

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

In the Matter of)
)
JHT Ventures, Inc.) File No.: EB-11-HU-0104
) NAL/Acct. No.: 201232540002
Licensee of Station KULF) FRN: 0019299098
Bellville, Texas) Facility ID No.: 48653
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 13, 2012

Released: March 13, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that JHT Ventures, Inc. (JHT Ventures), licensee of Station KULF, in Bellville, Texas, apparently willfully and repeatedly violated Section 73.1745(a) of the Commission’s rules (Rules),¹ by operating at times other than those specified in its license. We conclude that JHT Ventures is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000). In addition, we direct JHT Ventures to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that it is discontinuing operations at sunset.

II. BACKGROUND

2. Station KULF is licensed by the Commission as a daytime only AM broadcast station. The license for Station KULF specifies the average sunset hour for the month of December to be 5:30 p.m. local time.² On December 12 and 13, 2011, in response to a complaint about the Station operating at night, an agent from the Enforcement Bureau’s Houston Office (Houston Office) monitored the field strength of Station KULF’s transmissions before and after sunset and observed no noticeable change in field strength on either day. Additionally, on both days, the Station’s signal remained on the air until the program that was on the air ended at 6 p.m. On January 19, 2012, the agent inspected the main studio of Station KULF, and JHT Ventures had no explanation for why the Station aired its programming in its entirety, past sunset on December 12 and 13, 2011.

III. DISCUSSION

3. 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

¹ 47 C.F.R. § 73.1745(a).

² See License File No. BL-20101019ABD.

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. Operation at Times not Authorized by Station License

4. Section 73.1745(a) of the Rules states 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 in this part.”⁹ JHT Ventures is authorized to operate its Station until 5:30 p.m. each day in the month of December. On December 12 and 13, 2011, an agent from the Houston Office observed Station KULF operate with full daytime power between 5:30 p.m. and 6 p.m. Based on the evidence before us, we find that JHT Ventures apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by operating at times other than those specified in its license.

B. Proposed Forfeiture Amount and Reporting Requirement

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for unauthorized emissions 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, any history of prior offenses, ability to pay, and other such matters as

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 (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.

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

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 JHT Ventures is apparently liable for a forfeiture in the amount of \$4,000.

6. We further order JHT Ventures to submit a written statement, pursuant to Section 1.16 of the Rules,¹² signed under penalty of perjury by an officer or director of JHT Ventures, stating that it is operating Station KULF only during daytime hours and consistent with its license authorization. This statement must be provided to the Houston Office at the address listed in paragraph 11, below, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

7. 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, JHT Ventures, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 73.1745(a) of the Rules.¹³

8. **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, JHT Ventures, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that JHT Ventures, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 6, above, 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, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas, 77065. JHT Ventures shall also e-mail the written statement to SCR-Response@fcc.gov.

10. 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 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. 20554.¹⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. JHT Ventures will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 C.F.R. § 1.16.

¹³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1745(a).

¹⁴ See 47 C.F.R. § 1.1914.

11. 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.¹⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Houston Office, 9597 Jones Road, #362, Houston, Texas, 77065, and include the NAL/Acct. No. referenced in the caption. JHT Ventures also shall email the written response to SCR-Response@fcc.gov.

12. 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.

13. **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 regular mail to JHT Ventures, Inc. at 10614 Rockley Road, Houston, Texas, 77099-3514.

FEDERAL COMMUNICATIONS COMMISSION

Stephen P. Lee
Resident Agent,
Houston Office
South Central Region
Enforcement Bureau

¹⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).