

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

In the Matter of	)	
	)	File No: EB-10-HU-0045
Consolidated Radio, Inc.	)	
Licensee of Station KVOZ(AM)	)	NAL/Acct. No.: 201132540002
Del Mar Hills, Texas	)	
Facility ID #: 6429	)	FRN No.: 0006158083
	)	

**FORFEITURE ORDER**

**Adopted:** October 27, 2011

**Released:** October 27, 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 twenty-one thousand dollars (\$21,000) to Consolidated Radio, Inc. (“Consolidated Radio”), licensee of Station KVOZ(AM) in Del Mar Hills, Texas, for willful and repeated violation of sections 73.1125, 73.1745(a), and 73.3526 of the Commission’s rules (“Rules”).<sup>1</sup> The noted violations involved Consolidated Radio’s failure to: (1) maintain a main studio in the community of license; (2) operate consistent with the terms of its station authorization; and (3) maintain and make available a complete public inspection file.

**II. BACKGROUND**

2. On May 16, 2011, the Enforcement Bureau’s Houston Office (“Houston Office”) issued a Notice of Apparent Liability for Forfeiture and Order (“*NAL*”)<sup>2</sup> to Consolidated Radio for failing to maintain a main studio in the community of license, operating inconsistent with the terms of its station authorization, and failing to maintain and make available a complete public inspection file. In view of the record evidence, the *NAL* proposed a forfeiture of \$21,000 against Consolidated Radio for violation of sections 73.1125, 73.1745(a), and 73.3526 of the Rules.<sup>3</sup> Consolidated Radio submitted a response to the *NAL* certifying that it has corrected all of the violations set forth in the *NAL* and requesting cancellation or reduction of the proposed forfeiture due to its limited station funding which “relies entirely on donations from the listener community.”<sup>4</sup>

<sup>1</sup> 47 C.F.R. §§ 73.1125, 73.1745(a), 73.3526.

<sup>2</sup> *Consolidated Radio, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 6801 (Enf. Bur. 2011). The facts in the *NAL* are incorporated herein by reference.

<sup>3</sup> 47 C.F.R. §§ 73.1125, 73.1745(a), 73.3526.

<sup>4</sup> See Letter from Lauren Lynch Flick, Attorney for Consolidated Radio, Inc., to Lee Browning, Resident Agent, Houston Office, Enforcement Bureau, dated July 6, 2011 (“*NAL Response*”).

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> section 1.80 of the Rules,<sup>6</sup> and the *Forfeiture Policy Statement*.<sup>7</sup> In examining Consolidated Radio’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>8</sup> As discussed below, we have considered Consolidated Radio’s response in light of these statutory factors and find no basis upon which to reduce the forfeiture.

4. As set forth in the *NAL*, an agent from the Houston Office determined that: (1) Station KVOZ operated with daytime power at night on July 27 and 28, 2010; (2) Station KVOZ failed to maintain a main studio in the community of license for several months prior to July 29, 2010; and (3) Station KVOZ failed to maintain and make available a complete public inspection file for several months prior to July 29, 2010. In its response to the *NAL*, Consolidated Radio did not dispute any of the facts set forth in the *NAL* and certified that it has since corrected the violations.<sup>9</sup> The Commission expects parties to take post-inspection corrective action to come into compliance with the Rules, however, and such action does not nullify or mitigate any prior violations.<sup>10</sup> Thus, we find that Consolidated Radio willfully<sup>11</sup> and repeatedly<sup>12</sup> violated sections 73.1125, 73.1745(a), and 73.3526 of the Rules by failing to: (1) maintain a main studio in the community of license; (2) operate consistent with the terms of its station authorization; and (3) maintain and make available a complete public inspection file.

5. Finally, Consolidated Radio asserts that payment of the forfeiture would pose a financial hardship. With regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>13</sup> Consolidated Radio, however, provided no documentation of its finances with its *NAL Response*.

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> *NAL Response* at 1-3.

<sup>10</sup> See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

<sup>11</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.

<sup>12</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), 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>13</sup> See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

Accordingly, we are unable to determine whether a reduction based on inability to pay is warranted and find no basis to reduce the proposed forfeiture of \$21,000.<sup>14</sup>

### III. ORDERING CLAUSES

6. 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, Consolidated Radio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for violations of 73.1125, 73.1745(a), and 73.3526 of the Rules.<sup>15</sup>

7. 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>16</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 with any questions regarding payment procedures. Consolidated Radio shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Consolidated Radio, Inc. at P.O. Box 252, McAllen, TX 78505-0252 and to its attorney, Lauren Lynch Flick at Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037-1122.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>14</sup> Consolidated Radio may seek an installment payment plan of the full forfeiture amount, as described in paragraph 7 *infra*.

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1125, 73.1745(a), 73.3526.

<sup>16</sup> 47 U.S.C. § 504(a).