

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

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 16, 2011

Released: May 16, 2011

By the Resident Agent, Houston Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that Consolidated Radio, Inc. (“Consolidated Radio”), licensee of Station KVOZ(AM) in Del Mar Hills, Texas, apparently willfully and repeatedly violated sections 73.1125, 73.1745(a) and 73.3526 of the Commission’s Rules (“Rules”)¹ 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. We conclude that Consolidated Radio is apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000). We further order Consolidated Radio to submit a sworn statement certifying that it is currently in compliance with sections 73.1125, 73.1745(a), and 73.3526 of the Rules.²

II. BACKGROUND

2. On July 27 and 28, 2010, an agent from the Enforcement Bureau’s Houston Office (“Houston Office”) monitored the field strength for AM broadcast Station KVOZ in Del Mar Hills, Texas. The agent observed that the station’s field strength remained the same both days after sunset.³

3. On July 28, 2010, an agent from the Houston Office also attempted to inspect Station KVOZ, but could not locate the station’s main studio in Del Mar Hills, Texas, its community of license. The station had no published local or toll free telephone number in Del Mar Hills, so the agent called Consolidated Radio at its office in McAllen, Texas. Consolidated Radio provided the agent with a name of a contractor from Brownsville, Texas who handles FCC issues for Station KVOZ and advised that the contractor would coordinate an inspection of the station.

¹ 47 C.F.R. §§ 73.1125, 73.1745(a), 73.3526.

² *Id.*

³ In Del Mar Hills, Texas, during the month of July, local sunset occurs at 8:30 p.m. CDT. See <http://www.fcc.gov/mb/audio/bickel/srsstime.html>.

4. The agent thereafter contacted the contractor, and on July 29, 2010, the agent, accompanied by the aforementioned contractor and a technician, inspected the station's transmitter site. Station KVOZ's technician stated that the station had been running at 3 kilowatts power during both daytime and nighttime operation "for the last few months" due to a problem with its transmitter. The technician, in the presence of Consolidated Radio's contractor, also stated that Station KVOZ had not maintained a main studio for that period. Consequently, the station's public inspection file had not been available for inspection by the public at a main studio for that time. Later that same day, the agent, accompanied by the technician and the contractor, traveled to a private residence in Laredo, Texas and inspected a file that reportedly had been located at the previous main studio location. The file contained some of the contents of the station's public inspection file, but did not contain the station's service contour map, political file, or issues/programs lists.

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("the 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) 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

6. Section 73.1125 of the Rules requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station's community of license; or (3) within twenty five miles from the reference coordinates of the center of its community of license.⁷ As discussed above, the Bureau's investigation on July 29, 2010 revealed that Consolidated Radio had failed to maintain a main studio for Station KVOZ for a period of several months.⁸ Thus, based on the evidence before us, we find that Consolidated Radio willfully and repeatedly violated section 73.1125 of the Rules by failing to maintain a main studio.

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. § 73.1125.

⁸ Neither the private residence in Laredo nor the unattended transmitter site qualifies as a main studio. Although the station's sound board and microphone were located at the private residence, the residence did not appear to contain continuous program transmission capability as it only had one telephone line, was not open to the public, and was not staffed by any station employees. Similarly, the transmitter site was unattended and appeared to contain no production facilities. See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 F.C.C.R. 5024, 5026 (1988) (finding in part that a station must equip the main studio with production and transmission facilities that meet applicable standards) (subsequent history omitted); *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), (defining minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel), *clarified*, 7 FCC Rcd 6800 (1992).

7. Section 73.1745(a) of the Rules states that no 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.⁹ Station KVOZ is licensed to operate at 10 kilowatts during the day and 1 kilowatt after sunset. As discussed above, on July 27 and 28, 2010, an agent observed that Station KVOZ did not reduce its power after sunset. The station's technician admitted that Station KVOZ had for several months operated with 3 kilowatts of power at all times. Accordingly, Station KVOZ was operating over its authorized power after sunset. Thus, based on the evidence before us, we find that Consolidated Radio willfully and repeatedly violated section 73.1745(a) of the Rules by failing to operate Station KVOZ in accordance with the station's authorized power as specified on the station's license.

8. Section 73.3526(a)(2) of the Rules requires that every permittee or licensee of an AM, FM, TV or class A TV station in the commercial broadcast services maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of that section. In addition, section 73.3526(b) of the Rules requires the public inspection file be maintained at the station's main studio, and section 73.3526(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours. As Station KVOZ did not have a main studio for several months, the station's public inspection file was not available for inspection at the station's main studio during normal business hours for several months prior to the Bureau's inspection. Although the station did produce for inspection a file at a private residence, as discussed above, it was unavailable for public inspection during normal business hours and did not contain the station's service contour map, political file, or any issues/programs lists. Accordingly, based on the evidence before us, we find that Consolidated Radio apparently willfully and repeatedly violated sections 73.3526 of the Rules by failing to maintain and make available a complete public inspection file.

9. Pursuant to the *Forfeiture Policy Statement*, and section 1.80 of the Rules, the base forfeiture amount for violation of main studio rule is \$7,000, for public inspection file violations is \$10,000 and for exceeding power limits is \$4,000.¹⁰ 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.¹¹ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Consolidated Radio is apparently liable for a total forfeiture of \$21,000, consisting of the following elements: \$7,000 for failure to maintain a main studio; \$4,000 for failure to operate its station pursuant to the authorized power limits; and \$10,000 for failure to maintain and make available a complete public inspection file. We caution Consolidated Radio and other licensees that additional or similar violations may be subject to substantially larger forfeitures.

10. We direct Consolidated Radio to submit a statement signed under penalty of perjury by an officer or director of Consolidated Radio stating that: (1) it is maintaining a main studio for Station KVOZ in compliance with section 73.1125 of the Rules; (2) Station KVOZ is powering down after sunset as specified in its station authorization; and (3) a complete public inspection file is available at Station KVOZ's main studio. This statement must be provided to the Houston Office at the address listed in paragraph 15 within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*.

⁹ 47 C.F.R. § 73.1745(a).

¹⁰ *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.

¹¹ 47 U.S.C. § 503(b)(2)(E).

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, 0.311, 0.314 and 1.80 of the Commission's Rules, Consolidated Radio, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for violations of sections 73.1125, 73.1745(a) and 73.3526 of the Rules.¹²

12. **IT IS FURTHER ORDERED** that Consolidated Radio, Inc. **SHALL SUBMIT** a sworn statement as described in paragraph 10 to the Houston Office within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*.

13. **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*, Consolidated Radio, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Consolidated Radio 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, Houston Office, 9597 Jones Road #362, Houston, Texas, 77065 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed 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.

¹² 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1125, 73.1745(a), 73.3526.

⁸ See 47 C.F.R. § 1.1914.

IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Consolidated Radio, Inc. at P.O. Box 252, McAllen, TX 78505-0252.

FEDERAL COMMUNICATIONS COMMISSION

Lee R. Browning
Resident Agent
Houston Office
South Central Region
Enforcement Bureau