

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

In the Matter of)	
)	
Crocodile Broadcasting Corp., Inc)	File Number EB-10-OR-0090
)	
Licensee of Station KGLA(AM))	NAL/Acct. No. 201132620001
Gretna, LA)	
Facility ID Number: 14538)	FRN: 00008354904

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 7, 2011

Released: February 9, 2011

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“*NAL*”), we find that Crocodile Broadcasting Corp., Inc., (“*CBC*”), licensee of Station KGLA(AM), Gretna, LA, apparently willfully and repeatedly violated sections 73.1745(a) and 73.3526 of the Commission’s Rules (“*Rules*”)¹ by: (1) operating at times other than those specified in its license; and (2) failing to maintain and make available a complete public inspection file. We conclude that *CBC* is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000). We further order *CBC* to submit a sworn statement certifying that it is currently in compliance with sections 73.1745(a), and 73.3526 of the Rules.²

II. BACKGROUND

2. Station KGLA(AM) is a daytime-only station, authorized to operate during the daytime hours and for a limited period of time before and after sunset. During the month of October, Station KGLA(AM) has post-sunset authority to operate only until 8:30 p.m. local time.³

3. On October 28 and 29, 2010, in response to a complaint of interference, an agent from the Enforcement Bureau’s New Orleans Office (“*New Orleans Office*”) observed Station KGLA(AM) operating after 8:30 p.m. local time. On November 2, 2010, agents from the New Orleans Office, accompanied by the station’s general manager, inspected the station’s main studio during normal business hours. When questioned about night-time operations, the general manager admitted that the station had been operating at reduced power throughout the night for a number of years. He stated that he thought the station was authorized to operate at night. In addition, the general manager was unable to produce a complete public inspection file. The station’s public inspection file was missing a copy of the current

¹ 47 C.F.R. §§ 73.1745(a), 73.3526.

² *Id.*

³ Revised Parameters for Operation under Post-Sunset Authority (PSSA), February 28, 2007.

station authorization, the most recent license application, and the most recent eight issues/programs lists.

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ 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) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁶

5. Section 73.1745(a) of the Rules⁷ requires 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” under the Rules. Station KGLA(AM)’s license specifies that the station must cease operation at 8:30 p.m. local time during the month of October. On October 28 and 29, 2010, agents observed Station KGLA(AM) operating after 8:30 p.m. local time. On November 2, 2010, Station KGLA(AM)’s general manager admitted that the station had been operating overnight for several years. Thus, based on the evidence before us, we find that CBC apparently willfully and repeatedly violated section 73.1745(a) of the Rules by operating at times not specified in its license on October 28 and 29, 2010.

6. Section 73.3526 of the Rules states that “[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material” set forth in this section.⁸ The public inspection file must be maintained at the main studio of the station,⁹ and must be available for public inspection at any time during regular business hours.¹⁰ Section 73.3526(e)(12) of the Rules states that “every three months a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period [must be maintained in the public inspection file]. [. . .] The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station’s next license renewal application.”¹¹

7. On November 2, 2010, during regular business hours, agents of the New Orleans Office

⁴ 47 U.S.C. § 503(b).

⁵ 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 *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁶ 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.”

⁷ 47 C.F.R. § 73.1745(a).

⁸ 47 C.F.R. § 73.3526(a)(2).

⁹ 47 C.F.R. § 73.3526(b).

¹⁰ 47 C.F.R. § 73.3526(c).

¹¹ 47 C.F.R. § 73.3526(e)(12).

requested to inspect Station KGLA(AM)'s public inspection file at the station's main studio. The file produced was missing the most recent eight issues/programs lists, as well as a copy of the current station authorization and its most recent license application. Thus, based on the evidence before us, we find that CBC apparently willfully and repeatedly violated section 73.3526 by failing to maintain a complete public inspection file. We also find that CBC apparently willfully violated section 73.3526 by failing to make available a complete public inspection file.

8. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for: (1) exceeding power limits is \$4,000; and (2) violation of public inspection file rules is \$10,000.¹² 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.¹³ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that CBC is apparently liable for a \$14,000 forfeiture.

9. We direct CBC to submit a statement signed under penalty of perjury by an officer or director of CBC stating that: (1) Station KGLA is powering down after sunset as specified in its station authorization; and (2) a complete public inspection file is available at Station KGLA's main studio. This statement must be provided to the New Orleans Office at the address listed in paragraph 14 within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*.

IV. ORDERING CLAUSES

10. 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, Crocodile Broadcasting Corp., Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of sections 73.1745(a) and 73.3526 of the Rules.¹⁴

11. **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 and Order, Crocodile Broadcasting Corp., Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that Crocodile Broadcasting Corp. **SHALL SUBMIT** a sworn statement as described in paragraph 9 to the New Orleans Office within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*.

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 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card,

¹² 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1745(a), 73.3526.

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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. CBC shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

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, South Central Region, New Orleans Office, 2424 Edenborn Avenue, Suite 460, Metairie, LA 70001, and must include the NAL/Acct. No. referenced in the caption.

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 and Order shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Crocodile Broadcasting Corp., Inc., at 3850 North Causeway Boulevard, Lakeway II, Suite 442, Metairie, LA 70002.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gernon
District Director
New Orleans Office
South Central Region
Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.