

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

In the Matter of)	File No. EB-03-TP-035
)	
Donald Donovan Jackson)	NAL/Acct. No. 200332700023
1418 27 th Avenue, South)	
St. Petersburg, Florida)	FRN No. 000-890-9301

FORFEITURE ORDER

Adopted: August 5, 2004

Released: August 10, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Donald Donovan Jackson for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended, (“*Act*”).¹ The noted violations involve Mr. Jackson’s operation of an FM broadcast station on the frequency 102.1 MHz without Commission authorization.

2. On May 14, 2003, the Commission’s Tampa Field Office (“*Tampa Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Mr. Jackson for a forfeiture in the amount of twenty thousand dollars (\$20,000).² Mr. Jackson filed a response to the *NAL* on June 10, 2003. In his response, Mr. Jackson requested either cancellation or a substantial reduction of the forfeiture.

II. BACKGROUND

3. On November 23, 2002, after receiving a complaint regarding a pirate radio station in the St. Petersburg, Florida, area, agents from the Tampa Office observed a radio broadcast station operating on the frequency 102.1 MHz. The agents used direction-finding techniques and determined that the broadcasts originated from suite #200-D of a commercial office building located at 21 9th Street South, St. Petersburg, Florida. Field strength measurements taken near the sight of the broadcast indicated that the signal strength exceeded the permissible limits for a non-licensed station.³ A search of Commission records revealed no FM radio station licensed to operate on frequency 102.1 MHz in the St Petersburg, Florida, area. The agents proceeded to interview the owner of the commercial building, who provided the agents with a copy of the lease for suite #200-D, and informed them that Donald Donovan Jackson leased that unit and operated the radio station within.

4. On January 15, 2003, agents from the Tampa Office interviewed Mr. Jackson and conducted an inspection of the radio station after again observing a radio broadcast station operating on frequency 102.1 MHz from 21 9th Street South, Suite #200-D, St. Petersburg, Florida. During the

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, File No. EB-03-TP-035, NAL/Acct. No. 200332700023 (Enf. Bur., Tampa Office, released May 14, 2003).

³ See 47 C.F.R. § 15.239(b).

interview, Mr. Jackson admitted to leasing Suite #200-D and operating the radio station on frequency 102.1 MHz from that location. At that time, Mr. Jackson also demonstrated how the broadcast station operated, and agreed, at the agents' request, to shut down the station.

5. During the interview, one of the agents recognized Mr. Jackson as the subject of a previously issued warning letter regarding an unlicensed radio station operating on frequency 102.1 MHz in April 2002 from a nearby location. The agents observed, and Mr. Jackson confirmed, that the radio transmitter and equipment rack were the same as those used during Mr. Jackson's prior, unlicensed operation in April 2002.

6. On May 14, 2003, the Tampa Office issued an *NAL* to Donald Donovan Jackson for operation of a radio broadcast station on the frequency 102.1 MHz without Commission authorization.⁴ On June 10, 2003, Mr. Jackson responded to the *NAL*. In his response, Mr. Jackson acknowledged that he possessed no authority to operate a radio broadcast station, but requested either a cancellation or a substantial reduction of the forfeiture, citing an inability to pay. In support of his inability to pay, Mr. Jackson submitted various financial statements, and stated that he operated the radio station at a loss. Mr. Jackson further characterized his operation of the station as a "public service," and claimed that he never received financial gain from its operation as additional justification for cancellation or reduction of the forfeiture.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Donald Jackson's response, Section 503(b) of the Act requires that the Commission take into account 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.⁷

8. Section 301 of the Act mandates that "[n]o 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 this Act and with a license in that behalf granted under the provisions of this Act."⁸ It is undisputed that Mr. Jackson, on November 23, 2002, and January 15, 2003, operated a radio broadcast station on frequency 102.1 MHz without Commission authorization in willful⁹ and repeated¹⁰ violation of Section 301 of the Act.

⁴ *NAL* at ¶ 1.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 301.

⁹ 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,' ... 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"

¹⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

9. Mr. Jackson requested that the Commission consider his service to the community when assessing the appropriate forfeiture amount, stating that he intended only “to provide a public service to the local Caribbean population via the radio station.” We have previously rejected similar arguments concerning the asserted merits of violators’ programming when assessing the appropriate forfeiture amount, and we therefore reject Mr. Jackson’s claim of public service here.¹¹ Mr. Jackson further claimed, as a mitigating factor, that he never operated the radio broadcast station for the purposes of financial gain. We note, however, that operation for purposes other than financial gain will not, on its own, warrant the cancellation or reduction of a forfeiture.¹²

10. Finally, Mr. Jackson requested that the Commission either cancel or substantially reduce the forfeiture based on his inability to pay. After reviewing the financial documents submitted, we conclude that payment of the proposed \$20,000 forfeiture would impose financial hardship on Mr. Jackson, and we therefore reduce the forfeiture to \$3,000 based on Mr. Jackson’s inability to pay.¹³

11. We have examined Donald Donovan Jackson’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Mr. Jackson willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended. While we find no basis for canceling the forfeiture, we reduce the total amount of the forfeiture to \$3,000 based on Mr. Jackson’s inability to pay.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Donald Donovan Jackson **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand dollars (\$3,000) for his violation of Section 301 of the Act.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent via First Class Mail

¹¹ See *WPGS, Inc.*, 18 FCC Rcd 11332, 11334 (Enf. Bur. 2003) (concluding, “we do not think that any reduction of the proposed forfeiture is warranted based on the asserted merits of WPGS(AM)’s programming”).

¹² Cf. *Concilio Mission Cristiana Fuente de Agua Viva*, 17 FCC Rcd 19132, 19134 (Enf. Bur. 2002) (concluding that no reduction of the forfeiture was warranted based on the violator’s status as a non-profit entity alone), *recon. denied*, 18 FCC Rcd 6210 (Enf. Bur. 2003).

¹³ See *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 15 FCC Rcd 24385, 24389 ¶ 11 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 ¶ 6 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.

and Certified Mail, Return Receipt Requested, to Donald Donovan Jackson, 1418 27th Avenue South, St. Petersburg, Florida 33705-3439, and to his counsel, Tamara Felton Dudley, Tamara Felton Dudley, P.A., P.O. Box 12661, 2500 34th Street South, St. Petersburg, Florida 33733.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau