

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

In the Matter of)	
)	
West Coast Broadcasting)	File Number: EB-05-SJ-010
Licensee of Station WNNV(FM))	NAL/Acct. No.: 200532680004
San German, Puerto Rico)	FRN:0008555625
Facility ID # 71565)	

FORFEITURE ORDER

Adopted: September 26, 2006

Released: September 28, 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 eight thousand dollars (\$8,000) to West Coast Broadcasting (“West Coast”), licensee of station WNNV(FM) in San German, PR, for willful and repeated violation of Section 73.1350(a) of the Commission’s Rules (“Rules”) and willful violation of Section 73.1560(b) of the Rules.¹ The noted violations involve West Coast’s failure to operate station WNNV(FM) in accordance with the terms of its station authorization and its failure to maintain the transmitter output power of its FM station as near as practicable to its authorized power.

II. BACKGROUND

2. On March 14, 2005, resident agents from the Commission’s San Juan Office of the Enforcement Bureau (“San Juan Office”) inspected station WNNV’s transmitter site located at 18° 04’ 08” N 067° 02’ 54” W in Lajas, PR. The agents observed that the station’s directional FM antenna was pointed towards the northeast, about 20 degrees true. The station’s authorization requires that the directional antenna be pointed in a southwesterly direction, at 202 degrees true. When the agents asked the station owner about the apparently misaligned directional antenna, he stated that that’s the way the engineer installed it.

3. Station WNNV is authorized to operate with an effective radiated power (“ERP”) of 5,000 watts at the radiated maxima of the antenna’s directional pattern. On March 14, 2005, the agents observed, using the direct method specified in Section 73.267 of the Rules,² that the station’s 8,000 watt transmitter was operating at 100% power or 8,000 watts transmitter power output. Applying the antenna manufacturer’s specifications for the antenna gain and subtracting line losses, the station’s ERP was over 26,000 watts. Thus, station WNNV operated at over 500% of its authorized power. The station owner stated that the electric utility that provides electric power to the station does not provide reliable regulation of the input voltage to the transmitter facility, causing the transmitter power output to fluctuate. The agents observed the transmitter for approximately 40 minutes and found that the power on the direct reading meter fluctuated very little. There was a 20% reduction in transmitter power, when the station owner minimized the exciter output into the transmitter. However, the station owner could at no time during the inspection adjust the station’s transmitter down to its authorized power levels.

¹ 47 C.F.R. §§ 73.1350(a), 73.1560(b).

² 47 C.F.R. § 73.267.

4. On June 9, 2005, the station owner faxed a letter dated June 8, 2005 to the San Juan Office, which stated that he had adjusted the output power of the station to authorized levels. The letter also stated that he reoriented the FM antenna to an azimuth of 206 degrees true and would adjust it to 202 degrees true the following Friday.

5. On September 7, 2005, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to West Coast in the amount of eight thousand dollars (\$8,000) for the apparent willful and repeated violation of Section 73.1350(a) of the Rules and the apparent willful violation of Section 73.1560(b) of the Rules.³ On October 9, 2005, West Coast submitted a response to the *NAL* requesting the ability to pay the forfeiture in installments. West Coast, however, failed to submit its good faith payment and its request for an installment payment plan was denied.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ 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) ("*Forfeiture Policy Statement*"). In examining West Coast'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

7. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization.⁷ On March 14, 2005, station WNNV's directional antenna was installed so that it was pointed northeast, approximately 20 degrees true, which is 180 degrees in the wrong direction from what is required by its station authorization. The station owner stated that the antenna had been oriented in this direction since it was installed. According to the station owner, the station did not correct this problem until after June 8, 2005.

8. Section 73.1560(b) of the Rules states that the transmitter output power of an FM station, which is authorized for output power more than 10 watts, must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90% nor more than 105% of the authorized power.⁸ On March 14, 2005, station WNNV operated at 532% of its authorized power.

9. In its response to the *NAL*, West Coast did not deny the violations and requested to pay the forfeiture in installment payments. Based on the evidence before us, we find that West Coast willfully⁹ and

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532680004 (Enf. Bur., San Juan Office, September 7, 2005) ("*NAL*").

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 73.1350(a).

⁸ 47 C.F.R. § 73.1560(b).

⁹ 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

repeatedly¹⁰ violated Section 73.1350(a) of the Rules by failing to operate its station in accordance with the terms of its station authorization. We also find that West Coast willfully violated Section 73.1560(b) of the Rules by failing to maintain the transmitter output power of its FM station as near as practicable to the authorized power.

10. We have examined West Coast's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we find no basis for cancellation or reduction of the \$8,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, West Coast Broadcasting **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 73.1350(a) of the Rules and willfully violating Section 73.1560(b) of the Rules.

12. 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.¹¹ 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. 20554.¹²

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

FEDERAL COMMUNICATIONS COMMISSION

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

4387 (1991).

¹⁰ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.