

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

In the Matter of	)	
	)	
Frank Rackley, Jr.	)	File Number EB-07-OR-141
	)	
Licensee of Station WNBC-AM	)	NAL/Acct. No. 200832620003
Meridian, MS	)	
Facility ID # 22294	)	FRN 0010301059
	)	

**FORFEITURE ORDER**

**Adopted:** April 24, 2008

**Released:** April 28, 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 one thousand five hundred dollars (\$1,500) to Frank Rackley, Jr., licensee of station WNBC-AM, in Meridian, Mississippi, for willful and repeated violation of Sections 73.1350(a) and 73.1745(a) of the Commission's Rules (“*Rules*”).<sup>1</sup> The noted violations involve Mr. Rackley’s operation of the station from an unauthorized location and operation at a power level in excess of that authorized by the license.

**II. BACKGROUND**

2. On December 7, 2007, the Commission’s New Orleans Office of the Enforcement Bureau (“*New Orleans Office*”) received a complaint concerning station WNBC-AM. The complaint, among other things, alleged that station WNBC-AM was operating over power at night.

3. On January 14, 2008, an agent from the New Orleans Office monitored station WNBC-AM’s signal from 4:45 PM-CST until 6:00 PM-CST and did not observe any change in transmitter power. Station WNBC-AM’s station authorization requires it to reduce power from 2.5kW to 330 watts at local sunset time. During the month of January, local sunset time was 5:15 PM-CST.

4. On January 15, 2008, an agent from the New Orleans Office again monitored station WNBC-AM’s signal from 4:45 PM-CST until 8:45 PM-CST and did not observe any change in transmitter power.

5. On January 16, 2008, agents from the New Orleans Office determined the station was broadcasting from coordinates N32° 22’ 54” x W088° 40’ 12”. The station is licensed to broadcast from coordinates N32° 21’ 42” x W088° 37’ 26”.

6. On January 16, 2008, agents from the New Orleans Office, accompanied by Mr. Rackley, inspected the main studio of station WNBC-AM. Mr. Rackley stated the station operated at its full power of 2.5kW until it was manually signed off the air at 9:00 PM-CST. Mr. Rackley also stated that the station had

<sup>1</sup> 47 C.F.R. §§ 73.1350(a), 73.1745(a).

transmitted from its present location for years. Mr. Rackley was familiar with the coordinates listed on his license and stated that he had originally planned to place the transmitter there but that the deal for that location fell through.

7. On February 22, 2008, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Rackley in the amount of eight thousand dollars (\$8,000), for the apparent willful and repeated violation of Sections 73.1350(a) and 73.1745(a) of the Rules.<sup>2</sup> Mr. Rackley submitted a response to the *NAL* requesting a reduction of the proposed forfeiture.

### III. DISCUSSION

8. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> 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 Mr. Rackley’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.<sup>5</sup>

9. Section 73.1350(a) of the Rules<sup>6</sup> states 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. On January 16, 2008, agents from the New Orleans Office determined station WNBN-AM was broadcasting from coordinates N32° 22’ 54” x W088° 40’ 12”. The station is licensed to broadcast from coordinates N32° 21’ 42” x W088° 37’ 26”. The licensee admitted transmitting from its current location for years.

10. Section 73.1745(a) of the Rules<sup>7</sup> 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 WNBN-AM is authorized to operate at 2.5kW during the day and is required to reduce power to 330 watts at local sunset time. On January 14 and 15, 2008, an agent from the New Orleans Office did not observe a reduction in power at local sunset time. During the inspection of January 16, 2008, the licensee of WNBN-AM confirmed the station did not reduce power at local sunset time but, rather, operated at full power of 2.5kW until it was manually signed off the air at 9:00 PM-CST.

11. Mr. Rackley’s response to the *NAL* does not dispute either of the violations and asserts the violations have been corrected. Based on the evidence before us, we find that Mr. Rackley willfully<sup>8</sup> and

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<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832620003 (Enf. Bur., New Orleans Office, February 22, 2007) (“*NAL*”).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>6</sup> 47 C.F.R. § 73.1350(a).

<sup>7</sup> 47 C.F.R. § 73.1745(a).

<sup>8</sup> 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).

repeatedly<sup>9</sup> violated Sections 73.1350(a) and 73.1745(a) of the Rules by failing to broadcast from his authorized location and operating at a power level in excess of that authorized by his license.

12. Finally, Mr. Rackley 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.<sup>10</sup> After examining the financial documentation submitted by Mr. Rackley, we agree and reduce the forfeiture to \$1,500 based on his demonstrated inability to pay.

13. We have examined Mr. Rackley'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 \$1,500 is warranted, based on demonstrated inability to pay.

#### IV. ORDERING CLAUSES

14. 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, Frank Rackley, Jr. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violation of Sections 73.1350(a) and 73.1745(a) of the Rules.<sup>11</sup>

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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

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<sup>9</sup> 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. 97<sup>th</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1350(a), 73.1745(a).

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Frank Rackley, Jr. at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

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