

The FCC Continues Its Hunt for Unauthorized Broadcast Operations

Chip Yorkgitis

December 10, 2012

Last week, the FCC issued two Notices of Apparent Liability (“NALs”) against persons identified through various investigative techniques which the Commission concluded were operating unauthorized broadcast stations. Taken together, the cases illustrate, if not altogether clearly, how the Commission may increase forfeitures above the base amount as a result of aggravating circumstances.

In the first case, Enforcement Bureau agents utilizing direction-findings techniques following a complaint – the nature of which is undisclosed in the NAL – found the location of an [unauthorized station operating in Manhattan, Kansas](#). They determined the station signal exceeded the limits for operation under Part 15 of the Commission’s rules (general unlicensed operations) and therefore required a license. No license had been issued to any person at that location on the FM frequency being used. The following day, FCC agents confirmed the operation was continuing and visited the site. Further investigation led them to conclude that the equipment, located in a detached garage that was being rented, was owned and operated by a Glen Rabash. Specifically, in subsequent communications with the FCC by telephone, Mr. Rabash acknowledged he was an amateur radio operator (which the FCC used to conclude he knew the broadcast operation was illegal) and that he would not surrender the equipment if asked to do so (which the FCC factored in to conclude that he had control over the equipment). Based in large part on this evidence of both repeated and willful violation, the FCC proposed the base amount forfeiture of \$10,000 for unauthorized operation of a radio station. (Note that this is the base amount for unauthorized operation of any station of any type that requires an FCC authorization. The fact that the violation occurred on a broadcast frequency does not change the base amount.)

[Read more . . .](#)

In the second case, Bureau agents in [North Miami, Florida](#), used similar methods “while conducting routine monitoring of the airwaves” to detect the operation of not one, but three connected unauthorized FM stations. In general, the means to identify the owner/operator of the equipment, Fabrice Polynice, were more indirect and convoluted but not materially different in result than in the Rabash case. Apparently, Mr. Polynice would operate only one of the three stations at a time, in what the FCC concluded was an attempted scheme to evade detection. At one of the locations, the FCC personnel seized the equipment. In 2006, Mr. Polynice had been arrested and convicted for violating the State of Florida’s prohibition against operating an unlicensed radio station within the State. The FCC concluded that Mr. Polynice demonstrated a “complete disregard” for federal and State

authorizes and laws and, in view of what it called “the egregiousness of the violations, the history of prior offenses, and the degree of culpability,” it adjusted the violation upward by two-and-a-half times to \$25,000. In comparison with the Rabash case, one might question the Bureau’s math, given that three stations were operating in the Polynice case on top of a perceived attempt to evade and the prior history. Nonetheless, the Bureau warned that “future violations may subject [Mr. Polynice] to more severe enforcement action, including but not limited to larger monetary forfeitures, criminal prosecution, and the *in rem* seizure of his equipment.” The \$25,000 forfeiture does not approach the maximum amount the Commission could have assessed for the violations, and the Rabash and Polynice cases in juxtaposition evince an arguably less than harsh application of aggravating factors in the latter case.

These two cases are the most recent cases involving unauthorized operations on FM broadcast radio frequencies that have led to NALs. Earlier in 2012, for example, the Commission issued NALs to [unlicensed operators in San Francisco, CA](#), and [Pompano Beach, FL](#). In the San Francisco case, the violator was an amateur radio licensee against whom the Enforcement Bureau proposed a forfeiture of \$17,000 for unlicensed operation (\$10,000) and refusal to permit inspection of his station (by failing to open the door when FCC agents arrived) (\$7,000). For both violations by this operator, the base forfeiture amounts were assessed. In the Florida case, the operator was only cited for unauthorized operation, but the forfeiture amount (\$20,000) was doubled from the base because the violator had received earlier notices of unauthorized operation from the FCC in 2010. Nonetheless, this Florida operator did not appear to demonstrate the same level of disregard for law and regulations as Mr. Polynice.