

**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
	)	

**FORFEITURE ORDER**

**Adopted:** June 6, 2012

**Released:** June 6, 2012

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of three thousand five hundred dollars (\$3,500) to Super W Media Group, Inc. (Super W or the Licensee), licensee of Station WIPC, in Lake Wales, Florida, for willful and repeated violation of Section 73.1350(a) of the Commission's rules (Rules).<sup>1</sup> The noted violations involved Super W's failure to operate its Station in accordance with the terms of its station authorization.

**II. BACKGROUND**

2. On February 28, 2012, the Enforcement Bureau's Tampa Office (Tampa Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)<sup>2</sup> to Super W for its failure to change power/operating mode at night in accordance with the terms of its station authorization. The *NAL* proposed a \$4,000 forfeiture and ordered 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.<sup>3</sup> Super W submitted a response to the *NAL*, in which it questions the validity of some of the findings in the *NAL* and requests cancellation of the proposed \$4,000 forfeiture based on its "financial hardship" claim.<sup>4</sup> Super W also reports that it is now in compliance with Section 73.1350(a), stating that the "automation equipment used to transition WIPC from daytime to nighttime operations has been repaired and is functioning properly at the present time."<sup>5</sup>

<sup>1</sup> 47 C.F.R. § 73.1350(a).

<sup>2</sup> *Super W Media Group, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2076 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Donald E. Martin, P.C., Attorney for Super W Media Group, Inc., to FCC Enforcement Bureau, Tampa District Office, at 2 (filed March 29, 2012, in EB-11-TP-0018) (*NAL Response*).

<sup>5</sup> *Id.*

### 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),<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the *Forfeiture Policy Statement*.<sup>8</sup> In examining Super W's response, Section 503(b)(2)(E) 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.<sup>9</sup> As discussed below, we have considered Super W's response in light of these statutory factors, and find that a reduction of the forfeiture is justified.

4. 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."<sup>10</sup> As discussed in the *NAL*, 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.<sup>11</sup> 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.<sup>12</sup> If the Station had reduced power and antenna directional pattern as required, 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.<sup>13</sup>

5. In its *NAL Response*, Super W states: "Super W does not concede that the Station's nighttime operation was out of compliance at any time other than on the evening of June 15, 2011. However, Super W has no evidence to refute the field agents' allegations about May 21."<sup>14</sup> Given that Super W has conceded to violating Section 73.1350(a) of the Rules on June 15, 2011, and cannot otherwise provide a basis to dispute our finding with respect to the May 21<sup>st</sup> violation, we affirm our findings in the *NAL*. In addition, we note that Super W does not dispute the *NAL*'s factual recitation that the Station's owner/president admitted on June 16, 2011 that the equipment, which automatically switches the station to nighttime power and directional pattern, malfunctioned about one to two weeks before the inspection.<sup>15</sup> This undisputed admission also confirms that the violation occurred for more than one day. Accordingly, we conclude that Super W willfully and repeatedly violated Section 73.1350(a) of the Rules by failing to operate its Station in accordance with the terms of its station authorization.<sup>16</sup>

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<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> 47 C.F.R. § 73.1350(a).

<sup>11</sup> *NAL*, 27 FCC Rcd at 2077.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *NAL Response* at 2.

<sup>15</sup> *NAL*, 27 FCC Rcd at 2077

<sup>16</sup> To the extent Super W is arguing that the repairs it has since made to its equipment should serve as a basis for cancellation of the forfeiture, we disagree. The fact that Super W has since repaired its automation equipment and is operating its Station consistent with its authorization does not warrant reduction of the proposed forfeiture, as such corrective action is expected. See *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

6. In spite of the violation, Super W, in its *NAL Response*, nonetheless requests cancellation of the forfeiture due to “financial hardship.”<sup>17</sup> 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.<sup>18</sup> Nevertheless, we recognize that, in some cases, other financial indicators, such as net losses, may also be relevant. If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay a forfeiture.<sup>19</sup> Although Super W asserts that it cannot pay the proposed forfeiture due to an “aggregate net operating loss over”<sup>20</sup> the past three calendar years, based on our review of Super W’s submitted documentation and the relevant precedent, we conclude that the Licensee’s gross revenues can support paying a reduced forfeiture. Accordingly, we reduce the forfeiture from \$4,000 to \$3,500 based solely on the financial information that Super W submitted.<sup>21</sup>

#### 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, Super W Media Group, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand five hundred dollars (\$3,500) for violations of Section 73.1350(a) of the Commission’s rules.<sup>22</sup>

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>23</sup> within thirty (30) calendar 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.<sup>24</sup> 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. Regardless of the form of payment, 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 with any questions

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<sup>17</sup> *NAL Response* at 2.

<sup>18</sup> 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).

<sup>19</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17106. See also *PJB Communications of Virginia Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>20</sup> *NAL Response* at 2.

<sup>21</sup> This amount falls within the percentage of gross revenues that the Bureau has found to be appropriate and not excessive.

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1350(a).

<sup>23</sup> 47 C.F.R. § 1.80.

<sup>24</sup> 47 U.S.C. § 504(a).

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regarding payment procedures at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Super W shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

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 Super W Media Group, Inc. at 630 Mountain Lake Cutoff Road, Lake Wales, FL 33859, and to its counsel, Donald E. Martin, at P.O. Box 8433, Falls Church, VA 22041.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau