field strength measurements of the station's signal

³ *Resident, Transmission Site*, Notice of Unlicensed Radio Operation (Los Angeles Field Office, EB, July 30, 2013).

⁴ *Belarmino and Sonia Lara*, Notice of Unlicensed Operation (Los Angeles Field Office, EB, Aug. 6, 2013).

⁵ 47 CFR § 15.239. Measurements taken on March 6, 2015 showed a field strength that exceeded the permissible level for a non-licensed Part 15 transmitter.

⁶ *Pastor Belarmino Lara*, Notice of Unlicensed Operation (Los Angeles Field Office, EB, April 13, 2015).

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

and determined that the transmissions on 93.7 MHz exceeded the limits for operation under Part 15 of the Rules and therefore required a license.⁸ On April 13, 2016, the Los Angeles Office issued a Notice of Unlicensed Operation (Third NOUO) to Mr. Lara.⁹ The Los Angeles Office did not receive a response from Mr. Lara to the Third NOUO, and so, on June 17, 2016, an agent from the Los Angeles Office returned to the Transmission Site and determined that Mr. Lara's unlicensed station remained on the air. On June 24, 2016, the Los Angeles Office mailed Mr. Lara a copy of the Third NOUO, but received no response.

7. On July 8, 2016, two agents from the Los Angeles Office returned to the Transmission Site and determined that Mr. Lara was still operating an unlicensed FM broadcast station on 93.7 MHz. The agents spoke with Mr. Lara and informed him that the operation of the station violated the Act and issued an on-scene Notice of Unlicensed Radio Operation (Second Field Notice).¹⁰ The agents also instructed Mr. Lara to cease operating the station by the end of the day and informed him that the station must not operate the station in the future without a license. At the conclusion of the agents' inspection of the Transmission Site, Mr. Lara committed to cease operating the unlicensed station.

8. On August 29, 2016, an agent from the Los Angeles Office returned to the Transmission Site and determined that Mr. Lara had resumed operating the unlicensed station on 93.7 MHz. The agent recorded the station's audio stream, took field strength measurements of the station's signal, and determined that the transmissions on 93.7 MHz exceeded the limits for operation under Part 15 of the Rules, thus requiring a license.¹¹ On November 8, 2016, an agent from the Los Angeles Office returned to the Transmission Site and determined that Mr. Lara continued to operate a station on 93.7 MHz from that location.

III. DISCUSSION

9. We find that both Mr. Lara and Iglesia el Remanente 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.¹² Here, agents from the Los Angeles Office determined that the Station Operators operated an unlicensed FM broadcast station on 93.7 MHz at the Transmission site on July 30, 2013, March 6, 2015; July 15, 2015; February 26, 2016; and August 29, 2016.

10. Over the course of three years, the Los Angeles Office has issued multiple enforcement actions¹³ and has met with Mr. Lara and his adult children to explain that operating the unlicensed FM broadcast station on 93.7 MHz from the Transmission violated the Act and continued unlicensed operation could result in significant monetary penalties. Yet, despite these repeated warnings, the Station Operators have continued to transmit on 93.7 MHz from the Transmission Site, in apparent willful and repeated violation of Section 301 of the Act.

⁸ 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.

⁹ *Sonia and Lara Belarmino*, Notice of Unlicensed Operation (Los Angeles Field Office, EB, April 13, 2016). When the Third NOUO was re-issued on June 24, 2016, the inversion of the recipients' names was corrected to read "Sonia and Belarmino Lara."

¹⁰ *Belarmino Lara*, Notice of Unlicensed Radio Operation (Los Angeles Field Office, EB, July 8, 2016).

¹¹ 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.

¹² 47 U.S.C. § 301.

¹³ See *First Field Notice*, *First NOUO*, *Second NOUO*, *Third NOUO*, and *Second Field Notice*.

11. We find further that the Station Operators are jointly and severally liable for unauthorized operation under Section 301 of the Act. The Enforcement Bureau has previously found that joint and several liability is appropriate when more than one party demonstrates control over a station.¹⁴ We find that such joint and several liability is appropriate here in light of the fact that, although Mr. Lara has acknowledged operating the unlicensed station located at his home, the station appears to be operated as part of Iglesia el Remanente's religious mission and is featured prominently on the church's website (<http://elremanenteelim.org/>). In addition, as Iglesia el Remanente has a further connection with the unlicensed station: Iglesia el Remanente's registered corporate address is the Transmission Site. Such liability "may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation."¹⁵

12. 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."¹⁶ Here, Section 503(b)(2)(E) of the Act authorizes us to assess a forfeiture against the Station Operators 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.¹⁷ In exercising our forfeiture authority, 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."¹⁸ 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.¹⁹ 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.²⁰ Section 1.80(b) of the Rules sets a base forfeiture of \$10,000

¹⁴ *Andre Alleyne Jesse White*, Forfeiture Order, 26 FCC Rcd 10372 (EB 2011).

¹⁵ *Id.* at 10374, para. 8 (finding parties "equally culpable" for violating Section 301 in light of the fact that both parties participated in the operation of the station).

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 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 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).

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ 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).

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

for operation without an instrument of authorization for each violation or each day of a continuing violation.²¹

13. Through its investigation, the Enforcement Bureau has determined that the Station Operators operated an unlicensed station on 93.7 MHz from the Transmission Site on February 26, 2016 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 violation 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.²² On July 30, 2013; August 6, 2013; April 13, 2015; April 13, 2016; and July 8, 2016, the Los Angeles Office issued written warnings to the Station Operators that transmissions on 93.7 MHz from the Transmission Site were unlawful and could subject the Station Operators to further enforcement action, including a substantial monetary forfeiture. The fact that the Station Operators continued to operate an unlicensed station after being put on notice that their actions contravened the Act, the Rules, and related Commission decisions and orders, demonstrates 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 propose a total forfeiture of \$25,000 for which the Station Operators are apparently jointly and severally liable.

IV. CONCLUSION

14. We have determined that Iglesia el Remanente and Mr. Lara apparently willfully and repeatedly violated Section 301 of the Act. As such, Iglesia el Remanente and Mr. Lara are apparently jointly and severally liable for a forfeiture of \$25,000.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²³ and Section 1.80 of the Rules,²⁴ Iglesia el Remanente Fraternidad Elim, Inc. and Belarmino Lara are hereby **NOTIFIED** of this **APPARENT JOINT AND SEVERAL 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.²⁵

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Iglesia el Remanente Fraternidad Elim, Inc. and Belarmino Lara **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 19 below.

17. 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. Iglesia el Remanente Fraternidad Elim, Inc. and Belarmino Lara 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.²⁷ When

²¹ 47 CFR § 1.80(b).

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

²³ 47 U.S.C. § 503(b).

²⁴ 47 CFR § 1.80.

²⁵ 47 U.S.C. § 301.

²⁶ 47 CFR § 1.80.

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

18. 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 20554.²⁸ 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.

19. 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.²⁹ The written statement must be mailed to the Federal Communications Commission, Los Angeles Field Office, 18000 Studebaker Road, Suite 660, Cerritos, CA 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.

20. 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.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16, 1.80(f)(3).

21. **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 Iglesia el Remanente Fraternidad Elim, Inc. and Belarmino Lara at their mutual address of record.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley
Regional Director, Region Three
Enforcement Bureau