

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

In the Matter of	)	
	)	
Entertainment Media Trust, Dennis J. Watkins,	)	File No.: EB-10-KC-0020
Trustee	)	
Licensee of Station KZQZ	)	
St. Louis, MO	)	NAL/Acct. No.: 201132560003
Facility ID # 72391	)	
	)	
Licensee of Station KQQZ	)	FRN: 0014655476
DeSoto, MO	)	
Facility ID # 5281	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: May 19, 2011

Released: May 19, 2011

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

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Entertainment Media Trust, Dennis J. Watkins, Trustee (“Entertainment Media Trust” or “the Licensee”), licensee of AM Station KZQZ, in St. Louis, MO and AM Station KQQZ, in DeSoto, MO, apparently willfully violated section 73.1350 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to operate Station KZQZ in accordance with the terms of its station authorization. We also find that the Licensee apparently willfully and repeatedly violated sections 73.1590 and 73.3526 of the Rules<sup>2</sup> by failing to conduct required annual equipment performance measurements for Station KZQZ and failing to maintain and make available complete public inspection files for Stations KZQZ and KQQZ. We conclude that Entertainment Media Trust is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

**II. BACKGROUND**

2. On April 20, 2010, in response to a complaint, an agent from the Enforcement Bureau’s Kansas City Office (“Kansas City Office”) took measurements from a location approximately one kilometer west of the KZQZ transmitter site and observed no change in the field strength of the station’s transmissions after 6:30 p.m. CDT.<sup>3</sup> According to the KZQZ station authorization, the station must switch from daytime to nighttime directional patterns at 6:30 p.m. CDT during the entire month of April.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 73.1350.

<sup>2</sup> 47 C.F.R. §§ 73.1590, 73.3526.

<sup>3</sup> The agent took measurements at 6:07 p.m. CDT and at 8:05 p.m. CDT.

<sup>4</sup> License File Number: BZ-19990924ABK.

3. On April 21, 2010, an agent from the Kansas City Office conducted an inspection of the main studio of co-located Stations KZQZ and KQQZ. The agent requested to inspect both of the stations' public inspection files during normal business hours. The public inspection file for Station KZQZ was missing eight issues/programs lists, *i.e.*, all issues/programs lists for the period after the licensee acquired the station in March 2008. The public inspection file for Station KQQZ was missing two issues/programs lists, *i.e.*, both issues/programs lists for the period after the licensee acquired the station in November 2009. Station personnel also stated that Station KZQZ had received comments from the public on the station's webpage, but none of these comments was included in the public inspection file.

4. An agent from the Kansas City Office also conducted field intensity measurements of the Station KZQZ signal on April 21, 2010, after the station had switched manually to a nighttime directional pattern. Measurements taken at the same location as on April 20, 2010 found the field intensity to be one-tenth of the value measured the previous evening. According to station management, no remote monitoring equipment was installed or used at Station KZQZ, and no operator had made observations of the transmitting system to determine if the directional pattern was correct for the pertinent time of day. Station management also stated that the licensee had not established any monitoring procedures or schedules for the station and had not maintained any station logs, other than those pertaining to the Emergency Alert System.

5. On April 27, 2010, the Kansas City Office issued a Letter of Inquiry (“LOI”)<sup>5</sup> to the licensee requesting copies of the last set of equipment performance measurements for Station KZQZ made to demonstrate the station's compliance with spurious and harmonic emissions requirements in accordance with section 73.1590(d) of the Rules.<sup>6</sup> In its response to the LOI, dated May 6, 2010, Entertainment Media Trust stated that “arrangements [for the measurements] were in process but never coordinated because of time restraints on both sides” and that “this will be corrected as soon as possible.”<sup>7</sup>

### III. DISCUSSION

6. Section 503(b) of the Act<sup>8</sup> 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. Section 312(f)(1) 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>9</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act<sup>10</sup> and the Commission has so interpreted the term in the section

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<sup>5</sup> Letter from Robert McKinney, District Director, Kansas City Office, South Central Region, Enforcement Bureau to Dennis Watkins, Trustee, Entertainment Media Trust (April 27, 2010).

<sup>6</sup> 47 C.F.R. § 73.1590(d).

<sup>7</sup> Letter from Dennis Watkins, Trustee, Entertainment Media Trust to Robert McKinney, District Director, Kansas City Office, South Central Region, Enforcement Bureau (May 6, 2010).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

503(b) context.<sup>11</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>12</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>13</sup>

7. Section 73.1350 of the Rules states that “[e]ach 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.”<sup>14</sup> Section 73.62(b) of the Rules states that “[i]n the event of a failure of system components, improper pattern switching or any other event that results in operation substantially at variance from the radiation pattern specified in the instrument of authorization for the pertinent time of day, operation must be terminated within three minutes unless power can be reduced sufficiently to eliminate any excessive radiation.”<sup>15</sup>

8. The station authorization for Station KZQZ requires it to switch from daytime to nighttime directional patterns at 6:30 p.m. CDT during the entire month of April. On April 20, 2010, an agent from the Kansas City Office observed no change in the field strength of station KZQZ’s transmissions before and after 6:30 p.m. CDT. On April 21, 2010, the same agent took field strength measurements from the same location as the previous day, when Station KZQZ was confirmed to be operating with a nighttime directional pattern. The field strength measurement when the station was operating with a nighttime directional pattern was one-tenth the amount measured on April 20, 2010. Accordingly, we find that on April 20, 2010, Station KZQZ was operating with a daytime directional pattern after 6:30 p.m. CDT. The Licensee had no station personnel monitoring the station’s transmitter, no remote control equipment installed, and no automated monitoring equipment to determine if the station was operating outside authorized parameters for the pertinent time of day. In addition, the Licensee had not established monitoring procedures or schedules for the station to ensure compliance with the Rules and the station authorization. Based on the evidence before us, we find that Entertainment Media Trust apparently willfully violated sections 73.1350 of the Rules by failing to operate Station KZQZ consistent with the terms of its station authorization by its operation with an incorrect directional pattern.

9. Section 73.1590(a)(6) of the Rules states, in relevant part, that “the licensee of each AM... station... must make equipment performance measurements for each main transmitter ... annually, ... with not more than 14 months between measurements...”<sup>16</sup> Sections 73.1590(b) and (d) of the Rules further require that measurements “for spurious and harmonic emissions must be made to show compliance with the transmission system requirements of § 73.44 for AM stations” and that such measurements “together with a description of the equipment and procedure used in making the measurements, signed and dated by qualified person(s) making the measurements, must be kept on file at the transmitter or remote control point for a period of 2 years, and on request must be made available during that time to duly authorized representatives of the FCC.”<sup>17</sup>

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<sup>11</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

<sup>12</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>13</sup> 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.”

<sup>14</sup> 47 C.F.R. § 73.1350.

<sup>15</sup> 47 C.F.R. § 73.62(b).

<sup>16</sup> 47 C.F.R. § 73.1590(a)(6).

<sup>17</sup> 47 C.F.R. § 73.1590(b), (d).

10. During the April 21, 2010 inspection, station management could not provide the results of the latest equipment performance measurements pertaining to spurious and harmonic emissions on Station KZQZ. In response to the *LOI*, the Licensee stated that it did not conduct these annual equipment performance measurements. The Licensee acquired Station KZQZ in March 2008, and should have conducted these measurements in both 2008 and 2009. Based on the evidence before us, we find that Entertainment Media Trust apparently willfully and repeatedly violated section 73.1590 of the Rules by failing to conduct required equipment performance measurements for Station KZQZ in 2008 and 2009.

11. 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 that section.<sup>18</sup> Section 73.3526(e)(9) of the Rules states that “[a]ll written comments and suggestions received from the public regarding operation of the station . . . shall be retained for a period of three years from the date on which they are received by the licensee.”<sup>19</sup> Section 73.3526(e)(12) of the Rules states that commercial AM and FM broadcast stations must retain in the file “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. [ . . . ] 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.”<sup>20</sup> The public inspection file must be maintained at the main studio of the station,<sup>21</sup> and must be available for public inspection at any time during regular business hours.<sup>22</sup>

12. On April 21, 2010, in response to a Kansas City Office agent’s request during normal business hours to view the stations’ public inspection files, Stations KQQZ and KZQZ were unable to make available complete public inspection files. As discussed above, Station KQQZ’s public inspection file was missing issues/programs lists for two quarters and Station KZQZ’s public inspection file was missing issues/programs lists for eight quarters. There was no evidence that Entertainment Media Trust had ever maintained any issues/programs lists since it acquired the two stations. Station KZQZ’s public inspection file was also missing comments received from the public via the station’s webpage. Based on the evidence before us, we find that Entertainment Media Trust apparently willfully violated section 73.3526 of the Rules by failing to make available complete public inspection files for Stations KQQZ and KZQZ and apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to maintain complete public inspection files for those stations.

13. Pursuant to the *Forfeiture Policy Statement*, and section 1.80 of the Rules, the base forfeiture amount for operation with an improper radiation pattern for the pertinent time of day is \$7,000, for failure to make required measurements is \$2,000, and for violations of the public file rules is \$10,000.<sup>23</sup> 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.<sup>24</sup>

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<sup>18</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>19</sup> 47 C.F.R. § 73.3526(e)(9).

<sup>20</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>21</sup> 47 C.F.R. § 73.3526(b).

<sup>22</sup> 47 C.F.R. § 73.3526(c).

<sup>23</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) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>24</sup> 47 U.S.C. § 503(b)(2)(E).

14. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Entertainment Media Trust is apparently liable for a total forfeiture of \$25,000, consisting of the following: \$7,000 for Station KZQZ's failure to operate consistent with the terms of its station authorization; \$2,000 for Station KZQZ's failure to make required measurements in 2008; \$2,000 for Station KZQZ's failure to make required measurements in 2009; \$12,000 for Station KZQZ's incomplete public inspection file, and \$2,000 for Station KQQZ's incomplete public inspection file. The last two proposed forfeiture amounts are particularly influenced by our finding in another enforcement action issued today involving an inspection of two other stations owned by the Licensee on the same day as the inspection here.<sup>25</sup> That inspection found additional public inspection file violations at both stations, raising concerns that the Licensee may have a systematic compliance issue with the Commission's public inspection file rules. We strongly encourage the Licensee to review those rules closely and ensure that all of its facilities are in compliance.

#### IV. ORDERING CLAUSES

15. 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, Entertainment Media Trust, Dennis J. Watkins, Trustee is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of sections 73.1350, 73.1590 and 73.3526 of the Rules.<sup>26</sup>

16. **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, Entertainment Media Trust, Dennis J. Watkins, Trustee **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. 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.<sup>8</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, Entertainment Media Trust will send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

18. 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. Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2<sup>nd</sup>

<sup>25</sup> *Entertainment Media Trust, Dennis J. Watkins, Trustee*, Notice of Apparent Liability, DA 11-902 (Enf. Bur. rel. May 19, 2011).

<sup>26</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1350, 73.1590, 73.3526.

<sup>8</sup> See 47 C.F.R. § 1.1914.

Floor, Lees Summit, Missouri, 64086, along with the NAL/Acct. No. referenced in the caption. Also, email the response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

19. 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.

20. **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 Entertainment Media Trust, Dennis J. Watkins, Trustee, 6500 W. Main Street, Suite 315, Belleville, IL 62223.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney  
District Directory  
Kansas City Office  
South Central Region  
Enforcement Bureau