

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

In the Matter of)	
)	
Beacon Broadcasting, Inc.)	File Number: EB-09-PA-0273
)	NAL/Acct. No.: 201132400001
Former Licensee of AM Station WGRP, FM)	Facility ID: # 25227
Station WEXC, and Aural Studio Transmitter Link)	FRN: 0008-53-9157
WQGW238)	
Greenville, PA)	

FORFEITURE ORDER

Adopted: April 3, 2012

Released: April 3, 2012

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Beacon Broadcasting, Inc. (Beacon), former licensee of AM Station WGRP, FM Station WEXC, and aural studio transmitter link (STL) WQGW238, in Greenville, Pennsylvania,¹ for willfully and repeatedly violating Sections 73.3526(e)(12), 73.1745(a) and 1.903(a) of the Commission's Rules (Rules).² The noted violations involve Beacon's failure to (1) maintain radio issues/programs lists in Station WGRP's public inspection file; (2) operate Station WGRP in a manner which complies with the terms of the station authorization; and (3) operate the STL for Station WEXC on an authorized frequency.

II. BACKGROUND

2. On November 1, 2010, the Enforcement Bureau's Philadelphia Office (Philadelphia Office) issued a Notice of Apparent Liability for Forfeiture (NAL)³ to Beacon in the amount of \$18,000 for failure to maintain radio issues/programs lists in the station's public inspection file, failure to operate its broadcast station in a manner which complies with the terms of the station authorization, and failure to operate its STL (WQGW238) for Station WEXC on an authorized frequency. In view of the record evidence, the NAL proposed a forfeiture of \$18,000 against Beacon for violation of Sections 73.3526(e)(12), 73.1745(a), and 1.903(a) of the Rules.⁴ Beacon submitted a response to the NAL conceding that it failed to maintain quarterly issues/programs lists in Station WGRP's public inspection file and that it operated Station WGRP beyond the station's authorized nighttime power of 2.2 watts.⁵

¹ The sale of Stations WGRP, WEXC, and WQGW238 to Educational Media Foundation was consummated on January 7, 2011. See BALH-20100930ADL.

² 47 C.F.R. §§ 73.3526(e)(12), 73.1745(a), 1.903(a). Stations WGRP and WEXC

³ *Beacon Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 15254 (Enf. Bur., 2010). The facts in the NAL are incorporated herein by reference.

⁴ 47 C.F.R. §§ 1.903(a), 73.1745(a), 73.3526(e)(12).

⁵ See *Beacon Broadcasting, Inc.*, Partial Opposition to Notice of Apparent Liability for Forfeiture, dated November 30, 2010 (NAL Response) at 1-2.

Beacon challenged, however, the Philadelphia Office's conclusion that it operated Station WEXC's STL on an unauthorized frequency. In addition, Beacon requests a cancellation or reduction on the ground that payment of a forfeiture would pose a financial hardship.⁶

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Beacon's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation 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.¹⁰ As discussed below, we have considered Beacon's response in light of these statutory factors and find that a reduction in the forfeiture amount is warranted based on Beacon's documented inability to pay.

4. As set forth in the NAL, an agent from the Philadelphia Office determined, *inter alia*, that Beacon: (1) failed to maintain issues/programs lists in Station WGRP's public inspection file and (2) operated Station WGRP in excess of its authorized nighttime power of 2.2 watts. In its response to the NAL, Beacon does not dispute the findings with regard to the public inspection file violation and its overpowered nighttime operation.¹¹ To the extent Beacon reports that it corrected the violations after the inspection, the Commission expects parties to take post-inspection corrective action to come into compliance with the Rules and such action does not nullify or mitigate any prior violations.¹² Thus, we find that Beacon willfully and repeatedly violated Sections 73.3526(e)(12) and 73.1745(a) of the Rules by failing to maintain issues/programs lists in Station WGRP's public inspection file and operating Station WGRP in excess of the authorized nighttime power.

5. We reject Beacon's claim that it was not operating Station WEXC's STL on an unauthorized frequency. On November 19, 2009, using mobile direction-finding equipment, an agent determined that the STL for Station WEXC was operating on the unauthorized frequency 951.500 MHz. The agent also observed that the service label on the rear of the STL transmitter specified that J Squared Technical Service of Grants Pass, Oregon, programmed the transmitter with the frequency 951.500 MHz on February 22, 2001. In its *NAL Response*, Beacon submits a statement from its contract engineer that (1) he "determined through personal investigation" that the STL was operating on its authorized frequency, and (2) the 2001 service label indicating that the transmitter was operating on 951.500 MHz was "overtaken by events when the transmitter was retuned" to the authorized frequency prior to November 2009.¹³ We do not believe that this unsupported statement from Beacon's contract engineer outweighs the technical measurements and observations of the FCC agent who determined that Station

⁶ See *Beacon Broadcasting, Inc.*, Supplement to Partial Opposition to Notice of Apparent Liability for Forfeiture and Request to Withhold Information from Public Inspection, dated December 7, 2010 (*NAL Response Supplement*).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *NAL Response* at 1-3.

¹² See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹³ See *NAL Response*, Statement of Michael Glunt.

WEXC's STL was operating on the frequency 951.500 MHz on November 19, 2009. Thus, we conclude that the preponderance of the evidence supports our previous conclusion that Beacon willfully and repeatedly violated Section 1.903(a) of the Rules.

6. Finally, Beacon asserts that payment of the forfeiture would pose a financial hardship. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹⁴ We have reviewed our records and Beacon's submitted documentation and conclude that the forfeiture should be reduced to \$8,000, an amount within the range determined by the Bureau to be affordable.¹⁵

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(f)(4) of the Commission's rules, Beacon Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Sections 73.3526(e)(12), 73.1745(a), and 1.903(a) of the Rules.¹⁶

8. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for enforcement pursuant to section 504(a) of the Act.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Beacon Broadcasting, Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

¹⁴ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁵ See *id.*

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526(e)(12), 73.1745(a), 1.903(a).

¹⁷ 47 U.S.C. § 504(a).

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Beacon Broadcasting, Inc. c/o Harold Glunt at P.O. Box 1798, Warren, Ohio, 44482 and to John S. Neely, counsel for Beacon Broadcasting, Inc., at Miller and Neely, P.C., Suite 704, 6900 Wisconsin Avenue, Bethesda, Maryland 20815.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau