

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

In the Matter of	)	
	)	
Broadcast Learning Center, Inc.	)	File Number EB-02-PA-328
WHS405	)	NAL/Acct. No. 200332400004
Cherry Hill, New Jersey	)	FRN: 0007-83-6190
	)	
	)	

**FORFEITURE ORDER**

**Adopted: May 21, 2004**

**Released: May 25, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to Broadcast Learning Center, Inc. (“BLCI”) for apparent willful and repeated violation of Section 74.532(e) of the Commission’s Rules (“Rules”)<sup>1</sup> by operating station WHS405 at an unauthorized location.

2. On January 6, 2003, the Commission’s Philadelphia, Pennsylvania Office (“Philadelphia Office”) issued a *Notice of Apparent Liability* (“*NAL*”) to BLCI in the amount of four thousand dollars (\$4,000).<sup>2</sup> BLCI filed a response on February 4, 2003 and supplemented its response on May 11, 2004.

**II. BACKGROUND**

3. The license for station WHS405 authorizes BLCI to operate an aural broadcast auxiliary station on the frequencies 948.375 MHz and 948.625 MHz near the intersection of 11<sup>th</sup> Street and Moss Avenue, Hammonton, New Jersey. However, on October 15, 2002, an FCC agent with the Philadelphia Office inspected the station and found that BLCI was operating the station at an unauthorized location. Specifically, BLCI was operating the station at 308 Dutton Mill Road, Brookhaven, Pennsylvania, which is over 30 miles from the site authorized in the license.

4. On October 21, 2002, the Philadelphia Office issued a Notice of Violation (“NOV”) to BLCI for operating station WHS405 at an unauthorized location, in violation of Section 74.532(e) of the Rules. By letter dated October 30, 2002, BLCI submitted a response to the NOV. In the response, BLCI acknowledged to have operated station WHS405 at the unauthorized location since at least March 17, 1998. BLCI stated that although it had filed an application with the Commission to relocate the station to

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<sup>1</sup> 47 C.F.R. § 74.532(e).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332400004 (Enf. Bur., Philadelphia Office, released January 6, 2003).

308 Dutton Mill Road, Brookhaven, Pennsylvania, it was unaware that the Commission returned the application on September 27, 1998. BLCI stated that on October 24, 2002, it filed another license modification application and an application for Special Temporary Authority. On January 6, 2003, the Philadelphia Office issued a *NAL* for willful and repeated violation of Section 74.532(e) of the Commission's Rules.

5. In its response to the *NAL*, BLCI acknowledges that it violated Section 74.532(e) but denies that its conduct was "willful, deliberate or intentional." It argues that the public was not harmed and that it promptly corrected the violation. BLCI also claims that it is financially unable to pay the forfeiture and that it has a history of compliance with Commission rules and regulations.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>5</sup> In examining BLCI'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 such other matters as justice may require.<sup>6</sup>

7. Section 74.532(e) of the Rules provides that each aural broadcast auxiliary station will be licensed at a specified transmitter location to communicate with a specified receiving location, and the direction of the main radiation lobe of the transmitting antenna will be a term of the station authorization. Based on the agent's inspection and BLCI's responses, it is undisputed that between March 17, 1998 and October 15, 2002, BLCI operated aural broadcast auxiliary station WHS405 at an unauthorized location.

8. BLCI concedes that it was operating station WHS405 from an unauthorized location, but argues that its misconduct was not "willful, deliberate or intentional" even though it also admits that its staff failed to study the primary station license "in detail to detect that the transmitter address was incorrect" and to learn that its application to relocate the station to the proper address was returned. These arguments are rejected because we find BLCI's failure to ascertain that it was not operating at its authorized location to be willful misconduct.<sup>7</sup> Similarly, BLCI's argument that "no other station was harmed or interfered with" by its unintentional action and that the "public's safety was never put in risk or jeopardy" are also rejected. The absence of interference or any showing of harm to the public interest does not entitle BLCI to a reduction of

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D)

<sup>7</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).

the proposed forfeiture.<sup>8</sup>

9. BLCI points out that it has taken a number of corrective steps to cure the Rule violation. According to the company, after the violation was brought to its attention by the Commission, it immediately filed applications for license modification and Special Temporary Authority. BLCI states that these applications have been approved by the Commission, and that BLCI is now in “complete compliance.” BLCI claims that it “spent more than \$3,000 in attorney and engineering fees to correct the violation and bring our station into FCC compliance.” BLCI’s remedial repair actions subsequent to notification of the violation do not warrant cancellation or reduction of the proposed forfeiture.<sup>9</sup> It is well established that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”<sup>10</sup>

10. BLCI submits federal income tax returns for years 2000, 2001, and 2002 to demonstrate that payment of the monetary forfeiture will constitute a “financial burden on the station’s operation”.<sup>11</sup> In further support of its inability to pay showing, BLCI also states that it is a “non commercial educational station with a good portion of our revenue coming from individual donations,” lists other important financial obligations that it faces and discusses why it needs to set aside a cash reserve. However, the Commission has determined that, in general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.<sup>12</sup> After reviewing the financial data submitted, we find insufficient evidence in BLCI’s response to support cancellation of the forfeiture or a reduction based upon inability to pay.

11. Finally, in support of its request for cancellation or reduction, BLCI states that it has a history of full compliance with FCC regulations. We have reviewed Commission records and concur.

12. Based on the findings of the *NAL* and BLCI’s response thereto, we conclude that BLCI’s violations of Section 74.532(e) of the Rules were willful and repeated.<sup>13</sup> Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted because of the compliance record of BLCI with the Commission’s Rules. Accordingly, the forfeiture amount is reduced from four thousand dollars (\$4,000) to three thousand two hundred dollars (\$3,200).

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<sup>8</sup> See *In re AGM-Nevada, LLC*, 18 FCC Rcd 1476 (Enf. Bur. 2003).

<sup>9</sup> See *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>10</sup> *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator’s gross revenues).

<sup>12</sup> See *PJB Communications of Virginia, Inc.* at 2088, 2089.

<sup>13</sup> As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97<sup>th</sup> Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company, id.* at 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act<sup>14</sup>, and sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules<sup>15</sup>, Broadcast Learning Center's Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand, two hundred dollars (\$3,200) for its willful and repeated violation of Section 74.532(c) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules<sup>16</sup> 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>17</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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 note the NAL/Acct. No. 200332400004, and FRN: 0007-83-6190 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>18</sup>

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, and First Class Mail to Broadcast Learning Center, Inc., 1445 Skippack Pike, Blue Bell, Pennsylvania 19422 and to its counsel, Edward W. Hummers, Jr., Holland & Knight LLP, 2099 Pennsylvania Avenue, N.W., Suite 100, Washington, D.C. 20006-6801.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>16</sup> 47 C.F.R. § 1.80.

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> See 47 C.F.R. § 1.1914.