

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

In the Matter of)	
)	
Joy Public Broadcasting Corporation)	File No. 99TP016
Radio Station WJTF-FM)	NAL/Acct. No. 915TP0004
Panama City, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2001

Released: April 16, 2001

By the Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny a petition for reconsideration filed by Joy Public Broadcasting Corporation (“*Joy*”), licensee of Station WJTF-FM, Panama City, Florida, of a *Memorandum Opinion and Order* issued in this proceeding on January 29, 2001.¹ This is the fourth petition for reconsideration filed by Joy in connection with a *Forfeiture Order*² which issued a \$3,000 forfeiture against Joy for violations of Sections 73.1350(c)(2), 73.1590(a)(1), and 73.1870(b)(3) of the Commission’s Rules (“*Rules*”).³ The noted violations involved Joy’s failure to make periodic calibrations of the station’s monitoring equipment, to make equipment performance measurements upon the initial installation of a new transmitter, and to designate the station’s chief operator in writing and post a copy of the designation with the station license.

2. In its fourth petition for reconsideration, Joy again challenges the statement in the *Forfeiture Order* that the November 17, 1998, inspection of WJTF-FM by the FCC’s Tampa, Florida Field Office (“*Tampa Field Office*”) revealed a violation of Section 73.317(d) of the Rules, which provides that any emissions appearing on a frequency removed from the carrier by more than 600 kHz must be attenuated at least $43 + 10 \text{Log}_{10}(\text{Power, in watts})$ dB below the level of the unmodulated carrier, or 80 dB, whichever is the lesser attenuation.⁴ Measurements taken by agents from the Tampa Field Office during the November 17, 1998, inspection indicated that WJTF-FM’s second and third harmonics were not attenuated to 80 dB below the fundamental frequency as required by Section 73.317(d) of the Rules, and the Tampa Field Office included this violation in a Notice of Violation issued to Joy on December 4, 1998. However, the Tampa Field Office did not include this violation in the *Notice of Apparent Liability for a Forfeiture* (“*NAL*”)⁵ issued to Joy on February 4, 1999, because measurements of the station’s signal taken

¹ *Joy Public Broadcasting Corporation, Inc.*, DA 01-184 (Enf. Bur., released January 29, 2001).

² 14 FCC Rcd 856 (Compl. & Inf. Bur., 1999), *recon. denied*, 15 FCC Rcd 8575 (Enf. Bur., 2000), *recon. denied*, 15 FCC Rcd 18255 (Enf. Bur., 2000), *recon. granted in part*, DA 01-184 (Enf. Bur., released January 29, 2001).

³ 47 C.F.R. §§ 73.1350(c)(2), 73.1590(a)(1) and 73.1870(b)(3).

⁴ 47 C.F.R. § 73.317(d).

⁵ *Notice of Apparent Liability for a Forfeiture*, NAL/Acct. No. 915TP00004 (Compl. & Inf. Bur., Tampa, Florida Field Office, released February 4, 1999).

by FCC agents on January 20, 1999, showed no violation of Section 73.317(d). In the January 29, 2001, *Memorandum Opinion and Order*, we granted Joy's third petition for reconsideration for the limited purpose of ruling that the Tampa Field Office's finding of a violation of Section 73.317(d) during the November 17, 1998, inspection will not be used against Joy in any future proceeding. In light of this ruling, we concluded that Joy's argument that there was no violation of Section 73.317(d) was moot and required no further consideration. In its instant petition for reconsideration, Joy argues that the Bureau must delete the indication that WJTF-FM violated Section 73.317(d) because there is no support in the record for that finding.

3. We deny Joy's petition for reconsideration. The violation of Section 73.317(d) cited in the NOV issued to Joy was not included in the *NAL*. Furthermore, we made clear in our January 29, 2001, *Memorandum Opinion and Order* that this violation will not be used against Joy in any future proceeding. Joy's argument that there was no violation of Section 73.317(d) is beyond the scope of this proceeding. This proceeding is not the proper vehicle for challenging a violation that was not included in the *NAL*.

4. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended ("Act"),⁶ and Section 1.106 of the Rules,⁷ Joy Public Broadcasting Corporation's petition for reconsideration of the January 29, 2001, *Memorandum Opinion and Order* **IS DENIED**.

5. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Joy Public Broadcasting Corporation, 341 S. Washington, Lancaster, Wisconsin 53813, and to its counsel, Timothy E. Welch, Esq., Hill & Welch, 1330 New Hampshire Avenue N.W., Suite 113, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁶ 47 U.S.C. § 405

⁷ 47 C.F.R. § 1.106.