

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

In the Matter of)	
)	
J & J Broadcasting, Inc.)	File No.: EB-11-DT-0200
)	NAL/Acct. No.: 201232360008
Licensee of Radio Stations WIMI (FM) and)	FRN: 0015161508
WJMS(AM), Ironwood, Michigan)	Facility ID Nos.: 57226, 57223
Antenna Structure Owner)	ASR No.: 1035236

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: August 20, 2012

Released: August 21, 2012

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that J & J Broadcasting, Inc. (J & J), licensee of Stations WIMI(FM) and WJMS(AM) (Stations) in Ironwood, Michigan, and owner of antenna structure number 1035236 (Antenna Structure) in Montreal, Wisconsin, apparently willfully and repeatedly violated Sections 73.3526(e)(12) and 17.57 of the Commission's rules (Rules)¹ by failing to maintain and make available the quarterly issues/programs lists in the public inspection file and failing to immediately notify the Commission upon change in ownership information. We conclude that J & J is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000). In addition, we direct J & J to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that the Stations are now in compliance with Sections 73.3526(e)(12) and 17.57 of the Rules.

II. BACKGROUND

2. On September 14, 2011, an agent from the Enforcement Bureau's Detroit Office conducted an inspection with the Stations' General Manager and Sales Manager at the Stations' co-located main studio in Ironwood, Michigan. The agent reviewed the materials in each station's public inspection file and found that neither station had quarterly issues/programs lists since J & J's acquisition of the Stations on February 1, 2010, i.e., a total of five missing quarterly issues/programs lists.² The General Manager was not able to provide any explanation as to why the issues/program lists were missing.

3. After conducting the main studio inspection, the agent inspected the Antenna Structure for FM Station WIMI. At the time of the inspection, the Antenna Structure's registration specified that the owner was Roberts Broadcasting, Inc. DBA WIMI FM, one of the former owners of the Stations. According to the Stations' Chief Operator, J & J acquired the Antenna Structure in 2010 when it acquired the Stations.

¹ 47 C.F.R. § 73.3526(a)(12) and 17.57.

² See BALH-20090717ABC, granted August 31, 2009 and consummated on February 1, 2010.

III. DISCUSSION

4. 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.³ 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.⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

A. Failure to Maintain Issues/Program Lists

5. The evidence in this case is sufficient to establish that J & J violated Section 73.3526(a)(2) of the Rules. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.⁹ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,¹⁰ and Section 73.3526(e)(12) of the Rules specifically requires licensees to place in their public inspection file each calendar quarter a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period (known as the issues/programs list).¹¹ The issues/programs lists must include “a brief narrative describing what issues were given significant treatment and the programming that provided this treatment,” including, but not limited to, the time, date, duration, and title of each program in which the issue was treated.¹² Copies of the issues/programs list

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

⁵ H.R. Rep. No. 97-765, 97th 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 . . .”).

⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 8 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁸ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

⁹ 47 C.F.R. § 73.3526(a)(2).

¹⁰ 47 C.F.R. § 73.3526(c)(1).

¹¹ 47 C.F.R. § 73.3526(e)(12).

¹² *Id.*

must be retained in the public inspection file until final action has been taken on the station's next license renewal application.¹³

6. On September 14, 2011, an agent reviewed the Stations' public inspection files and found that they were missing all five quarters of issues/programs lists since J & J acquired the Stations on February 1, 2010. Accordingly, based on the evidence before us, we find that J & J apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Rules by failing to maintain the issues/programs lists and make them available in the Stations' public inspection files.

B. Failure to Update Antenna Structure Registration Database

7. Section 17.57 of the rules requires that the owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must immediately notify the Commission upon any change in ownership information.¹⁴ On February 1, 2010, J & J acquired ownership of the Stations and the associated Antenna Structure. At the time of the inspection on September 14, 2011, one of the previous owners, Roberts Broadcasting, Inc. DBA WIMI FM, was still listed as the owner on the antenna structure registration. Accordingly, based on the evidence before us, we find that J & J apparently willfully and repeatedly violated Section 17.57 of the Rules.

C. Proposed Forfeiture Amount and Reporting Requirement

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violation of the public file rule is \$10,000 and for failing to file required forms or information is \$3,000.¹⁵ 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that J & J is apparently liable for a total forfeiture in the amount of \$13,000, consisting of \$10,000 for its failure to maintain any quarterly issues/programs lists since it acquired the Stations on February 1, 2010 and \$3,000 for its failure to notify the FCC that it acquired ownership of the Antenna Structure.

9. We direct J&J to submit a statement signed under penalty of perjury by an officer or director of J & J stating that: (1) the radio issues/program lists are being compiled, (2) the radio issues/program lists are being placed in the public inspection file by the tenth day of the succeeding calendar quarter, and (3) the FCC has been notified using FCC Form 854 that J & J Broadcasting owns antenna structure number 1035236. This statement must be provided to the Detroit Office at the address listed in paragraph 12 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications

¹³ *Id.*

¹⁴ 47 C.F.R. § 17.57.

¹⁵ *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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, J & J Broadcasting, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for violation of Sections 73.3526(e)(12) and 17.57 of the Rules.¹⁷

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, J & J Broadcasting, 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 J & J Broadcasting, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 9, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan, 48335. J & J shall also e-mail the written statement to NER-Response@fcc.gov.

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. J & J shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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 1.16 and 1.80(f)(3) of the Rules.¹⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan, 48335, and include the NAL/Acct. No. referenced in the caption. J & J Broadcasting, Inc.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.57, and 73.3526(e)(12).

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

also shall email the written response to NER-Response@fcc.gov.

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 both Certified Mail, Return Receipt Requested, and first class mail to J & J Broadcasting, Inc. at P.O. Box 250, Ironwood, Michigan 49938.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau