

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

In the Matter of)	
)	
127, Inc.)	File Number EB-05-KC-143
)	
Licensee of Station KLFJ)	NAL/Acct. No. 200632560002
Facility ID# 17137)	
Springfield, Missouri)	FRN 0011407814

FORFEITURE ORDER

Adopted: September 1, 2006

Released: September 6, 2006

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of sixteen thousand eight hundred dollars (\$16,800) to 127, Inc. for willful and repeated violation of Sections 73.1125(a) and 73.1745 of the Commission’s Rules (“*Rules*”), and for willful violation of Section 73.3526(a) of the Rules.¹ The noted violations involve failure to maintain a main studio, operating overpower during nighttime hours and failure to make available for inspection the station’s public inspection file.

II. BACKGROUND

2. On December 13, 2005, an agent from the Commission’s Kansas City Office of the Enforcement Bureau (“*Kansas City Office*”) received a report that radio station KLFJ located in Springfield, Missouri was not reducing power during nighttime hours as required by the station license. The Commission agent monitored KLFJ’s signal from a location in Springfield. The agent’s monitoring indicated no power reduction in KLFJ’s signal from mid afternoon until after sunset.

3. On December 14, 2005, the agent again monitored KLFJ’s signal strength from the same location previously used and again the monitoring indicated no reduction in signal strength during nighttime hours from the signal level observed during mid-afternoon. Telephone calls to KLFJ went unanswered at 9:03 AM, 10:38 AM, 1:05 PM, 2:55 PM and 4:00 PM this date.

4. On December 15, 2005, the agent contacted Ms. Linda Morgan, executive assistant to the station’s owner, C.J. Perme, at Surrey Vacation Resorts/Surrey Grand Crown Resort, by using the phone number provided in KLFJ’s EEO Form 396. Ms. Morgan was located at the address listed on the EEO form, 430-C Highway 165 South in Branson, Missouri. The agent interviewed Ms. Morgan at that address. Ms. Morgan stated there was no studio for the radio station and station programming is done via computer from West Hollywood, California. Ms. Morgan stated she did not know the location of the public file but suggested checking at the Econo Lodge in Springfield. Ms. Morgan stated the KLFJ phone number listed in the Springfield phone book is supposed to be answered and is located at the Econo Lodge along with the computer containing the station’s aired material. Ms. Morgan provided the phone number for the contract

¹ 47 C.F.R. §§ 73.1125(a), 73.1745, 73.3526(a).

engineer for KLFJ and stated he would be able to aid with inspection of the transmitter and equipment located at the Econo Lodge.

5. Still on the same date, the agent inspected KLFJ's transmitter site and programming equipment located in Springfield, Missouri. Mr. Corbin Campbell, the KLFJ contract engineer, was present during the inspection. The transmitter was operating at a power of 1125 watts. Mr. Campbell stated that the station had operated at this power level for two to three months. Mr. Campbell stated that there was no studio or studio equipment for KLFJ. The agent found no microphone or other audio mixing capabilities that would allow origination of programming from the Econo Lodge, the transmitter site, or any other location in Springfield. Station programming material is uploaded to one of the two computers located in a back room of the Econo Lodge motel via telephone line from West Hollywood, California. During the inspection, Mr. Campbell was able to reduce the transmitter power to approximately 25 watts both manually and by using the remote control. Mr. Campbell stated that remote control instructions were left at the Econo Lodge when it was owned by Mr. Perme. According to Mr. Raj, new owner of the Econo Lodge, current Econo Lodge employees did not have any knowledge of the radio station operation or of any station records. Mr. Campbell stated he is called by the station only as needed. Mr. Campbell stated he had no knowledge of radio station staff locally and stated no chief operator was designated for the station. A check of the telephone for the station located at the Econo Lodge front desk found the telephone unplugged but operating correctly when plugged in.

6. On March 3, 2006, the Kansas City Office issued to 127, Inc. a *Notice of Apparent Liability for Forfeiture* ("NAL") proposing a forfeiture in the amount of \$21,000 that found 127, Inc. had willfully and repeatedly violated Sections 73.1125(a) and 73.1745 of the Rules, and had willfully violated Section 73.3526(a) of the Rules.² On May 11, 2006, the Kansas City Office received a letter from 127, Inc. dated May 1, 2006. The letter stated that 127, Inc. had previously submitted a response to the NAL and attached a copy of that response dated March 28, 2006. In its response, 127, Inc. does not deny the violations, states that it has made efforts to correct the violations, and requests cancellation or reduction of the proposed forfeiture due to its "spotless track record" and "many years of untarnished service."

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining 127 Inc.'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.⁶

8. Section 73.1125(a) of the Rules requires that each AM broadcast station maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632560002 (Enf. Bur., South Central Region, Kansas City Office, released March 3, 2006).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁶ 47 U.S.C. § 503(b)(2)(D).

community of license; or (3) within twenty-five miles from the reference coordinates of the center of its community of license as described in Sec. 73.208(a)(1). In addition, the station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.⁷ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁸ In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful."⁹ Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."¹⁰ On at least December 14 and 15, 2005, KLFJ did not have a main studio as confirmed by the agent's investigation and statements made by the station owner's executive assistant and the contract engineer. Therefore, 127, Inc. failed to comply with Section 73.1125(a) of the Rules. There is no dispute that 127, Inc. is licensed to operate station KLFJ in Springfield, and did so continuously on multiple days with no main studio facility or staffing in the community or at any location authorized by Section 73.1125(a) of the Rules. 127, Inc. did maintain program origination facilities but located hundreds of miles away from the community of license. Therefore, we find this violation to be willful and repeated.

9. Section 73.1745 of the Rules states in subsection (a) that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part" and in subsection (b) that "[a]ny unauthorized departure from an operating schedule which is required to be filed with the FCC in Washington, DC, will be considered as a violation of a material term of the license." KLFJ's license authorizes daytime power of 5000 watts and nighttime power of 28 watts. Monitoring of the station's signal strength on the nights of December 13 and 14, 2005, determined the station was operating overpower at a power of 1125 watts during night time hours. Therefore, 127, Inc. failed to comply with Section 73.1745 of the Rules. The contract engineer for the station stated that the KLFJ transmitter had operated continuously at a power of 1125 watts for at least two to three months. Therefore, we find this violation to be willful and repeated.

10. Section 73.3526(a) of the Rules requires commercial broadcast stations to maintain for public inspection a file containing materials listed in that section. The public inspection file is to be maintained at the main studio of the station¹¹ and be available for public inspection during regular business hours.¹² On December 15, 2005, no public file was available upon request at any location near the community of license. Therefore, 127, Inc. failed to comply with Section 73.3526(a) of the Rules. It is undisputed that 127, Inc. is licensed to operate KLFJ in Springfield and did so with no provision for access to the public inspection file. There is no evidence that the failure to provide access to the public file was caused by accident. Therefore, we find this violation to be willful.

11. While the response makes note of 127, Inc.'s efforts to correct the violations, such remedial efforts to correct violations after notification by the Commission do not mitigate imposition of a forfeiture. "[C]orrective action taken to come into compliance with Commission rules or policy is

⁷See *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

⁸*Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

⁹*Id.*

¹⁰7 FCC Rcd at 6802.

¹¹ 47 C.F.R. § 73.3526(b).

¹² 47 C.F.R. § 73.3526(c)(1).

expected, and does not nullify or mitigate any prior forfeitures or violations."¹³ After considering 127, Inc.'s past history of compliance, we conclude that a reduction of the forfeiture amount from \$21,000 to \$16,800 is appropriate.¹⁴

12. We have examined 127, Inc.'s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. We conclude that 127, Inc. willfully and repeatedly violated Sections 73.1125(a) and 73.1745 of the Rules, and willfully violated Section 73.3526(a) of the Rules. We find no basis for cancellation of the proposed forfeiture but do find that reduction of the forfeiture amount from \$21,000 to \$16,800 based on 127, Inc.'s history of compliance is appropriate.

IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,¹⁵ 127, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$16,800 for willful and repeated violation of Sections 73.1125(a) and 73.1745 of the Rules and willful violation of Section 73.3526(a) of the Rules.¹⁶

14. 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.¹⁷ 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. 20554.¹⁸

15. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to 127, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

¹³ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 at ¶ 7 (1994).

¹⁴ *See Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 703 ¶ 9 (Enf. Bur. 2003).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 C.F.R. §§ 73.1125(a), 73.1745, 73.3526(a).

¹⁷ 47 U.S.C. § 504(a).

¹⁸ *See* 47 C.F.R. § 1.1914.