

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

In the Matter of)	
)	
Ace of Hearts Disc Jockey Service, Inc.)	File Number EB-09-TP-0185
Licensee of Station W277AN)	
Cape Canaveral, Florida)	NAL/Acct. No. 201132700003
Facility ID #143943)	
)	FRN 0008590853

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 8, 2011

Released: March 8, 2011

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Ace of Hearts Disc Jockey Service, Inc. (“Ace of Hearts”), licensee of translator station W277AN, in Cape Canaveral, Florida, apparently willfully and repeatedly violated sections 73.1350 and 74.1235(e) of the Commission’s rules (“Rules”)¹ by: (1) operating overpower; and (2) utilizing an unauthorized transmitting antenna system. We conclude that Ace of Hearts is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. Station W277AN is authorized to operate with a transmitter output power of 0.061 kW (61 watts).² When operating with a transmitter output power of 61 watts, the expected field strength for Station W277AN’s signal is 47 mV/m.³ On October 28, 2009 and February 7, 2010, as part of an on-going investigation, agents from the Enforcement Bureau’s Tampa Office (“Tampa Office”) measured the field strength of Station W277AN’s signal at 82 mV/m and 92 mV/m, respectively, which means that the station was operating with more than its authorized transmitter output power.

3. On February 26, 2010, agents from the Tampa Office inspected Station W277AN’s transmitter site. The agents observed that the meter on the amplifier for Station W277AN registered a power output of 172 watts, which is 280% over the station’s authorized power. The President of Ace of Hearts stated that he was unaware of the station’s overpower operation and that it could have been caused by a problem with the amplifier. However, the agents found no record of any problems with the amplifier in the station’s technical operating logs. Ace of Hearts promptly reduced its transmitter output power to 61 watts during the inspection.

¹ 47 C.F.R. §§ 73.1350, 74.1235(e).

² License File Number BLFT-20070220AA0.

³ On February 26, 2010, agents from the Tampa Office measured the field strength of Station W277AN’s signals after the station’s transmitter output power was reduced to 61 watts.

4. On September 22, 2010 and September 24, 2010, in response to a complaint of interference, agents from the Tampa Office again measured the field strength of Station W277AN's signal at 74 mVm and 82 mVm, respectively, which means that the station was operating with more than its authorized transmitter output power. During an inspection of the station on September 22, 2010, the agents observed that the meter on the amplifier for Station W277AN registered a power output of 140 watts, which is 229% over the station's authorized power.

5. Station W277AN is authorized to operate with one antenna.⁴ Based on photographs taken during the Tampa Office's October 28, 2009 investigation, the agents determined that Station W277AN was using a two-antenna array. The agents confirmed by direct observation that Station W277AN was in fact using a two-antenna array on February 7, 2010, February 26, 2010 and September 22, 2010.

III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended ("Act"), 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.⁵ 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.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

7. Section 73.1350 of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization.⁸ Although Station W277AN's license authorizes it to operate with only one antenna section,⁹ as discussed above, photographs taken on October 28, 2009 as well as direct observations on February 7, 2010, February 26, 2010 and September 22, 2010 reveal that Station W277AN was operating with a two-antenna array transmission system. Thus, based on the evidence before us, we find that Ace of Hearts apparently willfully and repeatedly violated section 73.1350 of the Rules by using an unauthorized transmitting antenna system.

⁴ License File Number BLFT-20070220AA0. The license specifically describes the antenna type as "Non-Directional, OMB MP-1." Based on manufacturer specifications, the OMB MP-1 consists of only one antenna section.

⁵ 47 U.S.C. § 503(b).

⁶ 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).

⁷ 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."

⁸ 47 C.F.R. § 73.1350.

⁹ See License File Number BLFT-20070220AA0.

8. Section 74.1235(e) of the Rules states that in no event shall a station authorized under this subpart be operated with a transmitter power output (TPO) in excess of the transmitter certificated rating and the TPO shall not be more than 105 percent of the authorized TPO.¹⁰ Station W277AN is authorized to operate with a transmitter output power of 0.061 kW or 61 watts.¹¹ During inspections on February 26, 2010 and September 22, 2010, agents from the Tampa Office observed that the amplifier for Station W277AN was reading a power output of 172 watts and 140 watts, respectively. On October 28, 2009, February 7, 2010, September 22, 2010 and September 24, 2010, agents from the Tampa Office determined through measurements that Station W277AN operated above its authorized transmitter output power. Although Ace of Hearts was informed orally that it was operating overpower on February 26, 2010, it continued its overpower operations on September 22, 2010 and September 24, 2010. Thus, based on the evidence before us, we find that Ace of Hearts apparently willfully and repeatedly violated section 74.1235(e) of the Rules by operating above its authorized transmitter output power.

9. 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 and the base forfeiture amount for the use of unauthorized equipment is \$5,000.¹² 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, any history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Ace of Hearts operated overpower on at least five different occasions, two of which occurred after an oral warning. The fact that Ace of Hearts continued to operate overpower after being informed that the station was operating overpower in violation of the Rules demonstrates a deliberate disregard for the Commission's requirements, justifying an upward adjustment of \$4,000.¹⁴ Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Ace of Hearts is apparently liable for a total forfeiture of \$13,000 consisting of \$5,000 for violation of section 73.1350 of the Rules and \$8,000 for violation of section 74.1235(e) of the Rules.

10. We direct Ace of Hearts to submit a statement signed under penalty of perjury by an officer or director of Ace of Hearts stating that it is currently operating Station W277AN at authorized power levels and with an authorized antenna system. If it is not operating with an authorized antenna system, Ace of Hearts shall describe the steps it has taken to notify the Media Bureau and come into compliance. This statement must be provided to the Tampa Office at the address listed in paragraph 15 within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture.

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 of the Commission's Rules, Ace of Hearts Disc Jockey Service, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violation of sections 73.1350 and

¹⁰ 47 C.F.R. § 74.1235(e).

¹¹ See License File Number BLFT-20070220AA0.

¹² *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.

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ See *Nounoune Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (upwardly adjusting forfeiture by 100 percent because violator operated an unlicensed radio station on multiple days with full knowledge that such action violated the Rules).

74.1235(e) of the Rules.¹⁵

12. **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, Ace of Hearts Disc Jockey Service, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that, within fifteen days of the release date of this Notice of Apparent Liability for Forfeiture, Ace of Hearts Disc Jockey Service, Inc. **SHALL SUBMIT** a sworn statement as described in paragraph 10 to the Tampa Office listed below.

14. 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, 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. 20554.¹⁰ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Ace of Hearts Disc Jockey Service, Inc., will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

15. 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, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607, and must include the NAL/Acct. No. referenced in the caption. Ace of Hearts Disc Jockey Service, Inc. shall also email the response to SCR-Response@fcc.gov.

16. 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 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1350, 74.1235(e).

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Ace of Hearts Disc Jockey Service, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director
Tampa Office
South Central Region
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.