

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

In the Matter of	)	
	)	
WTMR License Limited Partnership	)	File Number EB-04-PA-104
	)	
Licensee of Station WTMR	)	NAL/Acct. No. 200532400003
Camden, New Jersey	)	
Facility ID # 24658	)	FRN 0003-77-1698

**FORFEITURE ORDER**

**Adopted: May 16, 2006**

**Released: May 18, 2006**

By the Regional Director, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to WTMR License Limited Partnership, licensee of AM station WTMR, Camden, New Jersey for willful and repeated violation of Section 73.1745(a) of the Commission’s Rules (“*Rules*”).<sup>1</sup> The noted violation involves the operation of WTMR at a power of more than 500 watts during nighttime hours, in direct contravention of the terms of the station authorization.

**II. BACKGROUND**

2. Station WTMR’s license specifies that the station must reduce power from its authorized daytime power of 5000 Watts to its authorized nighttime power of 500 Watts at local sunset time. The license also specifies that local sunset time is 7:30 p.m. (non-advanced Local Standard Time) during the month of July. Adjusting the time to daylight savings time, the station must operate with its nighttime power beginning at 8:30 p.m. during the month of July.

3. On July 15, 2004 and July 29, 2004, an agent with the FCC’s Philadelphia Office monitored the signal strength level of the station. The agent’s field strength measurements showed that the station did not reduce power at sunset, as required by its license. Specifically, on July 15, 2004, the station did not reduce power until 9:29 p.m. and on July 29, 2004, the station did not reduce power until 9:32 p.m.

4. On April 19, 2005, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture to WTMR for apparent willful and repeated violation of Section 73.1745(a) of the Rules for failure to reduce power to the authorized nighttime levels, in direct contravention of its station

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<sup>1</sup> 47 C.F.R. § 73.1745(a).

authorization.<sup>2</sup> WTMR submitted a response to the *NAL* on May 31, 2005.<sup>3</sup> WTMR does not dispute the findings in the *NAL*, but claims that a cancellation or reduction is warranted because the extent and gravity of this violation is much less than other cases in which \$4,000 forfeitures have been assessed. WTMR further describes its violation as a “comparatively minor infraction” and points to remedial efforts it has taken since the issuance of the *NAL*.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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>7</sup>

6. We disagree with WTMR that its failure to reduce power to its authorized nighttime power is a “comparatively minor infraction.” The Commission consistently has found that “[u]nauthorized pre-sunrise operation, because of its potential for interference to other broadcast stations, has always been considered a serious matter. . . .”<sup>8</sup> Moreover, contrary to WTMR’s claim, the assessment of the \$4,000 base forfeiture amount for the violation at issue here is appropriate and consistent with Bureau precedent.<sup>9</sup> Finally, we decline to reduce or cancel the forfeiture based on WTMR’s remedial efforts, which took place after the FCC agents’ July 2004 inspection. The Commission consistently has held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>10</sup>

7. We have examined WTMR’s response to the *NAL* pursuant to the statutory factors above

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<sup>2</sup> *WTMR License Limited Partnership*, Notice of Apparent Liability for Forfeiture, *NAL/Acct. No. 200532400003* (Enf. Bur., Philadelphia Office, April 19, 2005) (“*NAL*”).

<sup>3</sup> WTMR’s response to the *NAL* initially was due on May 19, 2005, but WTMR received from the District Director of the Philadelphia Office an extension of time to file the response.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

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

<sup>8</sup> See *Radio 810 Nashville*, Memorandum Opinion and Order, 19 FCC Rcd 10983 (2004) para. 12, *citing Hale Broadcasting Corporation*, 79 FCC 2d 169 (1980). Because of the concerns regarding potential interference, we do not believe, as WTMR seems to suggest, that whether an actual complaint of interference has been received, should have a bearing on whether to apply the base forfeiture amount for over power operation.

<sup>9</sup> See e.g., *Radio 810 Nashville*, *supra* (\$4,000 assessed for failure to reduce to nighttime power level on two days until fifty-five minutes after sunset); *Pilgrim Communications, Inc.*, Memorandum Opinion and Order, 2005 WL 2138617 (2005) (\$4,000 forfeiture assessed for failure to reduce to nighttime power level on one day until forty-five minutes after sunset); *RJM Communications, Inc.*, 19 FCC Rcd 1901 (2004) (\$4,000 forfeiture proposed for failure to reduce power until two and one-half hours after sunset on one day and until approximately one and one-half hours after sunset on a second day (proposed forfeiture was reduced based on inability to pay)).

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

and in conjunction with the Policy Statement. As a result of our review, and based on the record before us, we conclude that WTMR willfully and repeatedly violated Section 73.1745(a) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$4,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>11</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> WTMR License Limited Partnership **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willful and repeated violated of Section 73.1745(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, that case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>13</sup> 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>14</sup>

10. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to WTMR License Limited Partnership at its address of record and to counsel for WTMR License Limited Partnership at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.  
Regional Director, Northeast Region  
Enforcement Bureau

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<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup> 47 U. S. C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.