

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

In the Matter of	)	
	)	
J4 Broadcasting of Cincinnati, Inc.	)	File No. EB-01-DT-657
	)	NAL/Acct. No. 200232360007
Licensee of Station WCIN(AM)	)	FRN 0004-2892-60
Cincinnati, Ohio	)	

**FORFEITURE ORDER**

**Adopted: February 4, 2003**

**Released: February 6, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to J4 Broadcasting of Cincinnati, Inc. (“J4 Broadcasting”), licensee of Station WCIN(AM), Cincinnati, Ohio, for willful and repeated violation of Sections 73.51(e)(2) and 73.1560(a)(1) of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violations involve J4 Broadcasting’s failure to maintain a record of the station’s efficiency factor “*F*” used to determine operating power and operation of WCIN with power in excess of 105% of the authorized power.

2. On June 20, 2002, the Commission’s Detroit, Michigan Field Office (“Detroit Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to J4 Broadcasting for a forfeiture in the amount of five thousand dollars (\$5,000).<sup>2</sup> J4 Broadcasting filed a response to the *NAL* on August 20, 2002.

**II. BACKGROUND**

3. In 1996, after being evicted from its authorized transmitter site, J4 Broadcasting requested and was granted Special Temporary Authorization (“*STA*”) to operate WCIN from a temporary site at reduced power while it located a permanent site. In 1997, after J4 Broadcasting located a permanent site for WCIN and filed an application for a construction permit to relocate WCIN to that site,<sup>3</sup>

<sup>1</sup> 47 C.F.R. §§ 73.51(e)(2) and 73.1560(a)(1).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232360007 (Enf. Bur., Detroit Office, released June 20, 2002).

<sup>3</sup> The Commission staff granted J4 Broadcasting’s application for a construction permit on February 18, 1998 (File No. BP-19960531AD), but dismissed its application for a license to cover the construction permit (File No. 20010216ABA) on August 7, 2001, after finding that the special operating restrictions and conditions specified in the construction permit had not been satisfied. Thus, J4 Broadcasting’s construction permit, which had expired on March 15, 2001, was forfeited on August 7, 2001. J4 Broadcasting has since filed another application for a construction permit to relocate WCIN to the permanent site (File No. BP-20011015AGS). That application remains

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the Commission staff granted J4 Broadcasting's request for STA to operate from the proposed permanent site with a daytime non-directional power of 250 watts and a nighttime non-directional power of 15 watts. The Commission staff has granted J4 Broadcasting numerous extensions of this STA since that time.

4. On September 19, 2000, the Commission received a complaint alleging, among other things, that WCIN was operating with power in excess of its authorized power during both daytime and nighttime hours.

5. On September 26, 2000, an agent from the Detroit Office monitored and made field strength measurements of WCIN. On September 27, 2000, the agent again made field strength measurements of WCIN and then inspected WCIN. The agent found numerous rule violations, including violations of Sections 73.51(e)(2) and 73.1560(a)(1) (failure to maintain a record of the station's efficiency factor "*F*" and operation of the station with power in excess of 105% of the authorized daytime and nighttime power limits).

6. On November 27, 2000, the Detroit Office issued a Notice of Violation ("NOV") to J4 Broadcasting for numerous rule violations, including the violations of Sections 73.51(e)(2) and 73.1560(a)(1). J4 Broadcasting submitted a response to the NOV on December 6, 2000, detailing the actions it was taking to remedy the violations, and supplemented this response on December 9, 2000.

7. On November 7, 2001, the Detroit Office received another complaint alleging that WCIN was operating with power in excess of its authorized daytime and nighttime power limits.

8. On January 16, 2002, and again on January 17, 2002, agents from the Detroit Office monitored and made field strength measurements of WCIN both prior to and after sunset. The field strength measurements taken by the agents indicated that WCIN was operating in excess of 105% of its authorized power during both daytime and nighttime operation. Specifically, the agents determined that WCIN was operating at 2070 watts during both daytime and nighttime operation, which was approximately 828% of the daytime power of 250 watts and approximately 13,800% of the nighttime power of 15 watts permitted by the STA.<sup>4</sup> The agents also inspected WCIN on January 17, 2002. The inspection revealed, among other things, that the station did not have a record of the efficiency factor "*F*" used to determine the operating power, station personnel were not monitoring the station's operating power, and station personnel did not know how to determine the station's operating power or how to switch to nighttime power.

9. On January 22, 2002, J4 Broadcasting sent a letter to the Detroit Office addressing some of the violations noted at the time of the inspection. On March 22, 2002, the Detroit Office issued an NOV to J4 Broadcasting for numerous rule violations, including the subject violations before us. On

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pending.

<sup>4</sup> At the time of the inspection, J4 Broadcasting's STA had actually expired. However, the Commission staff subsequently granted J4 Broadcasting's request for another extension of its STA. Given that J4 Broadcasting has been operating WCIN pursuant to STA at reduced power for more than five years and that the Commission staff has denied J4 Broadcasting's requests to modify the STA to increase its daytime and nighttime power, the agents properly used the daytime and nighttime power levels set forth in the expired STA in determining that J4 Broadcasting was operating in excess of 105% of its authorized power levels.

April 5, 2002, the Detroit Office received J4 Broadcasting's response to the NOV, which described the actions it was taking to correct the violations.

10. On June 20, 2002, the Detroit Office issued an *NAL* finding J4 Broadcasting apparently liable for a \$5,000 forfeiture for failure to maintain a record of the station's efficiency factor "F" used to determine operating power in willful and repeated violation of Section 73.51(e)(2) of the Rules and operation of WCIN with power in excess of 105% of the authorized power in willful and repeated violation of Section 73.1560(a)(1) of the Rules. In its response to the *NAL*, J4 Broadcasting does not dispute that it violated these rules. However, J4 Broadcasting requests cancellation of the proposed forfeiture and submits its tax returns for 1999, 2000 and 2001 in support of this request.

### III. DISCUSSION

11. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining J4 Broadcasting's response, Section 503(b) of the Act requires that the Commission take into account 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>

12. Section 73.51(e)(2) of the Rules requires that a record of the efficiency factor "F" used in determining a station's operating power be kept in the station's records. Without a record of the efficiency factor, a station is unable to determine its operating power using the indirect method and therefore is unable to determine whether it is operating at its authorized power levels. J4 Broadcasting does not dispute that it failed to maintain a record of the efficiency factor "F" in its station records. Accordingly, we conclude that J4 Broadcasting willfully<sup>8</sup> and repeatedly<sup>9</sup> violated Section 73.51(e)(2) of the Rules.

13. Section 73.1560(a)(1) of the Rules provides that a station may not operate in excess of 105% of its authorized power. J4 Broadcasting does not dispute that it operated WCIN in excess of 105%

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

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

<sup>8</sup> 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,' ... 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).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

of the authorized daytime and nighttime power. Accordingly, we conclude that J4 Broadcasting willfully and repeatedly violated Section 73.1560(a)(1) of the Rules.

14. Although J4 Broadcasting does not specifically assert that it is unable to pay the \$5,000 forfeiture proposed in the *NAL* for these violations, it requests cancellation of the forfeiture and submits copies of its tax returns for 1999, 2000 and 2001 in support of this request. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>10</sup> After considering the financial information submitted by J4 Broadcasting, we conclude that its gross revenues are sufficient to enable it to pay a \$5,000 forfeiture.

15. We have examined J4 Broadcasting's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that J4 Broadcasting willfully and repeatedly violated Sections 73.51(e)(2) and 73.1560(a)(1) of the Rules, and we find no basis to rescind or reduce the forfeiture proposed for these violations.

#### IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>11</sup> J4 Broadcasting of Cincinnati, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for willful and repeated violations of Sections 73.51(e)(2) and 73.1560(a)(1) of the Rules.

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>12</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232360007 and FRN 0004-2892-60. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>13</sup>

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to J4 Broadcasting of Cincinnati, Inc., 3540 Reading Road, Cincinnati, Ohio 45229.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>10</sup> See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991). The Commission has also stated that if gross revenues are sufficiently great, the existence of operating losses does not by itself mean that a company cannot afford to pay a forfeiture. *Id.*

<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.

David H. Solomon  
Chief, Enforcement Bureau