

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

In the Matter of	)	File Number: EB-08-PA-0270
	)	
Clarion County Broadcasting Corp.	)	NAL/Acct. No.: 201032400002
	)	FRN: 0013-42-8743
Licensee of Station WKQW	)	
	)	
Facility ID #63290	)	

**FORFEITURE ORDER**

**Adopted:** October 18, 2011

**Released:** October 20, 2011

By the Regional Director, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Clarion County Broadcasting Corp. (“Clarion”), the licensee of FM Station WKQW in Oil City, Pennsylvania, for willfully and repeatedly violating section 73.1745(a) of the Commission’s rules (“Rules”).<sup>1</sup> The noted violations concern Clarion’s operation of Station WKQW beyond the station’s post-sunset authorization.

**II. BACKGROUND**

2. On March 4, 2010, the Commission’s Philadelphia Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”)<sup>2</sup> proposing a \$4,000 forfeiture against Clarion for apparently willfully and repeatedly violating section 73.1745 of the Rules.<sup>3</sup> Specifically, an agent in the Enforcement Bureau’s Philadelphia Office observed Station WKQW operating beyond its post-sunset authorization on three days in October 2008 and on eighteen days in November 2008.<sup>4</sup> In its response to the *NAL*, Clarion does not dispute those findings, but seeks cancellation of the proposed forfeiture claiming that, pursuant to section 503(b)(6) of the Communications Act of 1934, as amended (the “Act”),<sup>5</sup> the Philadelphia Office was required to issue an *NAL* within one year of the date of the first violation.<sup>6</sup> Clarion states that this action is therefore time barred because the first violation occurred on October 28, 2008, but the *NAL* was not issued until March 4, 2010.<sup>7</sup> In the event that the Commission does not agree that the *NAL* was

<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> *Clarion County Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032400002 (Enf. Bur., Philadelphia Office, rel. March 4, 2010).

<sup>3</sup> Section 73.1745 of the Rules provides that “[n]o broadcast station shall operate . . . with modes or power, other than those specified and made a part of the license.” 47 C.F.R. § 73.1745.

<sup>4</sup> A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>5</sup> 47 U.S.C. § 503(b)(6).

<sup>6</sup> See Letter from Frederick A. Polner, Counsel for Clarion, to Gene Stanbro, District Director, Philadelphia Office, dated March 23, 2010 at 2.

<sup>7</sup> *Id.*

issued after the expiration of the statute of limitations, Clarion claims in the alternative that it is entitled to a reduction in the amount of the proposed forfeiture based on its history of compliance with the Commission's rules.<sup>8</sup>

## II. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,<sup>9</sup> section 1.80 of the Rules,<sup>10</sup> and the *Forfeiture Policy Statement*.<sup>11</sup> In examining Clarion'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>12</sup> As discussed below, we have considered Clarion's response in light of these statutory factors and decline to reduce the proposed \$4,000 forfeiture.

4. We reject Clarion's argument that the Commission was required to issue the *NAL* against it within one year of the date of the violation. In the case of broadcast station licensees, the statute of limitations in section 503(b)(6) of the Act permits the Commission to issue a notice of apparent liability for forfeiture if (1) the violation charged did not occur more than one year prior to the date of issuance of the notice of apparent liability *or* (2) the violation charged did not occur prior to the date of commencement of the current license term.<sup>13</sup> Here, the violations charged occurred in October and November 2008, and the *NAL* was issued on March 4, 2010. Clarion's current license term began in 2006 and does not expire until August 1, 2014. While the *NAL* was not issued within one year of the violation dates, section 503(b)(6)(A)(ii) permits the Commission to determine or impose a forfeiture in this case because the violations charged did not occur prior to 2006, the commencement of the Station's current license term.<sup>14</sup> Accordingly, we find that the *NAL* was timely issued under section 503(b)(6)(A)(ii) of the Act, and we deny Clarion's request that we cancel the *NAL*.

5. We also decline to grant Clarion's request that we reduce the forfeiture amount based on its alleged history of compliance with the Commission's rules. We have reviewed our records and found that the Philadelphia Office issued Clarion a Notice of Violation on March 4, 2010, for violations found during an inspection conducted on August 12, 2009.<sup>15</sup> When determining an appropriate forfeiture amount, we have the discretion to issue a higher or lower forfeiture based on the particular facts and circumstances of each case.<sup>16</sup> Here, we conclude that a reduction based on a history of compliance with

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<sup>8</sup> *Id.*

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> 47 U.S.C. § 503(b)(6). *See, e.g., KGNT, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 5806, 5809 (Enf. Bur. 2000), *aff'd*, Forfeiture Order, 16 FCC Rcd 4656 (Enf. Bur. 2001); *see also Emmis Broadcasting Corp. of Boston*, Memorandum Opinion and Order, 11 FCC Rcd 8541, 8543 (1996); *Lester T. Pritchard*, Letter, 6 FCC Rcd 2210 (1991) n.4.

<sup>14</sup> *See* 47 U.S.C. § 503(b)(6)(A)(ii).

<sup>15</sup> *Clarion County Broadcasting Corp.*, Notice of Violation, NOV No. V201032400033 (Enf. Bur., Philadelphia Office, rel. March 4, 2010).

<sup>16</sup> *See* 47 C.F.R. § 1.80(b)(4); *see also, e.g., World Communications*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 837, 841-842 (2004) (noting that, "[a]s provided by the Commission's rules, the Commission and its staff retain the discretion to issue a higher or lower forfeiture, as permitted by statute").

the Commission's rules is not warranted in light of the violations found during the inspection on August 12, 2009.

6. Based on the evidence before us, we find that Clarion willfully and repeatedly violated section 73.1745(a) of the Rules by operating Station WKQW beyond the station's post-sunset authorization. Accordingly, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we conclude that cancellation or reduction of the forfeiture is unwarranted and we impose a forfeiture in the amount of \$4,000.

### III. ORDERING CLAUSES

7. 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, Clarion County Broadcasting Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of section 73.1745(a) of the Rules.<sup>17</sup>

8. 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.<sup>18</sup> 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 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Clarion County Broadcasting Corp. shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

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<sup>17</sup> 47 U.S.C. §, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1745(a).

<sup>18</sup> 47 U.S.C. § 504(a).

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent both by First Class and Certified Mail Return Receipt Requested to Clarion County Broadcasting Corp., 222 Seneca Street, Oil City, Pennsylvania 16301 and to its counsel, Frederick A. Polner, 16 Forest Hills Drive, Madison, Connecticut 06443.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt  
Regional Director  
Northeast Region  
Enforcement Bureau