

Federal Communications Commission

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

In the Matter of)	
)	
Dexter Blake)	File Number: EB-08-NY-0291
)	
Mt. Vernon, New York)	NAL/Acct. No: 200932380004
)	
)	FRN: 0018292433

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 3, 2009

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Dexter Blake, (“Blake”), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”),¹ by operating an unlicensed radio transmitter on the frequency 101.5 MHz in Mt. Vernon, New York. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Blake is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On August 13, 2008, in response to an interference complaint, agents from the Enforcement Bureau’s New York office, using a mobile direction-finding vehicle, monitored the frequency 101.5 MHz in Mt. Vernon, New York. The agents observed radio transmissions on 101.5 MHz and determined that the transmissions were from a station operating from the Linkage Caribbean Restaurant at 78 East 3rd Street, Mt. Vernon, New York 10550. The agents also observed an FM antenna on the roof of the building. The agents subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules (“Rules”)³ and therefore required a license. An agent searched Commission databases and found no evidence of a Commission authorization for this operation on 101.5 MHz in Mt. Vernon, New York.

3. On August 14, 2008, agents from the Enforcement Bureau’s New York office, using a mobile direction-finding vehicle, monitored the frequency 101.5 MHz in Mt. Vernon, New York. The agents observed radio transmissions on 101.5 MHz and again determined that the transmissions were from a radio station operating from the Linkage Caribbean Restaurant at 78 East 3rd Street, Mt. Vernon, New York

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

10550. The agents also observed an FM antenna on the roof of the building. The agents subsequently took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Rules and therefore required a license. The agent searched Commission databases and found no evidence of a Commission authorization for this operation on 101.5 MHz in Mt. Vernon, New York.

4. After taking measurements on August 14, 2008, the agents interviewed the superintendent of the building at 78 East 3rd Street, Mt. Vernon New York 10550. The superintendent accompanied the agents to the roof of the building where they observed a coaxial cable going from the antenna through a duct to the first floor of the building where Linkage Caribbean Restaurant operates. The agents spoke to workers in the restaurant who called the owner of the restaurant, Dexter Blake.⁴ One of the agents spoke to Blake, who admitted to operating the station.⁵ Blake shut down the audio remotely and told the agents that he would not operate the station again. The agents left a hand-delivered Notice of Unlicensed Operation (“NOUO”) for Blake at the restaurant advising him that his station was unlicensed and informing him of the penalties for unlicensed operation, seizure of the equipment, fines and imprisonment.

5. On August 20, 2008, the New York Office sent, via regular and certified mail, a formal *NOUO* to Blake at 78 East 3rd Street, Mt. Vernon, New York 10550. *The NOUO* again warned Blake that operation of the unlicensed radio station on 101.5 MHz violated Section 301 of the Act and outlined the potential penalties for such a violation, including seizure of the equipment, fines and imprisonment. *The NOUO* also directed Blake to terminate operation of the unlicensed station immediately and provided Blake ten days to reply. The New York Office did not receive a response to the *NOUO*.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

7. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the

⁴ Agents subsequently determined that Blake leases the retail space for the Linkage Caribbean Restaurant from the building owner, BMM Two, LLC.

⁵ On April 17, 2008, agents conducted an Internet search and discovered a website called “Linkage Radio,” which identified Dexter Blake, aka DJ Linkage, as the owner of the radio station on 101.5 MHz and the Linkage Caribbean Restaurant.

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 or any rule or regulation of the Commission authorized by this Act....” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under 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.”

receipt, forwarding, and delivery of communications) incidental to such transmission.”⁸ On August 13, 2008, and August 14, 2008, agents determined that an unlicensed radio station operated on 101.5 MHz from the Linkage Caribbean Restaurant at 78 East 3rd Street, Mt. Vernon, New York 10550. Blake admitted operation of the station to the New York agents on August 14, 2008. Therefore, his violation is willful. In addition, a lease agreement provided by the property owner shows that Blake is the tenant for the retail space for the Linkage Caribbean Restaurant. We have previously held that liability for unlicensed operation may be assigned to an individual who provides services and facilities incidental to the transmission of communications by radio.⁹ We therefore find that, even absent his admission to the agents on August 14, 2008, Blake is responsible for the unlicensed station operation on 101.5 MHz at 78 East 3rd Street, Mt. Vernon, New York, because he provided the facilities used in the operation of the station. The violation was repeated because it occurred on more than one day. Based on the evidence before us, we find that Blake apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission apparatus without a license on 101.5 MHz.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Dexter Blake is apparently liable for a (\$10,000) forfeiture.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Dexter Blake is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹²

10. **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 for Forfeiture, Dexter Blake **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 must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

⁸ 47 U.S.C. § 153(33).

⁹ See *Joni K. Craig*, Forfeiture Order, 21 FCC Rcd 10793 (EB 2006).

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

Federal Communications Commission

Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. If payment is made, Blake should send electronic notification on the date said payment is made to NER-Response@fcc.gov.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption.

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

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Dexter Blake at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau