

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

In the Matter of)
Four Corners Broadcasting, LLC)
Licensee of:)
Station KIQX(FM) and Station WHB352,) File No.: EB-FIELDWR-12-00004043
Durango, Colorado;) Facility ID No.: 22174
Station KRSJ(FM) and Station WLD73,) File No.: EB-FIELDWR-12-00004038
Durango, Colorado;) Facility ID No.: 22036
Station KIUP(AM) and Station WPNG746) File No.: EB-FIELDWR-12-00004044
Durango, Colorado) Facility ID No.: 22039
NAL/Acct. No.: 201432800001
FRN: 0003779816

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: October 24, 2013

Released: October 25, 2013

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Four Corners Broadcasting, LLC (Four Corners), licensee of Station KIQX(FM) and its associated studio-transmitter link (STL) Station WHB352 operating on frequency 948.5 MHz, Station KRSJ(FM) and its associated STL Station WLD73 operating on frequency 947.0 MHz, and Station KIUP(AM) and its associated STL Station WPNG746 operating on frequency 951.875 MHz, in Durango, Colorado, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 1.903(a) of the Commission’s rules (Rules),² by operating the three STL Stations from a location not authorized by their respective FCC licenses. We conclude that Four Corners is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000). In addition, we direct Four Corners to submit, no later than thirty (30) calendar days from the date of this NAL, a statement, signed under penalty of perjury, stating that Four Corners is now in compliance with the Rules and its licenses.

II. BACKGROUND

2. On August 24, 2012, an agent from the Enforcement Bureau’s Denver Office (Denver Office) conducted an inspection of the STL Stations. The agent’s inspection found that all three STL Stations were installed and operational at the Four Corners main studio location of 190 Turner Drive, Suite G, Durango, Colorado (Turner Drive Location), which is not the authorized location for the STL Stations.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

According to their authorizations, the licensed transmitter location for each of the STL Stations is 185 Suttle Drive, Durango, Colorado (Suttle Drive Location), a distance of approximately 0.6 miles from the Turner Drive main studio site. During a previous inspection, in 2010, the Four Corners Director of Engineering stated to a Denver agent that the three STL Stations had relocated from the Suttle Drive Location to the Turner Drive Location in 2007.

3. On September 27, 2012, the Denver Office issued the licensee separate Notices of Violation (NOV) for each of the STL Stations.³ In its Consolidated NOV Response,⁴ Four Corners did not deny the violations, but asserted that “remedial actions . . . were completed as of October 29, 2012.”⁵ In this respect, Four Corners stated that it “filed modification applications seeking coordinate and address corrections for the above-captioned STL licenses”; and, as part of its response, Four Corners submitted copies of the pending applications.⁶ However, in reviewing the Commission’s Universal Licensing System database, it appears that all three applications were “returned” to Four Corners by the Commission on February 20, 2013, and subsequently, on May 14, 2013, letters dismissing the applications were also sent to Four Corners.⁷ On July 23, 2013, a Denver Office agent conducted a follow-up inspection of the STL Stations and found that the stations continued to be in operation at the unauthorized Turner Drive Location.

III. DISCUSSION

4. Section 503(b) of the 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not

³ See *Four Corners Broadcasting*, Notice of Violation, V201232800069 (Sept. 27, 2012); *Four Corners Broadcasting*, Notice of Violation, V201232800070 (Sept. 27, 2012); *Four Corners Broadcasting*, Notice of Violation, V201232800071 (Sept. 27, 2012).

⁴ See Response to Notice of Violation of Four Corners Broadcasting, LLC (Nov. 1, 2012) (on file in EB-FIELDWR-12-00004043, EB-FIELDWR-12-00004038, and EB-FIELDWR-12-00004044) (Consolidated NOV Response).

⁵ *Id.* at 2.

⁶ *Id.* at 2 & Exhibits A–C.

⁷ See Station WHB352, File No. 0005469361 (filed Oct. 29, 2012; returned Feb. 20, 2013; dismissed May 14, 2013); Station WLD73, File No. 0005469286 (filed Oct. 29, 2012; returned Feb. 20, 2013; dismissed May 14, 2013); Station WPNG746, File No. 0005469317 (filed Oct. 29, 2012; returned Feb. 20, 2013; dismissed May 14, 2013).

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ 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 . . .”).

¹¹ 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).

willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

A. Operation at an Unauthorized Location

5. The evidence in this case establishes that Four Corners violated Section 301 of the Act and Section 1.903(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.¹⁴ Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission.¹⁵ At the time of the August 24, 2012, inspection by a Denver Office agent, the three STL Stations were found operating from a location approximately 0.6 miles from their authorized location. Further, the agent determined that the STL Stations had been operating at the unauthorized location since August 2007, which Four Corners did not dispute in its Consolidated NOV Response.¹⁶ In addition, while Four Corners filed applications to remedy the violations after receiving the Notices of Violation, those applications have all been “returned” and “dismissed” by the Commission and, therefore, not granted. Finally, the Denver Office’s July 23, 2013, inspection shows that Four Corners’ violation continued even after the applications were returned and dismissed, as Four Corners continued to operate the STL Stations at the unauthorized location. Based on the evidence before us, we find that Four Corners apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating each of the three STL Stations from a location not authorized on their respective licenses.

B. Proposed Forfeiture and Reporting Requirement

6. 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 justice may require.¹⁸ We find no basis for a downward adjustment, but conclude that an upward adjustment is warranted because of the deliberate nature of the violations and the long duration of Four Corners’ operation of the three STL Stations at a location not authorized by their respective licenses.¹⁹ Accordingly, we propose a forfeiture amount of \$4,000 for each of the three STL Stations operating at an unauthorized

¹² 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).

¹³ 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.

¹⁴ 47 U.S.C. § 301.

¹⁵ 47 C.F.R. § 1.903(a).

¹⁶ See Consolidated NOV Response, *supra* note 4.

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.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ See 47 C.F.R. § 1.80(b) (establishing “repeated or continuous violation” as an upward adjustment factor).

location for a total of \$12,000, and we apply an upward adjustment of \$13,000 for Four Corners' deliberate and continued violation of Section 301 of the Act and Section 1.903(a) of the Rules.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Four Corners is apparently liable for a total forfeiture in the amount of \$25,000.

7. We further order Four Corners to submit a written statement, pursuant to Section 1.16 of the Rules,²¹ signed under penalty of perjury by an officer or director of Four Corners, stating that the STL Stations are in compliance with Section 1.903(a) of the Rules²² and their respective licenses, and detailing the specific actions taken by Four Corners to come into compliance. This statement must be provided to the Denver Office at the address listed in paragraph 10, below, within thirty (30) calendar days of the release date of this NAL.

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, Four Corners Broadcasting, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 301 of the Act and Section 1.903(a) of the Rules.²³

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, Four Corners Broadcasting, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. **IT IS FURTHER ORDERED** that, pursuant to 1.80 of the Commission's rules, Four Corners Broadcasting, LLC, **SHALL SUBMIT** a written statement, as described in paragraph 7, 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, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado, 80226. Four Corners shall also e-mail the written statement to WR-Response@fcc.gov.

11. 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. Four Corners shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁴ 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

²⁰ See *Remel, Inc. and Its Corporate Parent Thermal Fisher Scientific, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 8778 (2013) (upward adjustment appropriate for multi-year violations of Section 301 of the Act and Section 1.903(a) of the Rules). See also *Union Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 7061 (Enf. Bur. 2013) (upward adjustment appropriate when a two year failure to correct a known antenna structure lighting violation demonstrates a deliberate disregard for the Rules).

²¹ 47 C.F.R. § 1.16.

²² 47 C.F.R. § 1.903(a).

²³ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903(a).

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

12. 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. 20554.²⁵ 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.

13. 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.²⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado, 80226, and include the NAL/Acct. No. referenced in the caption. Four Corners Broadcasting, LLC, also shall e-mail the written response to WR-Response@fcc.gov.

14. 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.

²⁵ See 47 C.F.R. § 1.1914.

²⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **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 Four Corners Broadcasting, LLC, at 190 Turner Drive, Suite G, Durango, Colorado 81303, and to its counsel, Frank R. Jazzo, Esquire, at Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver Office
Western Region
Enforcement Bureau