

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

In the Matter of)	File Number EB-03-TP-091
)	
Fritzner Simon)	NAL/Acct. No.200432700003
1411 Foxboro Drive)	
Brandon, Florida 33511)	FRN 0009996281
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 11, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Mr. Fritzner Simon (“Mr. Simon”) apparently liable 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 (“Act”).¹ Specifically, we find Mr. Simon apparently liable for operating a radio station on the frequencies of 102.1 and 87.9 MHz without Commission authorization.

II. BACKGROUND

2. On March 5, 2003, agents from the Commission’s Tampa Field Office drove an FCC direction finding vehicle to the Tampa, Florida area and observed an FM radio station operating on 102.1 MHz. Using direction finding equipment and techniques, the agents determined that the station was broadcasting from a room on the second floor of a two story building located at 1719 Columbus Drive, Tampa, Florida. The agents took field strength measurements of the station’s signal and determined that the station required a license to operate.² A search of the FCC’s records showed that no license had been issued for the operation of an FM broadcast station at this location.

3. Still on this date, the agents inspected the radio station. The agents found an FM radio transmitter in operation. One of two persons present inside the room identified himself with a photo identification as Mr. Fritzner Simon. Mr. Simon stated that he operated the radio station with his brother

¹ 47 U.S.C. § 301.

² Section 15.239 of the Commission’s Rules, 47 C.F.R. § 15.239, provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmissions does not exceed 250 μ V/m at three meters. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter by 6,105 times.

and that the other person in the room was visiting from Haiti and had no connection with the station. The agents hand delivered a written and verbal warning for unlicensed operation to Mr. Simon. Mr. Simon agreed to surrender an exciter and the radio transmitter to the agents.

4. On August 21, 2003, FCC agents conducting routine monitoring of the FM broadcast band observed a radio station operating on 87.9 MHz. Using direction finding equipment and techniques, the agents determined that the station was broadcasting from a room on the second floor of a residence located at 4206 Nebraska Avenue, Tampa, Florida. The agents took field strength measurements of the station's signal and determined that the field strength was in excess of any low-powered transmission allowed on any FM frequency.³ Further, the agents observed that this station operated continuously for more than an hour.⁴ The FCC's records showed that no license had been issued for the operation of an FM broadcast station at this location on 87.9 MHz. Thus, the radio station operating on 87.9 MHz from 4206 Nebraska Avenue, Tampa, Florida was in violation of Section 301 of the Act. A vehicle in the driveway was registered to Fritzner Simon and Heinz Simon.

5. On September 10, 2003, FCC agents met with the owner of the property located at 4206 Nebraska Avenue, Tampa FL. The FCC agents showed photos of Mr. Fritzner Simon to the property owner and he identified Mr. Fritzner Simon as the person using the space at his property to make recordings.

III. DISCUSSION

6. Section 301 of the Act provides 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 March 5, 2003, Mr. Simon operated radio transmitting equipment on the frequency 102.1 MHz and on August 21, 2003 he once again operated radio transmitting equipment on the frequency 87.9 MHz without the required Commission authorization.

7. Based on the evidence before us, we find Mr. Simon repeatedly⁵ and willfully⁶ violated Section 301 of the Act by operating radio transmission apparatus without a license.

³ FM broadcast operation on frequency 87.9 MHz is limited for use only by licensed noncommercial educational FM broadcast stations that have been required by the FCC to change frequency. 47 C.F.R. § 73.501.

⁴ Operation of a non-licensed, low-powered transmitter on frequency 87.9 MHz is restricted to periodic operation and is generally used for the transmission of a control signal such as those used with alarm systems, garage door openers, remote switches, etc. Because operation on this frequency must be limited in duration, continuous operation of a non-licensed, low-powered transmitter is not permitted on 87.9 MHz. *See* 47 C.F.R. § 15.209 and 15.231.

⁵ The 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." 47 U.S.C. § 312(f)(2).

⁶ 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,' 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).

8. Pursuant to Section 1.80(b)(4) of the Rules,⁷ the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include 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.⁸ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Fritzner Simon is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act by operating radio transmitting equipment on the frequency 102.1 MHz and also on 87.9 MHz without benefit of the required Commission authorization.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Fritzner Simon SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

13. 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.

⁷ 47 C.F.R. § 1.80(b)(4).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹ See 47 C.F.R. § 1.1914.

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Fritzner Simon, 1411 Foxboro Drive, Brandon, Florida, 33511.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
Tampa Field Office, Enforcement Bureau

Attachment