

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

In the Matter of)	
)	
Indianapolis Community Television, Inc.)	File Number: EB-06-IH-2309
)	NAL/Acct. No. 200932080004
Licensee of Noncommercial Television Station)	Facility ID No. 7908
WDTI(TV), Indianapolis, Indiana)	FRN: 0011053717

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 15, 2009

Released: April 15, 2009

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Indianapolis Community Television, Inc. (“ICTI”), licensee of noncommercial television station WDTI(TV), Indianapolis, Indiana, apparently willfully and repeatedly violated Section 73.1125 of the Commission’s rules¹ by failing to maintain a publicly accessible main studio, a meaningful management and staff presence at its main studio, a listed local telephone number, and failing to notify the Commission of the relocation of its main studio. As discussed below, based upon the facts and circumstances of this case, we find that ICTI is apparently liable for a forfeiture in the amount of \$9,000.

II. BACKGROUND

2. In response to a complaint alleging that Station WDTI(TV) did not have a main studio, an agent from the Commission’s Chicago Office inspected the Station on August 14, 2006, and discovered that the Station’s transmitter was surrounded by a locked fence in a windowless brick building located on the campus of Butler University. Butler University retains ownership of the Station’s antenna and transmitter site and leases antenna and transmitter space to ICTI. When the agent found the transmitter site locked and no personnel present, he contacted the Director of Media Arts at Butler University, who was able to unlock the gate surrounding the transmitter site to permit the agent access. The agent also obtained from Butler’s Director of Media Arts the name and telephone number of David Fort, an employee of Station WDTI(TV). The agent subsequently contacted David Fort, who confirmed that the Station’s only physical presence in Indianapolis is the Butler University transmitter site and that Station WDTI(TV) had no office, studio space, or other main studio location in the Indianapolis area.

¹ See 47 C.F.R. § 73.1125.

3. On April 13, 2007, the Bureau issued a Letter of Inquiry (“LOI”) to ICTI requesting information and materials relating to the studio’s location and staffing.² ICTI responded to the LOI on June 18, 2007.³

4. In its Response, ICTI stated that it acquired Station WDTI(TV) from Butler University on or about August 25, 2004.⁴ At that time, the main studio location was at 770 West Hampton in Indianapolis, Indiana.⁵ Butler University, however, retained that studio space.⁶ Thus, ICTI stated that, on or about September 14, 2004, the Butler University transmitter site located at 4307 Lester in Indianapolis, Indiana was designated as the station’s main studio.⁷ According to ICTI, the locked transmitter site served as the Station’s main studio; the Station’s public inspection file was kept at that site; David Fort, the Station’s Manager and Chief Operator, was available at that site from 8:00 a.m. to 5:00 p.m., Monday through Friday; and the Station had a local telephone number, although not listed locally.⁸ ICTI further stated that it “has been looking at various locations to relocate its main studio; however, it has experienced significant delays in commencing construction of its DTV build-out which has affected its relocation.”⁹ ICTI also stated that it anticipated relocating the main studio before November 18, 2007.¹⁰

5. Despite a specific direction in the LOI that the inquiries were continuing in nature,¹¹ the Bureau did not receive further information or documents from ICTI concerning its anticipated relocation of the Station’s main studio and, accordingly, issued a supplemental LOI to ICTI.¹² In its Supplemental Response, ICTI states that the Station’s main studio was relocated to 5610 Crawfordsville Road, Indianapolis, Indiana on July 27, 2007.¹³ ICTI’s response to the Supplemental LOI also states that the Station’s relocated main studio is open to the public Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., that the Station has a local telephone number that is listed locally, and that the

² See Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau to Indianapolis Community Television, Inc., dated April 13, 2007 (“LOI”).

³ See Letter from Robert L. Olender, Esquire, Koerner & Olender, P.C., Counsel for Indianapolis Community Television, Inc., dated June 18, 2007 (“Response”).

⁴ See *id.* at 1.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ See *id.* at 2-3.

⁹ See *id.* at 1.

¹⁰ See *id.*

¹¹ See LOI at 6.

¹² See Letter from Rebecca A. Hirselj, Assistant Chief, Investigations and Hearings Division to Robert L. Olender, Esquire, Koerner & Olender, P.C, Counsel for Indianapolis Community Television, Inc., dated February 25, 2009 (“Supplemental LOI”). We note that ICTI’s failure to timely supplement its LOI response concerning its July 27, 2007 relocation of the Station’s main studio itself might constitute a failure to follow the Bureau’s direction and therefore could itself result in sanctions. In the future such conduct could result in a forfeiture.

¹³ See Letter from Marcus D. Lamb, President, Indianapolis Community Television, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 6, 2009 (“Supplemental Response”).

Station's public inspection file is kept at the relocated main studio.¹⁴ In addition, ICTI states that the relocated main studio is staffed by the Station's Manager and Chief Operator, who is a full-time employee.¹⁵

III. DISCUSSION

6. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁶ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of any act, irrespective of any intent to violate" the law.¹⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁸ and the Commission so has interpreted the term in the Section 503(b) context.¹⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁰ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.²¹ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.²² The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.²³ As described in greater detail below, we conclude under this procedure that ICTI is apparently liable for a forfeiture in the amount of \$9,000 for its apparent willful and repeated violation of the Commission's main studio rule.

A. ICTI's Apparent Willful and Repeated Violation of the Main Studio Rule

7. Section 73.1125(a) of the Commission's rules requires the licensee of a broadcast station to maintain a main studio in order to serve the needs and interests of the residents of the station's community of license.²⁴ In particular, the main studio must be accessible to the public "[t]o assure

¹⁴ See Supplemental Response at 2-3.

¹⁵ See *id.*

¹⁶ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹⁷ 47 U.S.C. § 312(f)(1).

¹⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²⁰ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

²¹ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

²² See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²³ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

²⁴ See *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691 (1998), *recons. granted in part*, 14 FCC Rcd 11113 (1999).

meaningful public participation in [the Commission's] licensing process."²⁵ To fulfill these functions, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.²⁶ The Commission has defined a minimally acceptable "meaningful presence" as at least one full-time managerial *and* one full-time staff person who are present during normal business hours.²⁷ 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."²⁸ Section 73.1125(e) also requires every broadcast station to maintain and list a local or toll-free telephone number in its community of license.²⁹ Furthermore, Section 73.1125(d)(1) permits a licensee to relocate a station's main studio to a site within certain permissible geographic boundaries but requires the licensee to notify the Commission of such relocation.³⁰

8. ICTI's decision in September 2004 to designate its locked, inaccessible transmitter site as Station WDTI(TV)'s main studio is contrary to the objectives underlying the main studio rule, to facilitate meaningful public participation in the Commission's licensing process and to serve the needs and interests of its community of license. It is implausible that any licensee would make a determination that such a main studio location fulfills these obligations. The site held out by ICTI as a main studio for Station WDTI(TV) from September 14, 2004 until July 27, 2007 had no public access because the transmitter site is surrounded by a locked chain link fence and is located adjacent to a locked access road. In addition, the local telephone number of the main studio was not listed during this period.³¹ ICTI, however, has demonstrated that the Station's relocated main studio on Crawfordsville Road is fully accessible to the public. It is located in an office suite at a location where there are other corporate offices.³² Moreover, according to ICTI's Supplemental LOI response, the Station's local telephone number was listed when the main studio was relocated to its current address.³³

9. Although ICTI employed a full-time manager, he was not present at the transmitter site at the time of the August 2006 inspection and no other staff was present. Moreover, it appears that apart from a full-time manager, ICTI does not currently employ any full-time staff other than a manager.³⁴ A station must maintain management *and* staff presence on a full-time basis during normal business hours to

²⁵ *Main Studio and Program Origination Rules*, Report and Order, 2 FCC Rcd 3215, 3218 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

²⁶ *Main Studio and Program Origination Rules*, 2 FCC Rcd at 3217-18.

²⁷ *See Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991) ("*Jones Eastern*"), *clarified*, 7 FCC Rcd 6800 (1992).

²⁸ *Jones Eastern*, 7 FCC Rcd at 6802.

²⁹ *See* 47 C.F.R. § 1125(e); *B&C Kentucky, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 9305, 9307 ¶ 7 (Mass Med. Bur., Video Services Div. 2001) (citing *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988)) (broadcast station must, among other things, have a listed local or free long distance telephone number in order to comply with the main studio requirements).

³⁰ *See* 47 C.F.R. § 73.1125(d)(1).

³¹ *See* Response at 3.

³² *See* Supplemental Response at Attachment A.

³³ *See* Supplemental Response at 3 and Attachment C.

³⁴ *See* Response at 2-3; Supplemental Response at 2-3.

be considered “meaningful,” and both management and staff presence is required.³⁵ Under these circumstances, ICTI fails to provide the required meaningful management and staff presence at its main studio.³⁶ We will require ICTI to report to the Commission the steps that it has taken to comply with staffing requirements at the main studio.

10. ICTI failed to maintain an accessible main studio for Station WCTI(TV) on the date of the inspection. It appears that these circumstances commenced on September 14, 2004, soon after ICTI acquired the Station’s license, and persisted until the Station’s main studio was relocated in July 2007. ICTI also admits that it did not notify the Commission that the Station’s main studio had been relocated, as required by the rule.³⁷ As a result of these facts, we find that ICTI has apparently willfully and repeatedly violated Section 73.1125 of the Commission’s rules.

B. Proposed Forfeiture

11. The Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Commission’s rules set a base forfeiture amount of \$7,000 for violation of the main studio requirements.³⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other such matters as justice may require.³⁹ Based upon the facts and circumstances presented in this case, we conclude that an upward adjustment of the base forfeiture amount is warranted because the violations were egregious and persistent. For a period of almost three years, the main studio was inaccessible to the public and no local telephone number was listed. ICTI has also continuously for more than four years failed to maintain a meaningful staff presence at the station’s main studio. We therefore propose a forfeiture in the amount of \$9,000 for ICTI’s willful and repeated violation of Section 73.1125.⁴⁰

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Act,⁴¹ and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission’s rules,⁴² Indianapolis Community Television, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of

³⁵ See *Jones Eastern*, 7 FCC Rcd 6800 (clarifying that compliance with the “meaningful management and staff presence” component of the main studio rule is fulfilled by employing one full-time office worker and a full-time manager who reports to the main studio, using it as a home base and spending substantial amount of time there). See also, *First Baptist Church, Inc. (Station WAKJ(FM))*, Forfeiture Order, 23 FCC Rcd 919, 921 ¶¶ 9-11 (Enf. Bur, South Central Region 2008) (non-commercial FM station not in compliance with main studio rule because it did not maintain full-time manager and staff personnel at the main studio).

³⁶ See *id.*

³⁷ See Supplemental LOI Response at 2. See also, 47 U.S.C. § 73.1125(d)(1).

³⁸ See 47 C.F.R. § 1.80; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087, 17114 (1997), *recons. denied* 15 FCC Rcd 303 (1999).

³⁹ 47 U.S.C. § 503(b)(2)(E).

⁴⁰ See, e.g., *B&C Kentucky, LLC*, 16 FCC Rcd at 9311-12 ¶¶ 19, 21 (upward adjustment of \$1,500 proposed for licensee’s failure to maintain a main studio as required by Section 73.1125 where, for more than one year, the main studio was located at inaccessible structure housing the station’s transmitter without a meaningful staff presence).

⁴¹ See 47 U.S.C. § 503(b).

⁴² See 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

\$9,000 for willfully and repeatedly violating Section 73.1125 of the Commission's rules.⁴³

13. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this *NAL*, Indianapolis Community Television, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED** that within thirty days of the release of this *NAL* that Indianapolis Community Television Inc. **SHALL FILE** a written statement concerning the steps that it has taken to come into compliance with the staffing requirements for its main studio. Such statement must be submitted in the form of an affidavit or declaration in accordance with Section 1.16 of the Commission's rules,⁴⁴ must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, to the attention of: Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, and must include the File number and NAL/Acct. No. referenced above.

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 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. Indianapolis Community Television, Inc. shall also send electronic notification on the date said payment is made to: Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Rebecca.Hirselj@fcc.gov, and Melanie.Godschall@fcc.gov.

16. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, and **MUST INCLUDE** the NAL/Acct. No. referenced above. If any response is filed, Indianapolis Community Television, Inc. shall also, to the extent practicable, transmit a copy of the response via email to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Rebecca.Hirselj@fcc.gov, and Melanie.Godschall@fcc.gov.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁴³ See 47 C.F.R. § 73.1125.

⁴⁴ See 47 C.F.R. § 1.16.

18. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by Certified Mail - Return Receipt Requested, to Indianapolis Community Television, Inc., 3901 Highway 121 South, Bedford, Texas 76021 and to its counsel, Robert L. Olender, Esquire, Koerner & Olender, P.C., 11913 Grey Hollow Court, North Bethesda, Maryland 20852-5706.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau