

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

In the Matter of)	
)	
Halifax Christian Community Church, Inc.)	File Number EB-07-TP-064
)	
Licensee of WFBO-LP)	NAL/Acct. No. 200832700014
Flagler Beach, Florida)	
Facility ID # 133320)	FRN: 0006871339
)	

FORFEITURE ORDER

Adopted: June 26, 2008

Released: June 30, 2008

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 one hundred dollars (\$8,100) to Halifax Christian Community Church, Inc., (“Halifax”), licensee of low power FM (“LPFM”) radio station WFBO-LP, in Flagler Beach, Florida, for willful violation of Section 73.845 of the Commission’s Rules (“Rules”)¹ and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violations involve Halifax’s operation of its station inconsistent with the terms of its station authorization and its operation of an unlicensed radio station.

II. BACKGROUND

2. On April 23, 2007, in response to a complaint that LPFM station WFBO-LP was operating an unlicensed station on 93.5 MHz, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) monitored frequency 93.5 MHz in the Flagler Beach area, but heard no station on that frequency. The agents continued scanning the FM band and found a station on 92.7 MHz that was re-broadcasting the signal of WFBO-LP, which is licensed to operate on 93.3 MHz in the Flagler Beach, FL area. Agents from the Tampa Office used direction finding techniques to locate the source of the transmission on 92.7 MHz to the European Village Resort, 101 Palm Harbor Parkway, Palm Coast, FL. Field strength measurements on 92.7 MHz revealed that the signal being broadcast exceeded the limits for operation under Part 15 of the Commission’s Rules³ and therefore required a license. An agent from the Tampa Office searched Commission databases and found no evidence of a Commission authorization for a station to operate on 92.7 MHz from this location.

¹ 47 C.F.R. § 73.845.

² 47 U.S.C. § 301.

³ Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 μ V/m at three meters. 47 C.F.R. § 15.239. Measurements on April 23, 2007 showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter by over 905 times.

3. Still on April 23, 2007, agents from the Tampa Office found that the source of the transmission on 92.7 MHz was emanating from station WFBO-LP's new main studio located in the European Village Resort. The agents interviewed the station's general manager and president, who admitted that he was broadcasting on 92.7 MHz without a license. He explained that, because WFBO-LP on 93.3 MHz was not heard very well on 93.3 MHz from his new studio location, he began operating on 92.7 MHz in January 2007. The general manager/president stated that he knew the signal on 92.7 MHz got out approximately 1,000 feet and that he could not turn the transmitter any lower than a few watts. He voluntarily unplugged the transmitter, which was not FCC certified,⁴ before the agents departed the studio.

4. On October 19, 2007, agents from the Tampa Office inspected the new main studio of station WFBO-LP located in Flagler Beach, FL after receiving additional anonymous complaints concerning alleged violations at the station. The agents were accompanied by the Director of Station WFBO-LP Operations and observed that the station's transmitter on 93.3 MHz was operating at 106 watts. The Director contacted the station engineer who confirmed that 106 watts was the actual transmitter power. The station engineer was aware that the station was operating with this power level. The station engineer also stated that the station had installed a Norwalk Electronics Phazor antenna. The station is authorized to operate its transmitter with a maximum of 36 watts and to operate with a Shively 6812B antenna.

5. On April 8, 2008, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Halifax in the amount of twenty four thousand dollars (\$24,000), for the apparent willful violation of Section 73.845 of the Rules and the apparent willful and repeated violation of Section 301 of the Act.⁵ Halifax submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

6. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ 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 Halifax'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.⁸

7. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. In particular, Section 301 of the Act states that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; . . . except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter."⁹ On April 23,

⁴ Use of a non-certified transmitter violates Section 15.201(b) of the Rules, 47 C.F.R. § 15.201(b). Thus, even if the transmissions on 92.7 MHz did not exceed Part 15 limits, Halifax's operation of its transmitter on 92.7 would not be considered a permissible unlicensed use.

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832700014 (Enf. Bur., Tampa Office, April 8, 2008) ("*NAL*").

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 301.

2007, agents from the Tampa Office determined that Halifax was operating an unlicensed radio transmitter on 92.7 MHz in Palm Coast, FL. Halifax's general manager and president admitted to operating this unlicensed transmitter on 92.7 MHz since January 2007.

8. In response to the *NAL*, Halifax does not deny that it operated an unlicensed radio transmitter on 92.7 MHz. Nevertheless, it requests cancellation or reduction of the proposed forfeiture, because it attempted to operate the unlicensed transmitter on 92.7 with as little power as possible and attempted to restrict the transmitter's usable coverage area. Halifax also states that the complaint, which prompted the inspection, was submitted by a former volunteer who wanted the station shut down. We find that Halifax has raised no grounds to cancel or reduce the forfeiture. Although Halifax may have attempted to restrict the operation of its transmitter, it is undisputed that it willfully and repeatedly operated an unlicensed radio transmitter. Moreover, the fact that a complaint may have been submitted by a disgruntled former volunteer does not negate the violation. Based on the evidence before us, we find that Halifax willfully¹⁰ and repeatedly¹¹ violated Section 301 of the Act by operating an unlicensed radio transmitter.

9. Section 73.845 of the Rules states that each LPFM licensee is responsible for maintaining and operating its broadcast station in a manner ... in accordance with the terms of the station authorization. Section 73.1745(a) of the Rules¹² states that no 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. Station WFBO-LP is authorized to operate with 36 watts maximum power and a Shively 6812B antenna. On October 19, 2007, agents from the Tampa Office observed the station operating with 106 watts and a Norwalk Electronics Phazor antenna. The station engineer was aware that the station was operating with 106 watts and with a Phazor antenna. In response to the *NAL*, Halifax does not deny that it was operating overpower and with an unauthorized antenna, but states that it has since changed frequencies and is no longer experiencing as much interference. It asserts it no longer has a motive to operate overpower. Halifax also states that with the move to the new frequency it obtained a new antenna, which is authorized on its license. We find that Halifax has provided no ground to reduce or cancel the forfeiture. Although Halifax currently may be operating its station consistent with its authorization, it is undisputed that Halifax previously operated its station inconsistent with the terms of its station authorization. Based on the evidence before us, we find that Halifax willfully violated Section 73.845 of the Rules by operating its station inconsistent with the terms of its station authorization (overpower and with an unauthorized antenna).

10. Finally, Halifax states that payment of the forfeiture would pose an undue financial hardship. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ After examining the financial documentation submitted by Halifax, we agree and reduce the forfeiture to \$8,100 based on its demonstrated inability to pay.

¹⁰ 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).

¹¹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹² 47 C.F.R. § 73.1745(a).

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

11. We have examined Halifax'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 conclude that a reduction of the proposed forfeiture to \$8,100 is warranted, based on demonstrated inability to pay.

IV. ORDERING CLAUSES

12. 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, Halifax Christian Community Church, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand one hundred dollars (\$8,100) for violation of Section 73.845 of the Rules and Section 301 of the Act.¹⁴

13. 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.¹⁵ 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Halifax will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.845.

¹⁵ 47 U.S.C. § 504(a).