

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

In the Matter of)	
)	
Taylor Communications, Inc.)	File No.: EB-08-OR-0212
)	
Licensee WOXD-FM)	NAL/Acct. No.: 200932620003
Oxford, Mississippi)	
Facility ID: 1299)	FRN: 0005002852
)	
Owner of Antenna Structure Number 1038246)	

FORFEITURE ORDER

Adopted: September 12, 2011

Released: September 12, 2011

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 ten thousand dollars (\$10,000) to Taylor Communications, Inc. (“Taylor”), licensee of Station WOXD-FM, in Oxford, Mississippi and owner of antenna structure number 1038246, for willful and repeated violation of section 17.48(a) of the Commission’s rules (“Rules”) and willful violation of section 73.3526 of the Rules.¹ The noted violations involve Taylor’s failure to inform the Federal Aviation Administration (“FAA”) of a malfunction of the antenna structure lighting and its failure to make available a public inspection file.

II. BACKGROUND

2. On September 25, 2008, in response to a complaint alleging violations concerning antenna structure number 1038246, agents from the Enforcement Bureau’s New Orleans Office (“New Orleans Office”) conducted an inspection of Taylor’s antenna structure located at coordinates N34° 18' 10" x W089° 31' 25". The antenna structure is 328 feet in height above ground level and is required to be painted and lit.² Agents from the New Orleans Office observed the antenna structure 90 minutes after sunset and found that none of the red obstruction lights were working.³

3. On September 26, 2008, agents from the New Orleans Office, accompanied by Station WOXD-FM’s chief engineer and president, inspected Station WOXD-FM’s main studio during normal business hours. The agents requested to inspect the station’s public inspection file, but the station was unable to locate it. During the inspection, Station WOXD’s president alleged that the public inspection file was not available because it had been stolen by a former employee. In addition, the station’s chief engineer admitted that he had known that the lights on antenna structure number 1038246 had been out since the antenna structure was struck by lightning approximately six weeks before the inspection. The chief

¹ 47 C.F.R. §§ 17.48(a), 73.3526.

² See Antenna Structure Registration Database, Registration Number 1038246. See also 47 C.F.R. § 17.21 (generally requiring towers exceeding 200 feet in height to be painted and lit).

³ Local sunset time was 7:15 p.m. CDT.

engineer stated that he believed it was unnecessary to report the outage to the FAA because a nearby taller antenna structure was lit. The agents from the New Orleans Office informed the chief engineer and president that they should notify the FAA immediately of the outage. Station WOXD's president stated that he had already paid for the tower lighting repairs and ordered replacement parts.

4. On November 21, 2008, the New Orleans Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$13,000 to Taylor -- \$3,000 for the apparent violation of the Commission's tower rules and \$10,000 for the apparent violation of the Commission's public inspection file requirements.⁴ On December 19, 2008, Taylor submitted a response to the NAL requesting cancellation or reduction of the forfeiture.⁵

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ section 1.80 of the Rules,⁷ and the *Forfeiture Policy Statement*.⁸ In examining Taylor'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.⁹ As discussed below, we have considered Taylor's response in light of these statutory factors and reduce the forfeiture to \$10,000 based on Taylor's history of compliance and good-faith efforts to comply with the rules.

6. 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.¹⁰ 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 Act¹¹ and the Commission has so interpreted the term in the section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹⁴

⁴ *Taylor Communications, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200932620003 (Enf. Bur., New Orleans Office, rel. Nov. 21, 2008) ("NAL") (citing 47 C.F.R. §§17.48(a), 73.3526(a)(2), 73.3526(c)(1)).

⁵ Letter from Todd A. Steiner, Esq., Counsel for Taylor Communications, Inc., to Leroy Hall, District Director, New Orleans Office (dated Dec. 19, 2008) ("NAL Response").

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ H.R. Conf. Rep. No. 97-765, at 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms").

¹² *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California Broadcasting Co.*").

¹³ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated

7. Section 17.48(a) of the Rules states that “[t]he owner of any antenna structure which is registered ... [s]hall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.”¹⁵ Antenna structure number 1038246 is registered with the Commission and must be painted and lit.¹⁶ Taylor does not dispute that the red obstruction lighting on antenna structure number 1038246 was unlit for several weeks prior to the September 26, 2008 inspection, that it knew about the outage, and that it did not contact the FAA about the outage prior to September 26, 2008.¹⁷ Therefore, based on the evidence before us, we find that Taylor willfully and repeatedly violated section 17.48(a) of the Rules by failing to report immediately a malfunctioning light that could not be corrected within 30 minutes to the FAA.

8. However, we agree with Taylor that the proposed forfeiture for this violation should be reduced based on its good-faith efforts to comply with the rules. Taylor states it called the published local number for the FAA about the outage prior to the inspection, but that number was not in service.¹⁸ Taylor also points out that, during the inspection, the agent from the New Orleans Office had no local number for the FAA other than the same non-working one.¹⁹ Because Taylor attempted to notify the FAA prior to the inspection, we reduce the forfeiture associated with this violation from \$3,000 to \$2,500 based on Taylor’s good faith efforts to comply.²⁰

9. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain a public inspection file containing certain materials.²¹ Section 73.3526(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.²² Taylor’s president admits that Station WOXD’s public inspection file was not available for inspection on September 26, 2008, but denies knowing that the public inspection file was missing prior to the inspection.²³ Taylor claims, unbeknownst to it, the former station manager maintained keys to the station after his firing in July 2008, embezzled station

signal leakage).

¹⁴ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁵ 47 C.F.R. § 17.48(a).

¹⁶ See Antenna Structure Registration 1038246.

¹⁷ See *NAL Response* at 3.

¹⁸ *Id.* at 2-3. Taylor submitted a declaration under penalty of perjury signed by Taylor’s President supporting its statements.

¹⁹ The agent subsequently found a working number by contacting the main FAA contact number listed on its webpage.

²⁰ Unsuccessful attempts at compliance taken prior to an inspection have been considered sufficient to warrant good faith reductions. See, e.g., *Sutro Broadcasting Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277 (2004) (stating that the Commission will generally reduce the assessed forfeiture amount “based on the good faith corrective efforts of a violator when those actions were taken *prior* to Commission notification of the violation”) (emphasis added); see also *Starfish Television Network*, Forfeiture Order, 24 FCC Rcd 9147 (Enf. Bur. 2009) (providing good faith reduction as to party’s unlicensed operation because operator submitted license application information to a consultant prior to inspection); *Blountstown Communications, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 1097 (Enf. Bur. 2007) (provided good faith reduction as to fencing violation because licensee was in the process of employing an expert fence installer prior to the FCC inspection).

²¹ 47 C.F.R. § 73.3526(a)(2).

²² 47 C.F.R. § 73.3526(c)(1).

²³ See *NAL Response* at 5. Taylor’s president admits he knew that certain documents and files were removed from the station, but asserts he did not know that the public inspection file was among the stolen documents until the inspection.

funds, and removed documents and files (including the public inspection file) from the station.²⁴ Although Taylor submitted a criminal affidavit against its former station manager,²⁵ and the former station manager was arrested for embezzlement, the charges were dropped and there was no formal finding of guilt. Moreover, the former station manager submitted an affidavit to the court specifically denying that he “discarded, concealed or otherwise tampered with” Taylor’s public inspection file.²⁶ Indeed, the former station manager alleged that “following the renovations and cleaning [of the interior of the station in the spring of 2008], the FCC Public Inspection file could not be located.”²⁷ Whether the public inspection file was lost, misplaced, or stolen, the fact remains that the public inspection file was not available for inspection on September 26, 2008, and the “Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors.”²⁸ Therefore, based on the evidence before us, we find that Taylor willfully failed to make available a public inspection file²⁹ and do not find grounds to cancel or reduce the \$10,000 forfeiture associated with this violation based on Taylor’s claim of theft.

10. Finally, Taylor requests a reduction of the forfeiture because it has not received a prior violation during its thirteen-year history. We have examined the record and agree. Accordingly, we further reduce the total forfeiture from \$12,500 to \$10,000 based on Taylor’s history of compliance with the Rules.

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, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission’s rules, Taylor Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of sections 17.48(a) and 73.3526 of the Commission’s rules.³⁰

12. 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 enforcement pursuant to section 504(a) of the Act.³¹ 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

²⁴ See *id.* at Declaration of Jason T. Plunk, President of Taylor.

²⁵ See Arrest Affidavit of Jason T. Plunk dated September 29, 2008.

²⁶ See Affidavit of Ronald C. Cox dated April 4, 2011.

²⁷ *Id.*

²⁸ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863,-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991)(holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, Forfeiture Order, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

²⁹ Because we find that Taylor willfully failed to make the public inspection file available, we need not address whether a complete public inspection file was maintained at the main studio.

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.48(a), 73.3526.

³¹ 47 U.S.C. § 504(a).

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. Taylor will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Taylor Communications, Inc. at 302 Highway 7, South, Oxford, MS 38655 and to John C. Trent, its counsel at 200 South Church Street, Woodstock, VA 22664.

FEDERAL COMMUNICATIONS COMMISSION

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