

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

In the Matter of	)	
	)	
Octavio Sarmiento, Jr.	)	File Number EB-02-TP-208
	)	
Naples, Florida	)	NAL/Acct.No. 200232700012
	)	
		FRN No.0007-0497-52

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: June 5, 2002**

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Octavio Sarmiento, Jr., willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> by operating a radio station without Commission authorization. We conclude that Octavio Sarmiento, Jr. is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On April 19, 2002, agents from the Commission’s Tampa Field Office investigated complaints of an alleged unlicensed radio station operating on the frequency 107.5 MHz in the Naples, Florida area causing interference to the reception of a licensed broadcast station on 107.1 MHz. The agents detected an FM radio signal on the frequency 107.5 MHz. This station identified as “WTEN” and “Tropical Estereo.” Using direction finding techniques, the agents located the source of the radio transmissions on 107.5 MHz to a single-story office building at 2201 Kirkwood Ave., Naples, Florida. Based on field strength measurements taken by the agents of the station’s signal, this station required a license to operate.

3. Immediately after locating the radio station, the agents inspected the facilities at that address and found broadcast studio and radio transmitting equipment in operation on the frequency 107.5 MHz. The agents interviewed Mr. Octavio Sarmiento, Jr. and other individuals operating the radio station at that address. Mr. Sarmiento stated that he was responsible for the radio station operation and that he was president and registered agent of “Tropical Estereo Enterprises” which operated the radio station. Mr. Sarmiento stated that he had no license authorizing operation of the radio station and that he had submitted an application to the FCC for a Low Power FM license.<sup>2</sup> The agents hand delivered a warning

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<sup>1</sup> 47 U.S.C. § 301

<sup>2</sup> On April 24, 2002, the Tampa Office received from the FCC’s Media Bureau a copy of a letter sent by the Media Bureau to Mr. Octavio Sarmiento, Jr. The letter accompanied the return of FCC Form 319, application for Low Power FM radio station. The application was returned for untimely filing of the wrong FCC application with

letter to Mr. Sarmiento for operation of the unlicensed station. The warning letter advised Mr. Sarmiento that operation of the radio station violated Section 301 of the Act, warned of the penalties for violating the Act, and ordered the immediate cessation of the unlicensed operation. Mr. Sarmiento stated that he would cease his unlicensed radio broadcasts.

4. On April 20, 2002, the Commission agents returned to the same area in Naples and again observed radio broadcasts on 107.5 MHz identifying as “Estereo Tropical” and “WTEN.” The agents positively identified the source of the unauthorized transmissions to be the same single-story office building at 2201 Kirkwood Ave., Naples, Florida.

### III. DISCUSSION

5. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On April 19 and April 20, 2002, Octavio Sarmiento, Jr. operated radio transmission equipment without benefit of the required license. Mr. Sarmiento was warned verbally and in writing of the violation yet continued the unlicensed operation.

6. Based on the evidence before us, we find that on April 19 and 20, 2002, Octavio Sarmiento, Jr. repeatedly<sup>3</sup> and willfully<sup>4</sup> violated Section 301 of the Act by operating radio transmission apparatus without a license.

7. Pursuant to Section 1.80(b)(4) of the Commission’s Rules, the base forfeiture amount for the violation cited in this notice is \$10,000.<sup>5</sup> Section 503(b)(2)(D) of the Act requires us to 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 other such matters as justice may require.”<sup>6</sup> Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>7</sup> and Sections

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incorrect parameters. The Form 319 was signed “Octavio Sarmiento Jr, President and Manager.”

<sup>3</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4)

<sup>6</sup> 47 U.S.C. § 503 (b)(2)(D)

<sup>7</sup> 47 U.S.C. § 503(b).

0.111, 0.311 and 1.80 of the Commission's Rules,<sup>8</sup> Octavio Sarmiento, Jr. is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Octavio Sarmiento, Jr. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FRN and NAL/Acct. No. referenced in the letterhead above.

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced in the letterhead above.

12. 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 ("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.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

14. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Octavio Sarmiento, Jr. at 2431 Bear Creek Drive, Naples, Florida 34109.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>9</sup> See 47 C.F.R. § 1.1914.

Ralph M. Barlow  
District Director, Tampa Office  
Enforcement Bureau