

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

In the Matter of
Debut Broadcasting Mississippi, Inc.
Licensee of Station WNLA-AM
Indianola, MS
Owner of Antenna Structure No.: 1042309
Indianola, MS
File No.: EB-11-OR-0141
NAL/Acct. No.: 201232620002
FRN: 0016290595
Facility ID No.: 59971

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: June 12, 2012

Released: June 12, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Debut Broadcasting Mississippi, Inc. (Debut Broadcasting), licensee of Station WNLA-AM and owner of antenna structure number 1042309 (the Antenna Structure) in Indianola, Mississippi, apparently willfully and repeatedly violated Section 303(q) of the Communications Act of 1934, as amended (Act) and Sections 17.48, 17.51, and 73.1745 of the Commission's rules (Rules) by failing to: (1) notify the Federal Aviation Administration (FAA) immediately of a known lighting outage; (2) exhibit required antenna structure lighting; and (3) operate its station within authorized power limitations. We conclude that Debut Broadcasting is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000). In addition, we direct Debut Broadcasting 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 Station WNLA-AM in compliance with the terms of its station authorization and the Antenna Structure's lighting requirements.

II. BACKGROUND

2. Station WNLA-AM is authorized to operate with 500 watts during the day and increasingly reduced power at night. On November 7, 2011, in response to a complaint, agents from the Enforcement Bureau's New Orleans Office (New Orleans Office) took field strength measurements of Station WNLA-AM's transmissions from approximately the same location at 5:08 p.m., 6:30 p.m., and 7:05 p.m., local

1 47 U.S.C. § 303(q); 47 C.F.R. §§ 17.48, 17.51, 73.1745.

2 Station WNLA-AM operates at night pursuant to Post-Sunset Authority. In the month of November, Station WNLA-AM must reduce power to 70 watts at 5:00 p.m. (Central Standard Time (CST)), 36 watts at 5:30 p.m. (CST), and 26 watts at 6:00 p.m. (CST). See Revised Parameter for Operation under Post-Sunset Authority for Facility ID number 59971, dated February 28, 2007.

time. The agents observed no change in field strength at those times. The agents also observed that the lights on the Antenna Structure were not exhibited after sunset.<sup>3</sup>

3. On November 8, 2011, agents from the New Orleans Office measured the field strength of Station WNLA-AM's transmissions before and after sunset from the same location used the previous night and observed no change in field strength.<sup>4</sup> The agents again observed that the lights on the Antenna Structure were not exhibited after sunset.<sup>5</sup>

4. On November 9, 2011, an agent from the New Orleans Office determined that Debut Broadcasting had not contacted the FAA and that a Notice to Airmen (NOTAM) regarding the Antenna Structure's light outage had not been issued.<sup>6</sup> That same day, agents from the New Orleans Office inspected Station WNLA-AM's main studio. During the inspection, station personnel admitted to the agents that they knew the lights on the Antenna Structure were out. The agents also measured the field strength of the Station's transmissions with the transmitter in daytime and nighttime modes from the same location as the previous measurements on November 7 and 8, 2011. The measured field strength of Station WNLA-AM's transmissions on November 7 and 8, 2011 were approximately the same value as the field strength measurement taken when the transmitter was in daytime mode, and more than three times the value of nighttime mode, thus indicating that Station WNLA-AM was operating overpower at night.

### III. DISCUSSION

5. 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 order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>7</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>8</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>9</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>10</sup> The Commission may also assess a forfeiture for

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<sup>3</sup> Local sunset was 5:06 p.m. on November 7, 2011.

<sup>4</sup> Agents monitored the Station between 4:30 p.m. and 5:30 p.m., local time.

<sup>5</sup> Local sunset was 5:06 p.m. on November 8, 2011.

<sup>6</sup> A NOTAM was issued by the FAA on November 9, 2011 at the agent's request.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</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>10</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).

violations that are merely repeated, and not willful.<sup>11</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>12</sup>

**A. Failure to Exhibit Required Obstruction Lighting on the Antenna Structure and to Notify the FAA of a Lighting Outage**

6. Section 303(q) of the Act states that antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission.<sup>13</sup> Section 17.51(a) of the Rules requires all red obstruction lighting to be exhibited from sunset to sunrise unless otherwise specified.<sup>14</sup> Section 17.48 of the Rules requires antenna structure owners to notify the FAA immediately of any known extinguishment of any top steady burning light or any flashing obstruction light, regardless of its position, not corrected within 30 minutes.<sup>15</sup> The Antenna Structure is 97.5 meters above ground in overall height and, thus, is required to be painted and lit.<sup>16</sup> On November 7 and 8, 2011, agents from the New Orleans Office observed that no lighting on the Antenna Structure was exhibited after sunset. During the inspection on November 9, 2011, station personnel admitted to the agents that they were aware of the lighting outage. On November 9, 2011, an agent confirmed that Debut Broadcasting had not notified the FAA of this outage. Therefore, based on the evidence before us, we find that Debut Broadcasting apparently willfully and repeatedly violated Section 303(q) of the Act, and Sections 17.48 and 17.51 of the Rules by failing to exhibit required red obstruction lighting on the Antenna Structure after sunset and failing to notify the FAA immediately of a known prolonged outage.

**B. Failure to Operate with Authorized Power Limitations**

7. Section 73.1745(a) of the Rules requires that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license.<sup>17</sup> Station WNLA-AM is authorized to operate with 500 watts during the day and increasingly reduced power at night.<sup>18</sup> On November 7 and 8, 2011, agents from the New Orleans Office monitored Station WNLA-AM and observed no change in the measured field strength, indicating that Station WNLA-AM was operating with its daytime power of 500 watts at night. Based on the evidence before us, we find that Debut Broadcasting apparently willfully and repeatedly violated Section 73.1745 of the Rules by failing to operate within authorized power limits.

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<sup>11</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>12</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>13</sup> 47 U.S.C. § 303(q).

<sup>14</sup> 47 C.F.R. § 17.51(a).

<sup>15</sup> 47 C.F.R. § 17.48.

<sup>16</sup> See Antenna Structure Registration database for antenna structure number 1042309. See also 47 C.F.R. § 17.21 (requiring antenna structures more than 60.96 meters in height to be painted and lighted).

<sup>17</sup> 47 C.F.R. § 73.1745(a).

<sup>18</sup> See *supra* note 2.

### C. Proposed Forfeiture Amount and Reporting Requirement

8. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to comply with antenna structure prescribed lighting is \$10,000, and the base forfeiture amount for exceeding power limits is \$4,000.<sup>19</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 justice may require.<sup>20</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Debut Broadcasting is apparently liable for a total forfeiture of \$14,000, consisting of the following: \$10,000 for violation of antenna structure lighting requirements and \$4,000 for overpower operations.

9. We direct Debut Broadcasting to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>21</sup> in addition to any statement it might submit pursuant to paragraph 14, signed under penalty of perjury by an officer or director of Debut Broadcasting stating that it is currently reducing Station WNLA-AM's transmitter power at night as required and that the lights on the Antenna Structure have been restored. If the lights on the Antenna Structure have not been restored, Debut Broadcasting's statement shall provide a timeframe for lighting restoration, and Debut Broadcasting shall continue to notify the FAA of the lighting outage to ensure an active NOTAM is in place. This statement must be provided to the New Orleans Office at the address listed in paragraph 12 within thirty (30) calendar days of the release date of this NAL.

### IV. ORDERING CLAUSES

10. 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, Debut Broadcasting Mississippi, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violations of Section 303(q) of the Act and Sections 17.48, 17.51, and 73.1745 of the Commission's rules.<sup>22</sup>

11. **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, Debut Broadcasting Mississippi, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that Debut Broadcasting Mississippi, Inc. **SHALL SUBMIT** a statement as described *supra* in paragraph 9 to the New Orleans Office 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, New Orleans Office, 2424 Edenborn Avenue, Suite 460, Metairie, LA 70001. Debut Broadcasting Mississippi, Inc. shall also e-mail the written statement to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

<sup>19</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.

<sup>20</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>21</sup> 47 C.F.R. § 1.16.

<sup>22</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 17.48, 17.51, 73.1745.

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments 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. 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>23</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](mailto:ARINQUIRIES@fcc.gov). Debut Broadcasting Mississippi, Inc. will also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

14. 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.<sup>24</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Avenue, Suite 460, Metairie, LA 70001, and include the NAL/Acct. No. referenced in the caption. Debut Broadcasting Mississippi, Inc. also shall email the written response to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

15. 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.

16. **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 Debut Broadcasting Mississippi, Inc. at 1101 Cherry Avenue, Suite B, Nashville, TN 32703.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gernon  
District Director  
New Orleans Office  
South Central Region  
Enforcement Bureau

<sup>23</sup> See 47 C.F.R. § 1.1914.

<sup>24</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).