

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

In the Matter of	)	
	)	
Donald D. Coss	)	File Number: EB-10-PO-0031
	)	
Licensee of Station KCKX(AM)	)	NAL/Acct. No.: 201132920001
Stayton, Oregon	)	FRN: 0007803869
Facility ID # 65569	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: December 1, 2010

Released: December 3, 2010

By the Resident Agent, Portland Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Donald D. Coss (“Coss”), licensee of station KCKX(AM), in Stayton, Oregon, apparently willfully and repeatedly violated Section 73.1745(a) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to operate in accordance with the authorized nighttime power specified on the station’s license. We conclude that Coss is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

**II. BACKGROUND**

2. On April 22, 2010, in response to a complaint that Station KCKX(AM) was not lowering power at night, an agent from the Enforcement Bureau’s Portland Office monitored the Station KCKX(AM) signal from a location approximately one kilometer from the station’s antenna prior to the local sunset of 8:00 p.m. The agent then conducted field strength measurements which resulted in a value of approximately 115 mV/m. After local sunset, the Portland agent again conducted field strength measurements from the same location, which produced the same value of approximately 115 mV/m.<sup>2</sup>

3. On April 23, 2010, the Portland agent returned to Stayton and monitored Station KCKX(AM). Using the same procedures as on April 22, 2010, the agent measured the field strength of Station KCKX(AM) at 115 mV/m prior to the local sunset time and at 115 mV/m after the local sunset time.<sup>3</sup> Therefore, the agent determined that Station KCKX(AM) did not reduce power appropriately for nighttime operation.

4. In addition, on April 26, 2010, the Portland agent inspected Station KCKX(AM) at its control point located in Woodburn, Oregon. Station KCKX(AM) is authorized to operate with a non-

<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> The agent also captured Station KCKX(AM)’s relative signal strengths for its daytime and nighttime operations and determined that there was no reduction in signal strength for the nighttime operation.

<sup>3</sup> The Portland agent also captured the relative signal strengths on the mobile directing finding vehicle’s display to compare the signal strengths before and after the local sunset time.

directional pattern on 1460 kHz with 1000 watts during daytime hours and 15 watts during nighttime hours.<sup>4</sup> The Portland agent requested a demonstration of a reduction of the authorized operating daytime power of 1000 watts to the authorized nighttime power of 15 watts. A technical representative from Station KCKX(AM), after consulting with a contract engineer by telephone, attempted to dial out preprogrammed codes to the transmitter site to demonstrate the power reduction. The technical representative was not able to reduce the nighttime power to 15 watts for nighttime operation. During an interview with the Portland agent, the owner of Station KCKX(AM) stated that he was aware of the requirement to reduce the operating power to the authorized power levels for nighttime operation but stated that it was too expensive to maintain the calibrated time-keeping devices, power switching devices, and other equipment necessary to effect the timely change in power.

### III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> 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 thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>6</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>7</sup>

6. The Rules state that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules and in accordance with the terms of the station license.<sup>8</sup> Specifically, Section 73.1745(a) of the Rules states that no broadcast station shall operate at times or with modes or power, other than those specified and made part of the license.<sup>9</sup> The Rules define daytime as the “period of time between local sunrise and local sunset” and nighttime as the “period between local sunset and local sunrise.”<sup>10</sup> In Stayton, Oregon, during the month of April, local sunrise occurs at 6:30 a.m., and local sunset occurs at 8:00 p.m.<sup>11</sup> Therefore, during the month of April, Station KCKX(AM) is authorized to operate at 1000 watts during the daytime, *i.e.* between 6:30 a.m. and 8:00 p.m., and at 15 watts during the nighttime, *i.e.* between 8:00 p.m. and 6:30 a.m..

7. On April 22 and April 23, 2010, the Portland agent determined that Station KCKX(AM) was not reducing its operating power after 8:00 p.m., as required by its authorization. Therefore, the

---

<sup>4</sup> See File No. BL-19870615AI, granted August 11, 1987.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</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’, when used with reference to the commission or 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, *e.g.*, *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>7</sup> 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.”

<sup>8</sup> 47 C.F.R. § 73.1745(a).

<sup>9</sup> *Id.*

<sup>10</sup> 47 C.F.R. § 73.14.

<sup>11</sup> See <http://www.fcc.gov/mb/audio/bickel/srsstime.html>.

violation was willful.<sup>12</sup> The violation also occurred on more than one day, and was therefore repeated. Based on the evidence before us, we find that Coss apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by failing to operate Station KCKX(AM) in accordance with the station's authorized power as specified on its license.

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000 per violation.<sup>13</sup> 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, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>14</sup> Here, Coss admitted to the Portland agent that he was aware of the requirement to operate Station KCKX(AM) at the power levels authorized on its license. Moreover, the Portland agent had previously issued a *Notice of Violation* to Coss for the same violation in November 2000. Given Coss' history of noncompliance with the Rules, and Section 73.1745(a) specifically, we believe an upward adjustment of the base forfeiture is appropriate.<sup>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Coss is apparently liable for a forfeiture in the amount of \$6,000. We direct Coss to submit a sworn statement within thirty days of release of this NAL describing the specific action(s) taken to correct the cited violation and to preclude recurrence, and specifying when the corrective action(s) were taken. We caution Coss that future violations of our rules may subject him to more severe enforcement penalties.

#### IV. ORDERING CLAUSES

9. 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, Donald D. Coss is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for apparently willfully and repeatedly violating Section 73.1745(a) of the Rules.<sup>16</sup>

10. **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*, Donald D. Coss **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that, Donald D. Coss **SHALL SUBMIT** a sworn statement, as described in paragraph 8, within thirty days of the release date of this NAL. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington, 98666-1469.

---

<sup>12</sup> We note that the Enforcement Bureau has previously issued a Notice of Violation to Coss for failing to reduce the nighttime power of Station KCKX(AM), in violation of 47 C.F.R. § 73.1745(a). See *Notice of Violation*, File No. EB-00-PO-220 (Enf. Bur., Western Region, Portland Office, rel. November 30, 2000).

<sup>13</sup> *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.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> See *Citicasters Licenses, L.P.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1633 (Enf. Bur. Investigations & Hearings Div. 2007) (upwardly adjusting a proposed forfeiture amount when a licensee has a history of similar violations over a seven-year period); see also *WXDJ Licensing*, Forfeiture Order, 25 FCC Rcd 3911 (Enf. Bur. Investigations & Hearings Div. 2010).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1745(a).

12. 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 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.<sup>17</sup> 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. Donald D. Coss shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

13. 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, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington, 98666-1469 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

14. 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.

15. **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 Donald D. Coss at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen  
Resident Agent  
Portland Office  
Western Region  
Enforcement Bureau

---

<sup>17</sup> See 47 C.F.R. § 1.1914.