

Before the
Federal Communications Commission
Washington, DC 20554

Sergio Plasencia)	File No.: EB-FIELDSCR-17-00023640 ¹
)	NAL/Acct. No.: 201732600003
Miami, Florida)	FRN: 0017022294
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 25, 2017

Released: April 27, 2017

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$20,000 against Sergio Plasencia for apparently operating an unauthorized radio station on 101.9 MHz and 107.3 MHz in Miami, Florida. The Commission previously warned Mr. Plasencia that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Plasencia’s deliberate disregard of the Commission’s warnings warrants a significant penalty. Unlicensed radio stations create a danger of interference to licensed communications, including other broadcasters, aviation, and public safety frequencies. Such operations also undermine the Commission’s authority over FM broadcast radio operations.

II. BACKGROUND

2. During 2016 and 2017, the Enforcement Bureau investigated multiple complaints of unauthorized radio stations that appear to have been operated by Mr. Plasencia. In early 2016, the Bureau’s Miami Office received a complaint of an unauthorized radio station calling itself “The Vibe”, operating in the Miami area on 101.9 MHz. In response to the complaint, on March 24, 2016, agents used mobile direction-finding techniques to trace the source of the radio frequency transmissions to an FM transmitting antenna, located at a residential property in Miami, Florida.² One of the agents made field strength measurements of the station’s signal and determined it exceeded the requirements under Part 15 of the Commission’s rules (Rules) for non-licensed operation.³ The agent consulted the Commission’s records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near that residence.

3. On May 3, 2016, agents made a follow-up visit to the site and used mobile direction-finding techniques to trace the source of radio frequency transmissions to an FM transmitting antenna, located at the same residential property in Miami, Florida, as the one identified on March 24. During the

¹ The investigation began under File No. EB-FIELDSCR-16-00021267. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² The agents confirmed via public records that a member of Sergio Plasencia’s family owned the residence and that Sergio Plasencia lived there.

³ 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 CFR § 15.239.

May 3, 2016, visit, the agents talked to one of Mr. Plasencia's relatives, who told the agents that Mr. Plasencia owned the radio station. The relative then called Mr. Plasencia and put one of the agents on the phone with him. Mr. Plasencia identified himself and admitted to the agent that he operated the radio station on 101.9 MHz without a license. He further admitted that he had previously operated a station without a license on 99.5 MHz.⁴ The agent verbally warned Mr. Plasencia that it is illegal to operate a radio station without a valid FCC license. The agent left a Notice of Unauthorized Operation (NOUO) at Mr. Plasencia's residence that directed him to cease operating the unlicensed radio station on 101.9 MHz and warned Mr. Plasencia that continued unlicensed operation could result in additional enforcement action.⁵ On May 4, 2016, the Miami Office mailed another NOUO to Mr. Plasencia for operation of an unlicensed station on 101.9 MHz.⁶ Mr. Plasencia did not respond to either NOUO.

4. On February 25, 2017, in response to a complaint, agents monitored 107.3 MHz in Miami, Florida. The agents heard a station transmitting on that frequency refer to itself on air as "The Vibe," which is the same station identification that Mr. Plasencia previously used on the air. The agents observed that the car radio RDS display⁷ for this signal showed "107.3 Vibe Miami's Classic Hip-Hop Station." On the same date, the agents used mobile direction-finding techniques to trace the source of radio frequency transmissions to an FM transmitting antenna on a tall mast located at a residential property on NW 38th St. in Miami, Florida. They also observed Mr. Plasencia working in the yard in the back of the house. The agents confirmed via public records that Mr. Plasencia was the owner of the property on NW 38th St. in Miami, Florida.⁸ One of the agents took field strength measurements of the station's signal and determined that the transmissions exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. The agent consulted the Commission's records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near that residence.

5. On March 22 and March 29, 2017, agents again used mobile direction finding techniques to trace the source of radio frequency transmissions to an FM transmitting antenna located on NW 38th St. in Miami, Florida, the same residential property that agents visited on February 25, 2017. One of the agents took field strength measurements of the station's signal, and consistent with previous visits, determined that the transmissions exceeded the limits for operation under Part 15 of the Rules, and therefore required a license. The agents consulted the Commission's records and confirmed that the Commission had not issued an authorization for the operation of an FM broadcast station at or near that residence. On both the March 22 and March 29 visits, the agents monitored 107.3 MHz and heard a DJ identify himself as "DJ LS," and announce a phone number for the station. On March 29, 2017, the agents heard DJ LS on the air, and saw that the RDS display showed "The Mix at 6 is on with DJ LS on Vibe 107.3 FM."

6. On March 31, 2017, FCC agents accompanied the Miami-Dade Police Department (Miami-Dade PD) while they executed a search warrant at Mr. Plasencia's residential property regarding a state law violation. The FCC agents inspected the radio station found at the residential property. They

⁴ See *infra* para. 7.

⁵ *Sergio Plasencia*, Notice of Unlicensed Operation (EB May 3, 2016)(on file in EBATS File No. EB-FIELDSCR-16-00021267).

⁶ *Sergio Plasencia*, Notice of Unlicensed Operation (EB May 4, 2016)(on file in EBATS File No. EB-FIELDSCR-16-00021267). The return receipt stated that the NOUO was received at Mr. Plasencia's residence on May 6, 2016.

⁷ Radio Data System (RDS) is a feature available on most newer model AM/FM radios which enables the radio station name and other data to be shown on the radio display. <https://www.electronics-notes.com/articles/audio-video/broadcast-audio/rds-radio-data-system-basics-tutorial.php>.

⁸ Note that this property is different than that associated with the May 2016 Plasencia NOUOs.

found a large, professional studio with a U-shaped console, audio production equipment, transmitters, and an RDS generator, among other equipment. In addition, the agents found an exciter set to 107.3 MHz connected to an amplifier. Mr. Plasencia arrived at his property while the Miami-Dade PD were executing the warrant. Mr. Plasencia initially claimed that his general radiotelephone operator license allowed him to conduct on-air equipment tests for FM broadcast stations, and that he was doing so on behalf of two authorized low power FM stations. However, he was not able to show evidence that he was operating on behalf of an authorized station, or otherwise had authority to transmit on 107.3 MHz or any other broadcast frequency. Later during the same search warrant execution, Mr. Plasencia admitted in front of the Commission's agents and Miami-Dade PD that he was operating on 107.3 MHz without authorization. The FCC agents identified the equipment connected to the 107.3 MHz operation, and the Miami-Dade PD seized that equipment pursuant to Florida law.

7. These were not the first instances for which Mr. Plasencia was found operating unlicensed radio operations. On May 19, 2010, agents from the Commission's Miami Office, using a mobile direction-finding vehicle, monitored 98.7 MHz and determined that a station was broadcasting from an FM transmitter (in excess of the Part 15 limits) and antenna located on the roof of a condominium building in Miami, Florida, that was still under construction. An employee of the construction company working on that building accompanied the agents to the roof area, where that employee disconnected and removed the transmitting equipment. On May 20, 2010, the building's construction project manager contacted one of the agents and reported that someone who identified himself as Sergio Plasencia had asked for his equipment. The agent spoke to Mr. Plasencia by telephone on June 2, 3, and 4, 2010. In the June 2 conversation, Mr. Plasencia admitted that he owned the station and had operated it since January of 2010. On June 3, 2010, the agent verbally warned Mr. Plasencia that his operation of an unlicensed station was illegal and could lead to further enforcement action. The agent also mailed a NOUO to Mr. Plasencia for his unlicensed operation of a broadcast radio station on 98.7 MHz.⁹ On June 8, the building owner destroyed the radio equipment, with Mr. Plasencia's consent.

III. DISCUSSION

8. We find that Mr. Plasencia apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act).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 without a license granted by the Commission. On March 24 and May 3, 2016, agents from the Miami office determined that Mr. Plasencia owned and operated an unlicensed radio station on 101.9 MHz. Agents warned Mr. Plasencia that unlicensed operation is a violation of the Act and that continued unauthorized operation could result in further enforcement action. Nonetheless, Mr. Plasencia continued to operate, on 107.3 MHz, the unlicensed radio station in February and March, 2017 after receiving these warnings. As a result, we find Mr. Plasencia apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.

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. Plasencia of up to \$19,246 for each day of a continuing violation, up to a

⁹ *Sergio Plasencia*, Notice of Unlicensed Operation (EB June 3, 2010) (on file in Case EB-10-MA-0093).

¹⁰ 47 U.S.C. § 301.

¹¹ 47 U.S.C. § 503(b).

statutory maximum of \$144,344 for a single act or failure to act.¹² 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.”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

10. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for unauthorized radio station operation for each violation or each day of a continuing violation.¹⁶ In this case, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment is warranted. Mr. Plasencia has previously been warned verbally and in writing that operation of a radio station without a license is illegal.¹⁷ Despite these repeated warnings, Mr. Plasencia operated without a license again in February and March 2017. Accordingly, we find Mr. Plasencia’s violation egregious as it showed a complete disregard for the Commission’s authority and Section 301 of the Act. We therefore propose an upward adjustment of \$10,000 based on the egregious nature of Mr. Plasencia’s apparent violations of Section 301 of the Act.¹⁸ After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$20,000, for which Mr. Plasencia is apparently liable.

IV. CONCLUSION

11. We have determined that Mr. Plasencia apparently willfully and repeatedly violated Section 301 of the Act. As such, Mr. Plasencia is apparently liable for a forfeiture of \$20,000.

¹² See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9); see also *Jay Peralta, Corona, New York*, Notice of Apparent Liability for Forfeiture, FCC 17-35, n.30 (rel. Apr. 14, 2017) (discussing inflation adjustments to the forfeitures specified in Section 503(b)(2)(D)).

¹³ 47 U.S.C. § 503(b)(2)(E).

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

¹⁵ *Id.* See also *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).

¹⁶ 47 CFR § 1.80(b).

¹⁷ Mr. Plasencia was warned verbally and in writing in 2010 that operation of a radio station without authorization is illegal and could subject him to forfeitures and other punishment. Mr. Plasencia was warned verbally and in writing again in May 2016 that operation of a radio station without authorization is illegal.

¹⁸ See, e.g., *Marc-Nus Charles*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5835 (EB 2014) (proposing to double the \$10,000 base forfeiture amount for an unlicensed radio operator after subject continued operating despite receiving written warnings); *Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (EB 2011) (proposing \$20,000 forfeiture for repeat unlicensed operations in violation of Section 301 of the Act after receiving two written warnings); *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (EB 2010) (proposing \$20,000 forfeiture for repeat violation of Section 301 after receiving two written warnings).

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁹ and Sections 1.80 of the Rules,²⁰ Mr. Plasencia is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty Thousand Dollars (\$20,000) for willful and repeated violations of Section 301 of the Act.²¹

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Mr. Plasencia **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. Mr. Plasencia shall send electronic notification of payment to SCR-Response@fcc.gov and Janet.Moran@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.²³ 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 20554.²⁴ 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 47 U.S.C. § 503(b).

²⁰ 47 CFR § 1.80.

²¹ 47 U.S.C. § 301.

²² 47 CFR § 1.80.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ 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.²⁵ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Janet Moran, Field Counsel, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Janet.Moran@fcc.gov and SCR-Response@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 Mr. Plasencia at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Regional Director
Region Two
Enforcement Bureau

²⁵ 47 CFR §§ 1.16, 1.80(f)(3).