

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

In the Matter of	)	
	)	
ERJ Media, LLC	)	File No.: EB-FIELDSCR12-00000697
	)	NAL/Acct. No.: 201232600009
Licensee of Station WOIR	)	FRN: 0018302281
Miami, Florida	)	Facility ID No.: 13776
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

Adopted: April 6, 2012

Released: April 6, 2012

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

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that ERJ Media, LLC (ERJ Media), licensee of Station WOIR, in Miami, Florida, apparently willfully and repeatedly violated Section 73.1745(a) of the Commission's rules (Rules),<sup>1</sup> by failing to operate within authorized power limitations. We conclude that ERJ Media is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000). In addition, we direct ERJ Media to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury that it is operating its station at authorized power levels.

**II. BACKGROUND**

2. Station WOIR, an AM radio station, is authorized to operate on 1430 kHz with 5000 watts during the day and 500 watts at night. The license for Station WOIR specifies the average sunset time for the month of February to be 6:15 p.m. local time.<sup>2</sup> On February 10 and 11, 2012, in response to a complaint about the Station operating at night, an agent from the Enforcement Bureau's Miami Office (Miami Office) monitored the field strength of Station WOIR's transmissions before and after sunset and observed no noticeable change in field strength on either day. On February 13, 2012, an agent from the Miami Office observed that the field strength measurements taken at night on February 10 and 11, 2012, were approximately the same value as the field strength measurements of Station WOIR's transmissions taken during the day when it was operating at a full daytime power of 5000 watts, thereby confirming Station's WOIR's overpower operations at night. During an inspection of Station WOIR on February 13, 2012, ERJ Media had no explanation for the Station's overpower operations.

**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,

<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> See License File No. BL-20010202ABA.

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.<sup>3</sup> 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>4</sup> 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,<sup>5</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

#### **A. Operation at Power Levels 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.”<sup>9</sup> Station WOIR is licensed to operate with 5000 watts during the day and with 500 watts at night. On February 10 and 11, 2012, an agent observed Station WOIR operate its station with daytime power of 5000 watts after sunset. Based on the evidence before us, we find that ERJ Media apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by failing to operate within authorized power limitations.

#### **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 exceeding power limits is \$4,000.<sup>10</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, any history of prior offenses, ability to pay, and other such matters as

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 U.S.C. § 312(f)(1).

<sup>5</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 . . .”).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

<sup>9</sup> 47 C.F.R. § 73.1745(a).

<sup>10</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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

justice may require.<sup>11</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that ERJ Media is apparently liable for a forfeiture in the amount of \$4,000.

6. We further order ERJ Media to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>12</sup> signed under penalty of perjury by an officer or director of ERJ Media, stating that it is operating Station WOIR at its authorized power levels. This statement must be provided to the Miami 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, ERJ Media, LLC 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.<sup>13</sup>

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, ERJ Media, LLC **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 ERJ Media, LLC **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, Miami Office, P.O. Box 520617, Miami, FL 33152. ERJ Media, LLC 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.<sup>14</sup> 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. 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

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<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> 47 C.F.R. § 1.16.

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

<sup>14</sup> See 47 C.F.R. § 1.1914.

Sections 1.16 and 1.80(f)(3) of the Rules.<sup>15</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152, and include the NAL/Acct. No. referenced in the caption. ERJ Media 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 ERJ Media LLC, 14100 SW 144th Ave., Miami, FL 33186.

FEDERAL COMMUNICATIONS COMMISSION

Michael Mattern  
Resident Agent  
Miami Office  
South Central Region  
Enforcement Bureau

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<sup>15</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).