

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

In the Matter of)	
)	
Fellowshipworld, Inc.)	File No.: EB-FIELDNER-12-00004958
)	NAL/Acct. No.: 201332400003
Licensee of Station WFWO,)	FRN: 0020533394
Medina, New York)	Facility ID No.: 172262
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 17, 2013

Released: July 17, 2013

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Fellowshipworld, Inc. (Fellowshipworld), licensee of noncommercial educational FM Station WFWO in Medina, New York (Station WFWO or the Station), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 73.1350(a) of the Commission’s rules (Rules),² by failing to operate the Station in accordance with its authorization. We conclude that Fellowshipworld is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. Pursuant to its license, Station WFWO is authorized to operate its transmitter on frequency 89.7 MHz from Presbyterian Road in Knowelsville, New York, at coordinates 43° 14’ 33” north latitude and 78° 18’ 27” west longitude.³ On the morning of October 18, 2012, in response to a complaint, an agent from the Enforcement Bureau’s Philadelphia Office (Philadelphia Office) used radio direction finding techniques to determine if the Station’s transmitter was operating from its authorized location, and the agent determined that it was not. The agent found that the transmitter was operating, instead, from the Fellowship Christian Center, located at 1420 Main Street in Buffalo, New York, which is 36 miles from the location authorized in its license. The agent also measured the field strength of the signal on 89.7 MHz to determine if the transmitter was otherwise authorized to operate under Part 15 of the Rules,⁴ and confirmed that it exceeded the maximum permitted level of 250 μV/m at 3 meters for non-licensed devices and, therefore, required a license to operate. A review of the FCC database revealed that there was no license to operate the Station on 89.7 MHz in Buffalo. In the evening of October 18, 2012, the agent also determined that no station was operating on 89.7 MHz from the transmitter site authorized in the Station WFWO authorization, which further confirmed that the Station’s transmitter had been moved.

¹ 47 U.S.C. § 301.
² 47 C.F.R. § 73.1350(a).
³ See BLED-20120727AFJ.
⁴ 47 C.F.R. Part 15.

3. On October 23, 2012, after several unsuccessful attempts to reach a Fellowship representative, the agent eventually received a telephone call from John Young, the President of Fellowshipworld. Mr. Young stated that, on October 13, 2012, Fellowshipworld ceased operating Station WFWO from its authorized location so that the property owner could remove some trees around the antenna. Mr. Young also reported that he was operating a one watt low-powered transmitter on 89.7 MHz at 1420 Main Street in Buffalo. The agent informed Mr. Young that he needed to cease operating the Station's transmitter from Buffalo, because the Station exceeded the maximum permissible power level for operation without a license and that the Station's authorization required operation of the transmitter in Knowelsville. During the call, Mr. Young agreed to cease operating the transmitter from Buffalo. To ensure that there was no misunderstanding about the directive, the Philadelphia Office, on November 1, 2012, issued Fellowshipworld a Notice of Unlicensed Operation (NOUO), warning the licensee of the violation and the possibility that a monetary forfeiture might be imposed; the NOUO also ordered the licensee to cease operation of the transmitter from the unauthorized location.⁵

4. On November 5, 2012, the Philadelphia Office received information alleging that Station WFWO was again operating in the Buffalo, New York area.⁶ On November 15, 2012, the agent used radio direction finding techniques to determine if the Station was operating on 89.7 MHz from 1420 Main Street in Buffalo, and confirmed that it was.⁷ Later that day, the agent conducted a station inspection at 1420 Main Street while Mr. Young was present. During the inspection, Mr. Young claimed that he was unaware that the Station was operational and alleged that his children must have turned on the transmitter at 1420 Main Street. Mr. Young immediately ceased operation of the Station. Mr. Young also informed the agent that he had not yet returned the Station to service at the authorized transmitter location in Knowelsville. The agent later learned that Fellowshipworld filed a request for special temporary authority to remain silent, which the Media Bureau granted on April 10, 2013.⁸

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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so

⁵ *Fellowshipworld, Inc.*, Notice of Unlicensed Operation (Nov. 1, 2012) (on file in EB-FIELDNER-12-00004958).

⁶ E-mail from the director of engineering for a licensed station in Buffalo, New York (Nov. 5, 2012) (on file in EB-FIELDNER-12-00004958).

⁷ The agent listened to the Station's broadcast and heard the Station identify itself as "Totally Gospel" and "Powered by Fellowshipworld." The agent measured the field strength of the signal on 89.7 MHz and found that it exceeded the maximum permitted level of 250 $\mu\text{V}/\text{m}$ at 3 meters for non-licensed devices and, therefore, required a license to operate.

⁸ See Request for Special Temporary Authority to Remain Silent, BLSTA-20130212AAB (granted April 10, 2013).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ 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 (continued....)

interpreted the term in the Section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

A. Station Operation at an Unauthorized Location

6. The evidence in this case establishes that Fellowshipworld violated Section 301 of the Act and Section 73.1350(a) of the Rules. Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹⁵ Section 73.1350(a) of the Rules state that each licensee is responsible for maintaining and operating its broadcast station in accordance with the terms of the station authorization.¹⁶ Based on the Commission’s records, the license for Station WFWO authorizes a transmitter location on specific coordinates on Presbyterian Road in Knowelsville, New York. However, on October 18, 2012, an FCC agent determined (in response to a complaint) that Fellowshipworld was operating the Station’s transmitter from a different location—i.e., at 1420 Main Street in Buffalo, New York, which is 36 miles from the authorized location. Notwithstanding a verbal and written warning to Fellowshipworld that it must cease operating the transmitter from the unauthorized location, an agent confirmed (in response to another complaint) that Fellowship, again, on November 15, 2012, resumed operating the transmitter from the same unauthorized location. Based on the evidence before us, we find that Fellowshipworld apparently willfully and repeatedly violated Section 301 of the Act and Section 73.1350(a) of the Rules by operating Station WFWO’s transmitter from an unauthorized location.

B. Proposed Amount

7. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operating at an unauthorized location is \$4,000.¹⁷ 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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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 . . .”).

¹² See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁴ 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.

¹⁵ 47 U.S.C. § 301.

¹⁶ 47 C.F.R. § 73.1350(a).

¹⁷ *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.¹⁸ In doing so, we find that the violation here warrants a proposed forfeiture above the base amount. The fact that Fellowshipworld continued to operate the Station's transmitter from an unauthorized location after being put on notice (i.e., a verbal warning and issuance of a NOUO) that such operation contravened the Act and the Rules—and after promising to cease operating the transmitter from the unauthorized location—demonstrates a deliberate disregard for the Commission's requirements.¹⁹ In addition, we view the misconduct in this case to be egregious because Fellowshipworld moved the location of its transmitter more than 30 miles from its authorized location to a significantly more populous area (i.e., from Knowelsville to Buffalo, New York), affording Fellowshipworld a significantly larger listening audience while potentially causing economic or competitive harm to radio broadcast stations that have Buffalo as their community of license.²⁰ Thus, we find that an upward adjustment of \$4,000 in the forfeiture amount is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Fellowshipworld is apparently liable for a forfeiture in the amount of \$8,000.

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, Fellowshipworld, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 301 of the Act and Section 73.1350(a) of the Rules.²¹

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, Fellowshipworld, 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. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Fellowshipworld shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² 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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ See, e.g., *Pierre Nixon Jean*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6331 (Enf. Bur. 2012) (proposing upward adjustment for engaging in unlicensed operation after being put on notice by FCC agent that unlicensed operation violated the Act and Rules), *aff'd*, Forfeiture Order, 28 FCC Rcd 1849 (Enf. Bur. 2013).

²⁰ Station WFWO's community of license is Medina, New York. Medina has a reported population of 6,060 in 2011. See City-Data.com, <http://www.city-data.com/city/Medina-New-York.html> (last visited May 24, 2013). In comparison, the reported population for the City of Buffalo was 261,025 in 2011. See United States Census Bureau, State and County QuickFacts page, <http://quickfacts.census.gov/qfd/states/36/3611000.html> (last visited May 24, 2013).

²¹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1350(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@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 1.16 and 1.80(f)(3) of the Rules.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. Fellowshipworld, Inc. also shall e-mail the written response to NER-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 principles (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.

²³ See 47 C.F.R. § 1.1914.

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Fellowshipworld, Inc. at 1420 Main Street, Buffalo, New York 14209.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau