

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

In the Matter of)	
)	
Super W Media Group, Inc.)	File No.: EB-11-TP-0018
)	NAL/Acct. No.: 201232700002
Licensee of Station WIPC AM 1280 kHz)	FRN: 0019751031
Lake Wales, Florida)	Facility ID No.: 59616

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 28, 2012

Released: February 28, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Super W Media Group, Inc. (Super W), licensee of Station WIPC, in Lake Wales, Florida, apparently willfully and repeatedly violated Section 73.1350(a) of the Commission's rules (Rules),¹ by failing to operate its station in accordance with the terms of its station authorization. We conclude that Super W is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000). We further direct Super W to submit a written statement, signed under penalty of perjury, stating whether Station WIPC is now in compliance with Section 73.1350(a) of the Rules.

II. BACKGROUND

2. Station WIPC is authorized to operate on 1280 kHz with a non-directional antenna using 1000 watts during the day and a directional antenna using 540 watts at night.² On May 21 and June 15, 2011, in response to a complaint, agents from the Enforcement Bureau's Tampa Office (Tampa Office) monitored the field strength of Station WIPC's transmissions before and after sunset. On both days, the agent observed no noticeable change in field strength.

3. On June 16, 2011, during regular business hours, agents from the Tampa Office, accompanied by the station's owner/president, conducted an inspection of Station WIPC's main studio and transmitter site in Lake Wales, Florida. An agent confirmed that the station was operating with full daytime power. The station's owner/president admitted that the station's equipment, which automatically reduces power and changes the antenna's directional pattern at night, malfunctioned about one or two weeks before. He stated that he had been manually reducing power at night, but claimed he forgot to do so the evening of June 15, 2011. He did not say anything regarding changing the antenna's directional pattern at night.

¹ 47 C.F.R. § 73.1350(a).

² See File No. BZ-870629AA.

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act),³ 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 monetary 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.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 Inconsistent with Station Authorization

5. Section 73.1350(a) of the Rules states that licensees are “responsible for maintaining and operating its broadcast station in a manner which complies with . . . the terms of the station authorization.”⁹ Station WIPC is authorized to operate on 1280 kHz with a non-directional antenna using 1000 watts during the day and a directional antenna using 540 watts at night. On May 21 and June 15, 2011, agents from the Tampa Office observed no significant change in signal strength for Station WIPC’s transmissions before and after sunset. If the station had reduced power and antenna directional pattern, the agents estimate the signal strength of Station WIPC’s transmissions would have decreased by approximately one-third, where the signal was measured and observed. On June 16, 2011, Station WIPC’s owner/president admitted that the equipment, which automatically switches the station to nighttime power and directional pattern, malfunctioned about one to two weeks before the inspection. The owner/president stated that he manually reduced power at night and forgot to do so on June 15, 2011. Based on the evidence before us, we find that Super W apparently willfully and repeatedly violated Section 73.1350(a) of the Commission’s rules by failing to change power/operating mode at night.

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).

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. § 73.1350(a).

B. Proposed Forfeiture and Reporting Requirement

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000.¹⁰ 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 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 Super W is apparently liable for a total forfeiture of \$4,000.

7. We also direct Super W to submit a written statement signed under penalty of perjury, pursuant to Section 1.16 of the Rules,¹² by an officer or director of Super W, stating the measures it has taken to come into full compliance with Section 73.1350(a) of the Rules. This statement must be provided to the Tampa Office at the address listed in paragraph 12, below, within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

8. 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, Super W Media Group, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 73.1350(a) of the Commission's rules.¹³

9. **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, Super W Media Group, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that Super W Media Group, Inc. **SHALL SUBMIT** a statement as described in paragraph 7 to the Tampa Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

11. 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

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.

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, 73.1350(a).

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 Email: ARINQUIRIES@fcc.gov. Super W Media Group, Inc. shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

12. 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.¹⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd, Suite 425, Tampa, FL 33607, and include the NAL/Acct. number referenced in the caption. Super W Media Group, Inc. also shall email the written response to SCR-Response@fcc.gov.

13. 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.

14. **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 Super W Media Group, Inc. at 630 Mountain Lake Cut-off Road, Lake Wales, FL 33859.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow
District Director,
Tampa Office
South Central Region
Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.

¹⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).