

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

In the Matter of)	
)	
Beacon Broadcasting, Inc.)	File Number EB-09-PA-0273
)	
Licensee of AM Station WGRP, FM Station)	NAL/Acct. No. 201132400001
WEXC, and Aural Studio Transmitter Link)	
WQGW238)	FRN 0008-53-9157
Greenville, PA)	
)	
Facility ID # 25227)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 29, 2010

Released: November 1, 2010

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Beacon Broadcasting, Inc. (“Beacon”), licensee of AM station WGRP, FM station WEXC, and aural studio transmitter link (“STL”) WQGW238, in Greenville, Pennsylvania, apparently willfully and repeatedly violated Sections 73.3526(e)(12), 73.1745(a) and 1.903(a) of the Commission's Rules (“Rules”)¹ by failing to: (1) maintain radio issues/programs lists in the station’s public inspection file; (2) operate its broadcast station in a manner which complies with the terms of the station authorization; and (3) operate an STL for Station WEXC on an authorized frequency. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Beacon is apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000).

II. BACKGROUND

2. On November 18, 2009 and November 19, 2009, an agent from the Enforcement Bureau’s Philadelphia Office (“Philadelphia Office”) conducted an inspection at the WGRP main studio in Greenville, Pennsylvania with the station’s General Manager. While at the main studio, the agent reviewed the contents of the WGRP public inspection file and found that it did not contain any radio issues/programs lists since the grant of the latest WGRP renewal application on July 28, 2006. In Exhibit 11 of its renewal application, Beacon acknowledged that the public inspection file did not contain the radio issues/programs lists prior to September 14, 2005 because the former station principals had not prepared them.³ Beacon also stated that “[t]he public inspection file is complete and timely for all periods after the consummation date of

¹ 47 C.F.R. §§ 73.1745(a), 1.903(a), 73.3526(e)(12).

² 47 U.S.C. § 503(b).

³ See File No. BR-20060323AHR (filed March 27, 2006).

the transfer of control.”⁴

3. In addition, on November 18, 2009 at 10:13 p.m. and again on November 19, 2009 at 2:28 p.m., the agent conducted field strength measurements of the WGRP signal on the frequency 940 kHz. The agent found that the field strength of the station during the nighttime was 5.2 mV/m and the field strength of the station during the daytime was 31.0 mV/m. During the inspection on November 19, 2009, the agent observed that WGRP was operating with an antenna input power of 957 Watts during the daytime.⁵ Based on both the field strength measurements and the observed daytime antenna input power, the agent calculated that WGRP was operating with 26.9 Watts on November 18, 2009 at 10:13 p.m. The license for WGRP, by contrast, requires operation with an antenna input power of 2.2 Watts at nighttime.⁶

4. Further, during the inspection on November 19, 2009, the agent found that Beacon was operating a Nautel AM Transmitter (Model J1000) and that Beacon had programmed the transmitter to automatically reduce power to 28 Watts at nighttime. The FCC agent contacted a representative from Nautel through the Technical Support Line on that date to determine if the Nautel J1000 AM Transmitter is capable of operating at WGRP’s authorized nighttime power of 2.2 Watts. The Nautel representative informed the FCC agent that the Nautel J1000 AM Transmitter is only FCC certified to operate at power levels between 10 Watts and 1100 Watts. The representative also said that the Nautel J1000 AM Transmitter is not capable of operating at 2 Watts without experiencing audio distortion. The agent found that the minimum operating power for the WGRP transmitter is also specified as 10 Watts on the Technical Summary Page from the Nautel J1000 manual.

5. Beacon shares the WGRP main studio with co-owned FM broadcast station WEXC. On November 19, 2009, the agent also inspected the STL for station WEXC. The agent observed that Beacon was operating a Mosely Associates STL (Model PCL505) on the frequency 951.500 MHz. The service label on the rear of the STL specified that J Squared Technical Service of Grants Pass, Oregon programmed the transmitter with the frequency 951.500 MHz on February 22, 2001. Beacon’s General Manager showed the agent a copy of the license for station WPYK361, which authorized operation of an STL on the frequency 951.500 MHz at the WEXC main studio location. Commission records show, however, that the license WPYK361 was cancelled on March 20, 2007 pursuant to a request that Beacon filed on that same day.⁷ At the time of the inspection, Beacon was only authorized to operate an STL for WEXC on the frequency 948.000 MHz, under the license for station WQGW238.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁸ The term “repeated”

⁴ *Id.* The transfer of control of Beacon Broadcasting Inc. from the former principal shareholder, Michael Arch, to the current principal shareholder, Harold F. Glunt, was consummated on September 14, 2005. *See* File No. BTC-20050609AAH.

⁵ The antenna input power was based on the forward power reading from the front panel display of the Nautel 1000 AM Broadcast Transmitter. The agent did not determine the antenna input power using the reading from the station’s common point meter, because the common point meter had not been recently calibrated and appeared to be providing erroneous readings. The agent reported the problem to Beacon’s General Manager.

⁶ *See* File No. BZ-20070216ABS.

⁷ *See* File No. 0002957991 (filed March 20, 2007).

⁸ 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’, when used with reference to the commission or

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means the commission or omission of such act more than once or for more than one day.⁹

7. Section 73.3526(e)(12) of the Rules requires AM and FM broadcast licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.¹⁰ This list is known as the radio issues/programs list. Copies of the radio issues/programs list must be maintained in the station's public inspection file until final action has been taken on the station's next renewal application. Therefore, Beacon was required to maintain copies of all quarterly radio issues/program lists that it prepared since July 28, 2006, the grant date of the latest WGRP renewal application. Beacon did not maintain the radio issues/programs lists in the WGRP public inspection file for the period between July 28, 2006 and November 19, 2009. We note that Beacon clearly understood that it was required to maintain the radio issues/programs lists in the public inspection file because it acknowledged in its most recent renewal application that the public inspection file was missing quarterly radio issues/programs lists prior to September 14, 2005. We find that Beacon's failure to maintain the radio issues/programs lists in the station's public inspection file was willful and repeated. Accordingly, based on the evidence before us, we find that Beacon apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Rules.

8. Section 73.1745(a) provides that "[n]o 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."¹¹ The license for station WGRP requires the station to operate with an antenna input power of 2.2 Watts during the nighttime. The agent found that Beacon was operating station WGRP with an antenna input power of 26.9 Watts on November 18, 2009 at 10:13 p.m. Moreover, Beacon programmed the WGRP transmitter to automatically reduce to this unauthorized power level at nighttime. Thus, we find that the violation was willful. Beacon has operated its Nautel J1000 AM Transmitter, which is not capable of operating at station WGRP's authorized nighttime power level, since its purchase on November 30, 2005. We therefore find that the violation was also repeated.¹² Accordingly, based on the evidence before us, we find that Beacon apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by failing to operate its broadcast station in a manner which complies with the terms of the station authorization.

9. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.¹³ Section 1.947(a) of the Rules specifies that all major modifications as defined in Section 1.929 of the Rules require prior Commission approval.¹⁴ Section

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omission of any act, 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, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he 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."

¹⁰ 47 C.F.R. § 73.3526(e)(12).

¹¹ 47 C.F.R. § 73.1745(a)

¹² According to a representative of Nautel, Beacon Broadcasting purchased the J1000 AM Transmitter (S/N B150) on November 30, 2005 for station WGRP.

¹³ 47 C.F.R. § 1.903(a). At issue here is Beacon's operation of its STL, which is considered an aural broadcast auxiliary station. Section 74.6 of the Rules provides that "[a]pplicants for and licensees of . . . aural broadcast stations. . . are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F of this chapter." 47 C.F.R. § 74.6. Part 1, subpart F includes Section 1.903(a) of the Rules.

¹⁴ 47 C.F.R. § 1.947(a).

1.929(a)(6) of the Rules lists one of the major modifications as “any application or amendment requesting to add a frequency or frequency block for which the applicant is not currently authorized.”¹⁵ On November 19, 2009, an agent from the Philadelphia Office found that Beacon was operating the WEXC STL on the unauthorized frequency 951.500 MHz. At the time of the inspection, Beacon held a license for its STL under the call sign WQGW238, authorizing operation on the frequency 948.000 MHz. Beacon once held authorization to operate an STL on the frequency 951.500 MHz under the license for station WPYK361. The Commission cancelled the license for WPYK361 on March 20, 2007, however, pursuant to a request that Beacon filed on that same day. Beacon affirmatively cancelled the license authorizing operation of the STL on the frequency 951.500 MHz, but nonetheless continued to operate on that frequency. We therefore find that the violation was willful and repeated. Accordingly, based on the evidence before us, we find that Beacon apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating a Studio Transmitter Link on an unauthorized frequency.

10. Pursuant to The Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation with excessive power is \$4,000 and for operation on an unauthorized frequency is \$4,000.¹⁶ The base forfeiture amount for violation of the public file rule is \$10,000.¹⁷ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Beacon is apparently liable for a forfeiture in the amount of \$18,000.

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, 0.314 and 1.80 of the Commission's Rules, Beacon Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for violations of Sections 73.3526(e)(12), 73.1745(a) and 1.903(a) of the Rules.¹⁹

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Beacon Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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

¹⁵ 47 C.F.R. § 1.929(a)(6).

¹⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁷ *Id.*

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526(e)(12), 73.1745(a), 1.903(a).

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. 20554.²⁰ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Beacon Broadcasting, Inc. shall also send electronic notification to NER-Response@fcc.gov on the date said payment is made.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Field Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to NER-Response@fcc.gov.

15. 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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Beacon Broadcasting, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
District Director
Philadelphia Field Office
Northeast Region
Enforcement Bureau

²⁰ See 47 C.F.R. § 1.1914.