

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

In the Matter of	)	File Number EB-03-TP-110
	)	
Gary M. Feldman	)	NAL/Acct. No.200432700008
5500 N.W. 4th Avenue	)	FRN 00010018281
Miami, Florida	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** February 4, 2004

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Gary M. Feldman (“Mr. Feldman”) apparently liable for forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> Specifically, we find Mr. Feldman apparently liable for the operation of an FM broadcast station on the frequency 91.9 MHz without Commission authorization.

**II. BACKGROUND**

2. On March 5, 2003, agents from the FCC Enforcement Bureau's Tampa Field Office received information alleging that an unlicensed radio station operated on 91.9 MHz in the Ft. Myers, Florida area.

3. Using direction-finding techniques, two Tampa Field Office agents determined that a radio broadcast station operated on the frequency 91.9 MHz from a commercial business located at 2243 Cleveland Avenue, Suite A, Ft. Myers, Florida. Based on field strength measurements taken by the agents of the station’s signal, the station required a Commission authorization to operate.<sup>2</sup> FCC license records showed no license issued for an FM broadcast station at that location or for the frequency 91.9 MHz in the Ft. Myers, Florida area.

4. Still on March 5, 2003, the Tampa Field Office agents inspected the radio station broadcasting on 91.9 MHz at 2243 Cleveland Avenue, Suite A, in Ft. Myers, Florida. The agents found an FM broadcast transmitter inside the suite. The operator, Gary M. Feldman, admitted to operating the station without an FCC license and was given a warning letter for unlicensed radio operation. Mr. Feldman was the only person present at the studio. Mr. Feldman stated that he had been on the air from this location for about two weeks and that he was operating the station to promote his DJ services at the

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> See 47 C.F.R. § 15.239(b).

local nightclubs.

### III. DISCUSSION

5. Section 301 of the Act requires 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. Feldman operated radio transmitting equipment on the frequency 91.9 MHz without the required Commission authorization.

6. Based on the evidence before us, we find that on March 5, 2003, Mr. Feldman willfully<sup>3</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 Rules,<sup>4</sup> the base forfeiture amount for operating a radio station 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.<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

### IV. ORDERING CLAUSES

Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> Gary M. Feldman is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 the Act by operating radio transmitting equipment on the frequency 91.9 MHz without benefit of the required Commission authorization.

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

9. 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

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<sup>3</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>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

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.<sup>8</sup>

10. 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-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

11. 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.

12. 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.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Gary M. Feldman, 5500 N.W. 4th Avenue, Miami, Florida 33127.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow  
District Director  
Tampa Field Office, Enforcement Bureau

Attachment

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<sup>8</sup> See 47 C.F.R. § 1.1914.