

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

In the Matter of )
)
)
NEW NORTHWEST BROADCASTERS, ) File No. EB-02-IH-0696
L.L.C. ) NAL/Acct. No. 200432080161
) FRN # 0003799814
Licensee of Stations KEGX(FM), KIOK(FM), ) Facility ID Nos. 53140, 12455, 63359, 35717,
KALE(AM), Richland, Washington, KNLT(FM), ) 53139
Walla Walla, Washington, and KTCR(AM), )
Kennewick, Washington<sup>1</sup>

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 24, 2004

Released: May 25, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find New Northwest Broadcasters, L.L.C. ("NNB"), licensee of Stations KEGX(FM) KIOK(FM), KALE(AM), Richland, Washington, KNLT(FM), Walla Walla, Washington, and KTCR(AM), Kennewick, Washington, apparently liable for a monetary forfeiture in the amount of Four Thousand Dollars (\$4,000) for a violation of section 73.1216 of the Commission's rules.<sup>2</sup> That rule requires a broadcast licensee to conduct its contests substantially as announced or advertised. We find that NNB broadcast contests in which it awarded prizes to callers who did not satisfy its pre-announced contest rule parameters.

II. BACKGROUND

2. The Commission received a confidential complaint dated July 31, 2002, alleging that NNB, time-broker of Station KUJ-FM, Walla Walla, Washington, had engaged in "rampant rigging of contests" there.<sup>3</sup> According to the complaint, the station's on-air announcers were instructed by NNB's managers to award contest prizes "to women that sound[ed] over the age of 18," even where the announced contest rules specified that the ninety-ninth caller would win the applicable prize.<sup>4</sup>

3. On November 15, 2002, the Investigations and Hearings Division of the Enforcement

<sup>1</sup> New Northwest Broadcasters, L.L.C. also time-brokers Station KUJ-FM, Walla Walla, Washington. Station KUJ-FM is licensed to Alexandria Communications.

<sup>2</sup> 47 C.F.R. § 73.1216.

<sup>3</sup> See Confidential Complaint dated July 31, 2002 at 2 ("Complaint").

<sup>4</sup> Id.

Bureau sent a letter of inquiry to NNB.<sup>5</sup> NNB responded by letter dated December 23, 2002.<sup>6</sup> In its response, NNB denied that its stations and its employees, including NNB's Operations Manager, and an announcer, violated the applicable statutory and regulatory requirements.<sup>7</sup>

### III. DISCUSSION

4. *Applicable Statutory and Regulatory Requirements.* Section 508 of the Act prohibits a licensee from knowingly deceiving the public by engaging "in any artifice or scheme for the purpose of prearranging or predetermining in whole or in part the outcome of a purportedly bona fide contest . . . of chance."<sup>8</sup> Thus, section 73.1216 of the Commission's rules requires a broadcast licensee to conduct station-sponsored contests "substantially as announced or advertised," and to disclose fully and accurately the "material terms" of such contests.<sup>9</sup> Material terms, among other things, include any eligibility restrictions, means of selection of winners, and instructions regarding entry and participation.<sup>10</sup>

5. With respect to the contest-rigging allegation, NNB has represented that its stations, except for KALE(AM) and KTCR(AM), have conducted various station-sponsored grand and minor prize contests, typified by call-in parameters (*i.e.*, contests awarded to designated numbered callers).<sup>11</sup> As an example, NNB provided a transcript of a typical contest announcement.<sup>12</sup> NNB contends that the parameters of and the procedures for such station-sponsored contests were established and implemented

---

<sup>5</sup> See Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to NNB, dated November 15, 2002 ("*LOP*").

<sup>6</sup> See Letter from Trila Bumstead, Chief Financial Officer, NNB, to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, dated December 23, 2002 ("*Response*").

<sup>7</sup> *Id.*

<sup>8</sup> 47 U.S.C. § 509.

<sup>9</sup> 47 C.F.R. § 73.1216 specifically provides that a licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term.

<sup>10</sup> See 47 C.F.R. § 73.1216, notes 1(b) and 2. Note 1 to that rule provides that the material terms of the contest include "the extent, nature and value of prizes" and "the basis for valuation of the prizes." Note 2 to the rule states:

In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However, the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter. The material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement is sufficient. In addition to the required broadcast announcements, disclosure of material terms may be made in a non-broadcast manner.

<sup>11</sup> See *Response* at 4.

<sup>12</sup> *Id.* at Exhibit E.

by its stations' program directors and disc jockeys.<sup>13</sup> NNB maintains that its employees did not rig contest results, and that its stations conducted contests and awarded prizes consistent with the announcements and in accordance with the applicable statutory and regulatory requirements.<sup>14</sup> NNB acknowledged, however, that, in its investigation into the allegations, it discovered that, in a few incidents in which call volume fell short of the announced designated numbered callers, prizes had been awarded to the next eligible callers.<sup>15</sup> NNB maintained that these incidents were isolated and were attributable to insufficient call volume -- not from any desire to favor any type of contestant, adult female or otherwise.<sup>16</sup> NNB advised that it took corrective action, by informing its disc jockeys that, in the event of insufficient call volume, they should announce a lower number level and award the prize accordingly.<sup>17</sup>

6. In this case, it appears that NNB violated section 73.1216 of the Commission's rules by not conducting at least one of its contests substantially as announced. NNB admits that its station announcers, in a few instances, awarded prizes to call-in contestants who did not meet the contests' announced parameters and requirements. Licensees, as public trustees, have the affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements,<sup>18</sup> and for conducting their contests substantially as announced.<sup>19</sup> Although NNB later took remedial actions to correct the conduct of its contests prospectively, these actions do not absolve it from liability and the proposed forfeiture penalty.<sup>20</sup>

## V. FORFEITURE

7. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.<sup>21</sup> In

---

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *WMJX, Inc.*, 48 RR 2d 1339, 1355 (1981); Report and Order, *Rules Relating to Licensee-Conducted Contests*, 60 FCC 2d 1072 (1976).

<sup>19</sup> *In re Headliner Radio, Inc. (KSXY-FM)*, 8 FCC Rcd 2962 (MMB 1993); *In re Lincoln Dellar*, 8 FCC Rcd 2582, 2585 (MMB-ASD 1993) (where the cancellation of a pre-announced contest violated the pertinent Commission rule because the contest was not then conducted "substantially as announced").

<sup>20</sup> See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); see also *Station KVGL, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>21</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion (continued....)

order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>22</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>23</sup> As we set forth in greater detail below, we conclude under this standard that NNB is apparently liable for a forfeiture for its apparent willful violation of section 73.1216 of the Commission's rules.

8. Based upon the evidence before us, we find that NNB apparently willfully<sup>24</sup> violated section 73.1216 of the Commission's rules. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for failure to conduct a station contest substantially as announced.<sup>25</sup> In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>26</sup> which include 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. After considering the record, the factors contained in section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), and the *Forfeiture Policy Statement*, we believe that a \$4,000 forfeiture is appropriate in this case.

## V. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended,<sup>27</sup> and sections 0.111, 0.311, and 1.80 of the Commission's rules,<sup>28</sup> that New Northwest Broadcasters, L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR (Continued from previous page) \_\_\_\_\_ and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>23</sup> *See, e.g., SBC Communications, Inc.*, Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

<sup>24</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to 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 ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>25</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

<sup>26</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>27</sup> 47 U.S.C. § 503(b).

<sup>28</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

FORFEITURE in the amount of Four Thousand Dollars (\$4,000) for willfully violating section 73.1216 of the Commission's rules.

10. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of the release of this Notice, New Northwest Broadcasters, L.L.C. 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 may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and also should note the NAL/Acct. No. referenced above.

12. The response, if any, must be mailed to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 3-B433, Washington, D.C. 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>29</sup>

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If NNB qualifies as a small entity and if it wishes to be treated as a small entity for tracking purposes, it should so certify to us within thirty (30) days of this NAL, either in its response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division. NNB's certification should indicate whether it, including its parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. NNB's response or failure to respond to this question will have no effect on its rights and responsibilities pursuant to Section 503(b) of the Communications Act. If NNB has questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified

---

<sup>29</sup> See 47 C.F.R. § 1.1914.

Mail/Return Receipt Requested, to New Northwest Broadcasters, L.L.C., 15405 S.E. 37<sup>th</sup> Street, Suite 130, Bellevue, Washington 98006, and to its counsel, M. Anne Swanson, Esq., Dow Lohnes & Albertson, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036-6802.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

October 2002

## ATTACHMENT A

**FCC List of Small Entities**

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
<b>Industry Type</b>	<b>Description of Small Business Size Standards</b>
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

**Note:** With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard -

900 MHz Specialized Mobile Radio	<b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their

	affiliates)
<i>Miscellaneous</i>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)