

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

In the Matter of
Steckline Communications, Inc.
Licensee of Station KQAM
Wichita, Kansas
File No.: EB-FIELDSCR-12-00005158
NAL/Acct. No.: 201432560002
FRN: 0009951286
Facility ID: 61362

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: October 23, 2013

Released: October 24, 2013

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Steckline Communications, Inc. (Steckline), licensee of AM Station KQAM (Station), in Wichita, Kansas, apparently willfully and repeatedly violated Sections 73.62, 73.1560(a), 73.1745(a), and 73.3526 of the Commission's rules (Rules) by failing to maintain required directional patterns within prescribed parameters, operate within authorized power limits, and maintain and make available a complete public inspection file. We conclude that Steckline is apparently liable for a forfeiture in the amount of twenty one thousand dollars (\$21,000). In addition, we direct Steckline to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that it is operating its Station as authorized.

II. BACKGROUND

2. Station KQAM is authorized to operate with 1081 watts at night and 5400 watts during the day. On October 22, 2012, in response to an anonymous complaint of overpower operations, an agent from the Kansas City Office, accompanied by Steckline's owner and station manager, inspected the main studio and transmitter site of Station KQAM in Wichita, Kansas. During the inspection, the agent observed that when set to nighttime mode, Station KQAM's transmitter operated with 1682 watts, or 155 percent of authorized nighttime power.

3. In addition, when testing the Station's transmitters in daytime and nighttime modes, the agent observed that some of the sample current ratios of its antenna for both modes of operation deviated by more than five percent from authorized values. At no point during the inspection was Station KQAM's management able to bring Station KQAM's directional parameters into tolerance for the nighttime setting. Station KQAM relied on automated switching and monitoring equipment for its transmitting system and did not have an operator on duty to make adjustments to the transmitting systems. However, no alarms occurred during the inspection when the transmitter power and directional parameters were out of tolerance. Measurements taken at Station KQAM's monitoring points on September 26, 2012 by a consulting group hired by Steckline showed one reading in excess of authorized limits. Notwithstanding the consultant's

1 47 C.F.R. §§ 73.62, 73.1560(a), 73.1745(a), 73.3526.

2 See License File No. BZ-20091223AOJ.

report, there was no evidence that Steckline made any corrections to its directional parameters or rechecked its monitoring points.

4. Also during that inspection, the agent from the Kansas City Office asked to inspect Station KQAM's public inspection file. The agent observed that none of the documents which the Station called "issues programs lists" contained any information regarding the programs aired to address the listed community issues and that the Station had not filed any "issues programs lists" at all for the 3rd quarter of 2012.

5. On November 8, 2012, the Kansas City Office issued a Notice of Violation (NOV) to Steckline, regarding, among other things, the Station's overpower operations, operation with incorrect directional pattern and parameters, and public inspection file violations.³ On November 27, 2012, Steckline responded to the NOV and did not deny any of the noted violations.⁴ Steckline claimed that its antenna monitor was malfunctioning and that it had not read the September 26, 2012 consultant's testing results until October 22, 2012.⁵ Steckline stated that it sent in the antenna monitor for repair after the inspection.⁶ Steckline also noted that its engineer resigned in May 2012 and that there had been no regular maintenance of the Station's equipment since then.⁷ Steckline did not address why its transmitter was set to operate overpower during nighttime mode. Finally, Steckline stated that it was unaware of the requirement to include lists of the programs aired, as well as the dates and times associated with those programs, in its issues programs lists and that it had added such information to the current and previous issues programs lists.⁸

III. DISCUSSION

6. 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

³ *Steckline Communications, Inc.*, Notice of Violation, V201332560005 (Enf. Bur. Nov. 8, 2012)

⁴ Letter from Greg Steckline, President, Mid-America Network, to Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau, at 3 (Nov. 27, 2012).

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.* at 3. Steckline states that it hired a contract engineer, who inspected the station and said it was compliant with FCC requirements. *Id.*

⁸ *Id.* at 2.

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 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").

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. Failure to Operate within the Parameters of the Licenses

7. 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.”¹⁵

i. Operation with more than authorized power

8. Section 73.1560(a) of the Rules states that “the antenna input power of an AM station . . . must be maintained as near as is practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power.”¹⁶

9. As noted earlier, Station KQAM is authorized to operate only with 1081 watts at night. On October 22, 2012, an agent from the Kansas City Office observed that in nighttime mode Station KQAM was set to operate with 1682 watts or 155 percent of authorized nighttime power. In response to the NOV, Steckline did not dispute that its transmitter was set to operate overpower at night¹⁷ and failed to address this violation in any way. Given its transmitter’s settings, Station KQAM was incapable of operating with authorized power at night. Thus, based on the evidence before us, we find that Steckline apparently willfully and repeatedly violated Sections 73.1560(a) and 73.1745(a) of the Rules by operating Station KQAM with more than authorized power at night.

ii. Failure to maintain directional parameters within prescribed limits

10. Section 73.62 of the Rules states that “(a) each AM station operating a directional antenna must maintain the relative amplitudes of the antenna currents, as indicated by the antenna monitor, within 5% of the values specified on the instrument of authorization. Directional antenna relative phases must be maintained within 3 degrees of the values specified . . . (c) In the event of minor variations of the directional antenna operating parameters from the tolerances specified in paragraph (a) of this section, the following procedures will apply . . . (3) If any monitoring point exceeds its specified limit, the licensee must either

¹² See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (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, para. 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, para. 9.

¹⁵ 47 C.F.R. § 73.1745(a).

¹⁶ 47 C.F.R. § 73.1560(a).

¹⁷ Specifically, under the transmitter’s settings, if Station KQAM’s transmitter system automatically switched to nighttime mode at night, or if the Station was manually switched to nighttime mode at night, Station KQAM would have operated at 155 percent of authorized nighttime power. If Station KQAM simply failed to switch to nighttime power, it would have operated with full daytime power at night, or approximately 490 percent of authorized nighttime power.

terminate operation within three hours or reduce power . . . in order to eliminate any possibility of interference or excessive radiation in any direction.”¹⁸

11. At least one measurement taken at Station KQAM’s monitoring points on September 26, 2012 by Steckline’s hired consultant exceeded authorized levels and indicated a possible variance in the directional antenna operating parameters, but Steckline neither terminated operations, reduced power, or took any corrective measures. On October 22, 2012, an agent from the Kansas City Office observed that some of the sample current ratios for Station KQAM’s directional antenna for both day and nighttime modes of operation deviated by more than five percent from authorized values. During the inspection, Steckline was unable to correct the antenna’s directional parameters when set in nighttime mode.

12. In response to the NOV, Steckline did not deny that its antenna’s directional parameters were not within authorized levels, but claimed its antenna monitor was malfunctioning, and that it had not read the September 26, 2012 testing results until October 22, 2012. Steckline’s ignorance of the testing results and its malfunctioning equipment, however, does not relieve it of its responsibility to ensure that its Station operates consistent with the conditions of its station authorization. Thus, we conclude that the parameters for its directional antenna were not within authorized levels at least between September 26, 2012, and October 22, 2012. Based on the evidence before us, we find that Steckline apparently willfully and repeatedly violated Sections 73.62 and 73.1745(a) of the Rules by failing to maintain the directional parameters of its antenna within authorized levels.

B. Failure to Maintain and Make Available a Complete Public Inspection File

13. Section 73.3526(a)(2) of the Rules states that “[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing the material” set forth in that section.¹⁹ Section 73.3526(e)(12) of the Rules states that commercial AM and FM broadcast stations must retain in the file “every three months a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station’s next license renewal application.”²⁰ The public inspection file must be maintained at the main studio of the station,²¹ and must be available for public inspection at any time during regular business hours.²²

14. On October 22, 2012, an agent from the Kansas City Office asked to inspect Station KQAM’s public inspection file during regular business hours. The public inspection file provided contained documents that the Station called “issues programs lists”—except for the third quarter of 2012— but these documents did not contain any lists or information regarding the programs aired to address community issues. The “issues programs lists” only contained lists of community issues, as opposed to lists of the programming the Station had aired on those issues. In response to the NOV, Steckline stated that it did not realize that this missing information was required to be included in its issues programs lists and that it has since supplemented those lists. Based on the evidence before us, we find that Steckline apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a complete public inspection file for Station KQAM and apparently willfully violated Section 73.3526 by failing to make available a complete public inspection file for Station KQAM.

¹⁸ 47 C.F.R. § 73.62.

¹⁹ 47 C.F.R. § 73.3526(a)(2).

²⁰ 47 C.F.R. § 73.3526(e)(12).

²¹ 47 C.F.R. § 73.3526(b).

²² 47 C.F.R. § 73.3526(c).

C. Proposed Forfeiture and Reporting Requirement

15. 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, for failure to maintain directional pattern within prescribed parameters is \$7,000, and for violation of public file rules is \$10,000.²³ 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.²⁴ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Steckline is apparently liable for a total forfeiture in the amount of \$21,000, consisting of the following: \$4,000 for the overpower operation, \$7,000 for failure to maintain the directional parameters within prescribed limits, and \$10,000 for failure to maintain and make available a complete public inspection file.

16. We further order Steckline to submit a written statement, pursuant to Section 1.16 of the Rules,²⁵ signed under penalty of perjury by an officer or director of Steckline, stating that it is operating its Station within authorized power levels and directional parameters. This statement must be provided to the Kansas City Office at the address listed in paragraph 19 within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Steckline Communications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty one thousand dollars (\$21,000) for violations of Sections 73.62, 73.1560(a), 73.1745(a), and 73.3526 of the Rules.²⁶

18. **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, Steckline Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. **IT IS FURTHER ORDERED** that Steckline Communications, Inc. **SHALL SUBMIT** a written statement, as described in paragraph 1616, 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, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, MO 64086-4711. Steckline Communications, Inc. shall also e-mail the written statement to SCR-Response@fcc.gov.

20. 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. Steckline Communications, Inc. shall also send electronic notification on the date said payment is made to SCR-

²³ *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.

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ 47 C.F.R. § 1.16.

²⁶ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.62, 73.1560(a), 73.1745(a), 73.3526.

Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ 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 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.

21. 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. 20554.²⁸ 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.

22. 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.²⁹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 N.E. Colbern Rd., 2nd Floor, Lees Summit, MO 64086-4711, and include the NAL/Acct. No. referenced in the caption. Steckline Communications, Inc. also shall email the written response to SCR-Response@fcc.gov.

23. 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.

24. **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 First Class Mail to

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 C.F.R. § 1.1914.

²⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).

Steckline Communications, Inc. at 1632 South Maize Road, Wichita, KS 67209 and 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
Kansas City Office
South Central Region
Enforcement Bureau