

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

In the Matter of	)	File Number EB-04-TP-029
	)	
Wilner Simon	)	NAL/Acct. No.200432700016
110 Triangle Street	)	
Port Charlotte, Florida	)	FRN 0010511020

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** April 20, 2004

By the Enforcement Bureau, Tampa Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Wilner Simon apparently liable for 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”).<sup>1</sup> Specifically, we find Mr. Simon apparently liable for the operation of a radio station without Commission authorization.

**II. BACKGROUND**

2. On February 20, 2003, agents from the FCC Enforcement Bureau’s Tampa Field Office (“Tampa Office”) observed an FM radio station operating on the frequency 107.5 MHz in the Port Charlotte, Florida area. Commission records showed no license issued for a station on this frequency in the Port Charlotte area. Using direction-finding techniques, the agents determined the source of the signal to be a residence located at 110 Triangle Street, Port Charlotte, Florida. The agents took field strength measurements of the station’s signal and determined that the station required a license to operate.<sup>2</sup> The agents inspected the radio station and interviewed the operator, Wilner Simon. The agents orally warned Simon about the unlicensed radio operation. Simon relinquished the unlicensed radio equipment to the agents.

3. On January 8, 2004, two Tampa Office agents in the Port Charlotte, Florida area observed a signal on the frequency 87.6 MHz. Using direction-finding techniques, the agents determined the source of the signal to be a residence at 110 Triangle Street, Port Charlotte, Florida. The agents could detect the signal at a distance of more than three miles from the source. Commission records showed no license issued for a station on this frequency in the Port Charlotte area.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 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 µV/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.

4. On January 13, 2004, using direction-finding techniques, two Tampa Office agents again detected a signal on the frequency 87.6 MHz. Using direction-finding techniques, the agents determined the source of the signal to be a residence located at 110 Triangle Street, Port Charlotte, Florida. A vertical dipole antenna was mounted on a tower attached to the residence. No audio or modulation could be detected on the signal's main carrier, but the agents observed that the signal broadcast a subcarrier, known also as Subsidiary Communications Authority, which is a separate audio or data channel transmitted along with the main audio signal over a broadcast station signal. Based on the field strength measurements taken by the agents, the station required a Commission authorization to operate.<sup>3</sup> A vehicle parked in the driveway was registered to Simon's business.

5. Later on January 13, 2004, the Tampa Office agents attempted an inspection of the radio station broadcasting on 87.6 MHz at 110 Triangle Street, Port Charlotte, Florida. No one answered the agents' knocks on the door of the residence. However, the station broadcasting from this location ceased broadcasting while the agents knocked on the door. Two vehicles were parked at the residence: one was the same vehicle seen earlier in the day and registered to Simon's business, and another vehicle registered to Simon.

6. On January 15, 2004, the Tampa Office agents interviewed Mr. Wilner Simon, the owner of the residence at 110 Triangle Street, Port Charlotte, Florida. Mr. Simon admitted to operating a broadcast station utilizing a subcarrier transmission from his residence on January 13, 2004 without an FCC license. Mr. Simon stated that his broadcasts were providing a service to the community. Mr. Simon also stated that he did not intend to cease broadcasting despite the agents warnings of possible civil and criminal enforcement sanctions for unlicensed radio operation.

### III. DISCUSSION

7. 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 January 8 and 13, 2004, Mr. Simon operated radio transmitting equipment on the frequency 87.6 MHz without the required Commission authorization.

8. Based on the evidence before us, we find that on January 8 and 13, 2004, Mr. Simon willfully<sup>4</sup> and repeatedly<sup>5</sup> violated Section 301 of the Act by operating radio transmission apparatus

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<sup>3</sup> Section 15.209(a) of the Commission's Rules, 47 C.F.R. § 15.209(a), provides that non-licensed broadcasting in the 30-88 MHz band is permitted only if the field strength of the transmissions does not exceed 100 µV/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 24,672 times.

<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).

without a license.

9. Pursuant to Section 1.80(b) (4) of the Rules,<sup>6</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>7</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>8</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>9</sup> Wilner 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 the Act by operating radio transmitting equipment on the frequency 87.6 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, Wilner 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.<sup>10</sup>

12. 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. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of

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<sup>5</sup> 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).

<sup>6</sup> 47 C.F.R. § 1.80(b)(4).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>10</sup> See 47 C.F.R. § 1.1914.

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.

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 Wilner Simon, 110 Triangle Street, Port Charlotte, Florida 33954.

IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Wilner Simon, 18265 Poston Ave, Port Charlotte, FL 33948.

FEDERAL COMMUNICATIONS COMMISSION

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

Attachment