

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

In the Matter of)	
)	
Unique Broadcasting, L.L.C.)	File Number: EB-04-DL-224
)	
Licensee of Station KKJW(FM))	NAL/Acct. No. 200532500002
Stanton, Texas)	
Facility ID 76095)	FRN 0013487103

FORFEITURE ORDER

Adopted: October 3, 2007

Released: October 5, 2007

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 three thousand six hundred dollars (\$3,600) to Unique Broadcasting, L.L.C. (“Unique”), licensee of station KKJW(FM) in Stanton, TX, for willful and repeated violation of Section 308(b) of the Communications Act of 1934, as amended (“Act”).¹ The noted violation involves Unique’s failure to respond to Commission correspondence requiring written statements of fact relating to operation of the station.

II. BACKGROUND

2. On September 22 and 23, 2004, an agent from the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”) attempted to inspect FM radio station KKJW in Stanton, Texas. On both occasions, the door to the main studio was locked and the lights were off. The agent attempted to contact the station via the telephone six times in September and October, 2004. All of the agent’s calls were routed directly to voicemail, and the station returned only one of the agent’s four messages.

3. On October 29, 2004, the Dallas Office issued a Letter of Inquiry (“LOI”) to Unique by Certified Mail, Return Receipt Requested seeking information regarding its main studio staff presence. On November 22, 2004, a signed Return Receipt for the LOI dated November 10, 2004 was received by the Dallas Office. The station owner also acknowledged receipt of the LOI via email.

4. On December 3, 2004, after receiving no response to the LOI from Unique, the Dallas Office issued a Notice of Violation (“NOV”) by Certified Mail, Return Receipt Requested for failure to respond to an LOI. The NOV was mailed to Unique’s address of record, the address listed in the LOI. The NOV required Unique to provide a written statement concerning its failure to respond to the LOI and its attempts to correct the violation. A copy of the LOI was included with the NOV. On January 4, 2005, the unopened envelope containing the NOV was returned to the Dallas Office, marked unclaimed.

5. On January 14, 2005, the Dallas Office sent a letter to Unique by regular mail to the same address as the LOI. The letter included, as enclosures, the LOI and the NOV, and instructed the licensee to respond to the documents no later than January 29, 2005. The letter was not returned to the Dallas Office. As of September 14, 2005, Unique failed to respond to the LOI, NOV, or letter.

¹ 47 U.S.C. § 308(b).

6. On September 14, 2005, the Dallas issued a *Notice of Apparent Liability for Forfeiture* to Unique in the amount of four thousand dollars (\$4,000) for the apparent willful and repeated violation of Section 308(b) of the Act.² On December 13, 2005, Unique responded to the *NAL* and requested the ability to pay the forfeiture in installments. Although it submitted a good faith payment of \$400, as of September 24, 2007, Unique failed to submit all of the required financial documentation and its request for an installment payment plan was denied.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Commission's Rules ("Rules"),⁴ 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 Unique'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.⁵

8. Section 403 of the Act authorizes the Commission to institute on its own motion any inquiry into, *inter alia*, any matter relating to the enforcement of the Act or the Rules.⁶ Section 308(b) of the Act provides that the Commission "during the term of any such licenses, may require from ... a licensee further written statements of fact to enable it to determine whether ... such license [should be] revoked ..."⁷ Section 1.89(b) of the Rules states that licensees must submit a written answer to an NOV to the office originating the NOV within 10 days of receipt of the NOV or within such period as may be specified.⁸ Pursuant to Section 308(b) of the Act, the Dallas Office ordered Unique in an LOI to provide the requested information by November 15, 2004. Unique signed the return receipt for the LOI and separately acknowledged receipt of the LOI via email. Unique failed to respond to the LOI. Pursuant to Section 308(b) of the Act and Section 1.89 of the Rules, the Dallas Office issued an NOV to Unique on December 3, 2004, citing its failure to respond to a Bureau inquiry. On January 14, 2005, the Dallas Office mailed a letter to Unique to the address listed in the LOI, which included the LOI and NOV and required a response by January 29, 2005. This letter was not returned to the Dallas Office. Unique did not respond to the LOI until November 14, 2005, after the *NAL* was released.

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

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532500002 (Enf. Bur., Dallas Office, September 14, 2005) ("*NAL*").

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 403.

⁷ 47 U.S.C. § 308(b). *See also* 47 C.F.R. § 73.1015.

⁸ 47 C.F.R. § 1.89(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 4387 (1991).

repeatedly¹⁰ violated Section 308(b) of the Act by failing to respond to Commission correspondence.

10. We have examined Unique'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 \$4,000 forfeiture proposed for this violation. However, as Unique has already paid \$400 of the \$4,000 proposed forfeiture, we issue a forfeiture in the amount of \$3,600.

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, Unique Broadcasting, L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand six hundred dollars (\$3,600) for willfully and repeatedly violating Section 308(b) of the Act.¹¹

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.¹² 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. 20554.¹³

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

FEDERAL COMMUNICATIONS COMMISSION

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

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. §§ 308(b), 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.