

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

In the Matter of	)	
	)	
Cochise Broadcasting LLC	)	File No.: EB-FIELDSCR-13-00010408
	)	NAL/Acct. No.: 201432560004
Licensee of AM Station KOMJ	)	FRN: 0005641998
Omaha, NE	)	Facility ID No.: 74104
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: February 20, 2014**

**Released: February 20, 2014**

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 Cochise Broadcasting LLC (Cochise), licensee of AM Station KOMJ, in Omaha, Nebraska (the Station), apparently willfully and repeatedly violated Sections 73.1125(a) and 73.3526(c) of the Commission's rules (Rules),<sup>1</sup> by failing to maintain and staff a main studio, and make available the Station's public inspection file. We conclude that Cochise is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000). In addition, we direct Cochise to submit, no later than thirty (30) calendar days from the date of this NAL, a statement, signed under penalty of perjury, that it has established a fully-staffed main studio for the Station and that its public inspection file is available at that location.

**II. BACKGROUND**

2. On August 1, 2013, an agent with the Enforcement Bureau's Kansas City Office (Kansas City Office) attempted to inspect the Station, but was unable to locate the address of the main studio. The agent was also unable to contact anyone responsible for the Station. The agent called the local telephone number, 402-553-1490, listed on the Station's website, however, calls to that number were transferred to Arizona and were answered by voice mail. The agent left a message, but did not receive a return call. The agent was unable to find any other local telephone number for the Station. The agent also left a message on the voicemail for one of Cochise's owners, who is located in Wyoming, but did not receive a return call.

3. On August 5, 2013, an agent with the Kansas City Office telephoned Cochise's attorney, who stated the Station's main studio was located at the Journal Broadcast Group's (Journal) main studio for Station KMTV-TV at 10714 Mockingbird Drive, Omaha, Nebraska (Mockingbird Drive).<sup>2</sup> That same day, the agent called the Journal's main studio at Mockingbird Drive, but was told by a receptionist that Station KOMJ was not located at Mockingbird Drive and did not have a public inspection file on the premises. On August 6, 2013, the station manager for Station KMTV-TV stated that the Station might have some files at its main studio, but that he would have to research the matter.

<sup>1</sup> 47 C.F.R. §§ 73.1125(a), 73.3526(c).

<sup>2</sup> On August 6, 2013, Cochise's attorney confirmed that 402-553-1490 was Station KOMJ's telephone number and also confirmed Cochise's owner's telephone number.

4. On August 14, 2013, the Kansas City Office issued a Notice of Violation to Cochise for failing to maintain a main studio and public inspection file.<sup>3</sup> On September 13, 2013, Cochise responded that the Station's telephone is answered in Arizona, where the Station's programming is produced.<sup>4</sup> Cochise stated that because the agent did not identify himself as a Commission representative, the staff treated his call as a "listener call without any special urgency."<sup>5</sup> Cochise reiterated that its main studio and public inspection file are located at Mockingbird Drive.<sup>6</sup>

5. On September 17, 2013, the Kansas City Office issued Letters of Inquiry (*LOI*) to Cochise and Journal regarding the Station's main studio and public inspection file.<sup>7</sup> On October 21, 2013, Cochise affirmed that the Station's main studio was located at Mockingbird Drive.<sup>8</sup> Cochise stated that per an agreement effective March 27, 2007, between Omaha Dirt & Wire LLC, a company co-owned with Cochise, and Journal (March 27, 2007 Agreement), it rented "studio space, office space and reception service for KOMJ."<sup>9</sup> Cochise claimed the rental agreement was in place on August 1, 2013 and provided a check recently cashed by Journal, but stated it may look for a new main studio location.<sup>10</sup> Cochise stated that through the agreement it had "available to it any studio space necessary or desirable for the necessary functions of a main studio, including the use of any of Journal's production equipment."<sup>11</sup> Cochise, however, did not identify any Cochise equipment located at Mockingbird Drive or any Cochise employees or managers working at Mockingbird Drive. Finally, Cochise stated its public inspection file is located at Mockingbird Drive and that it has so instructed Journal's receptionist.<sup>12</sup>

6. On November 5, 2013, Journal submitted its response to the *LOI*.<sup>13</sup> Journal stated that the March 27, 2007 Agreement related to facilities located at 5030 North 72<sup>nd</sup> Street, Omaha, Nebraska and

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<sup>3</sup> *Cochise Broadcasting LLC*, Notice of Violation, NOV No. V201332560032 (Aug. 14, 2013) (on file in EB-FIELDSCR-13-00010408).

<sup>4</sup> Letter from Susan A. Marshall, Counsel for Cochise Media Licenses LLC, to Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau at 2 (Sept. 13, 2013) (*NOV Response*) (on file in EB-FIELDSCR-13-00010408).

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

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau, to Susan A. Marshall, Counsel for Cochise Media Licenses, LLC (Sept. 17, 2013) (on file in EB-FIELDSCR-13-00010408); Letter from Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau, to Journal Communications Inc. (Sept. 17, 2013) (on file in EB-FIELDSCR-13-00010408).

<sup>8</sup> Letter from Susan A. Marshall, Counsel for Cochise Media Licenses LLC, to Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau at 4 (Oct. 21, 2013) (*LOI Response*) (on file in EB-FIELDSCR-13-00010408).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> Journal did not submit a timely response to the *LOI* issued September 17, 2013. The Kansas City Office again requested a response to the *LOI* on October 23, 2013. Letter from Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau, to Journal Communications, Inc. (Oct. 23, 2013). Letter from John W. Bagwell, Counsel for Journal Communications Inc., to Ronald D. Ramage, District Director, Kansas City Office, South Central Region, Enforcement Bureau (Nov. 5, 2013) (*Journal LOI Response*).

expired no later than March 26, 2008,<sup>14</sup> and that the parties did not enter into any written extension or modification of the agreement.<sup>15</sup> Journal stated, however, that Cochise has continued to pay Journal a monthly fee to locate files at Mockingbird Drive.<sup>16</sup> “Other than the certain files referenced above, Cochise did not have any equipment or specifically designated space at the Mockingbird Drive Location.”<sup>17</sup> Moreover, Journal “neither provides nor shares any EAS or other technical equipment with Cochise.”<sup>18</sup> “Journal agreed to provide reception service at the front desk of Journal’s [Mockingbird Drive] facilities in this Agreement. However, Journal does not provide and has never provided any staff or manager to Cochise and no Journal staff or managers are subject to any direction or control by Cochise.”<sup>19</sup> Finally, Journal stated that its receptionist does not recall speaking to anyone about the Station on August 5, 2013, but that any number of other Journal employees and interns may have relieved her during a break.<sup>20</sup>

### III. DISCUSSION

7. 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>21</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>22</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>23</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>24</sup> The Commission may also assess a forfeiture for

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<sup>14</sup> The copies of the March 27, 2007 agreement provided by Cochise and Journal stated that the initial term expired September 26, 2007 and only explicitly referenced 5030 North 72<sup>nd</sup> Street, Omaha, Nebraska.

<sup>15</sup> *Journal LOI Response* at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 2-3.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> 47 U.S.C. § 503(b).

<sup>22</sup> 47 U.S.C. § 312(f)(1).

<sup>23</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>24</sup> *See, e.g., 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>25</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>26</sup>

#### A. Failure to Maintain and/or Staff a Main Studio

8. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.<sup>27</sup> The Commission has interpreted Section 73.1125 (also known as the Main Studio Rule) to require the station to “equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence.”<sup>28</sup> Specifically, the Commission has found that a main studio “must, at a minimum, maintain full-time managerial and full-time staff personnel.”<sup>29</sup>

9. The evidence in this case is sufficient to establish that Cochise apparently violated Section 73.1125(a) of the Rules.<sup>30</sup> Cochise asserts that, pursuant to an agreement with Journal, the Station’s main studio is located at Mockingbird Drive. Journal, however, states that it only has an agreement with Cochise to provide receptionist services and house certain Station files at Mockingbird Drive. Journal states that no Cochise equipment or employees are located at Mockingbird Drive and that Journal does not share any equipment or employees with Cochise. Ignoring the discrepancy over whether a main studio rental agreement is in place, on August 5, 2013, no one at Mockingbird Drive was aware of any Station presence at Mockingbird Drive. Moreover, Cochise has been unable to identify any Station equipment or staff located at Mockingbird Drive, other than the purported public inspection file. In addition, Cochise’s local telephone number is forwarded to Arizona, so its only local presence in Omaha, Nebraska is the Journal receptionist at Mockingbird Drive. Cochise has not asserted that it maintains any full-time staff or managerial presence at Mockingbird Drive or any other location in Omaha. Accordingly, based on the evidence before us, we find that Cochise apparently willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain and/or fully staff a main studio for Station KOMJ.

#### B. Failure to Make Available a Public Inspection File

10. 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

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<sup>25</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>26</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>27</sup> 47 C.F.R. § 73.1125.

<sup>28</sup> *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988) (*Main Studio and Program Origination Rules*), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

<sup>29</sup> See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 & n.2 (1991) (noting that, “This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered ‘meaningful.’”), *clarified*, 7 FCC Rcd 6800 (1992) (*Jones Eastern II*). See also *Birach Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2635 (Enf. Bur. 2010).

<sup>30</sup> 47 C.F.R. § 73.1125(a).

containing the material” set forth in that section.<sup>31</sup> The public inspection file must be maintained at the main studio of the station,<sup>32</sup> and must be available for public inspection at any time during regular business hours.<sup>33</sup> On August 1, 2013, an agent from the Kansas City Office attempted to inspect the Station’s public inspection file but was unable to contact anyone from the Station to determine the location of the public inspection file. The agent called the local telephone number, which is answered by voicemail, but the call was not returned, because the agent was misidentified as a regular “listener.”<sup>34</sup> Even if the call had been returned, public inspection files must be available at any time during regular business hours, and stations may not require that a member of the public make an appointment in advance or return at another time to inspect the public inspection file.<sup>35</sup> Requiring members of the public to call a telephone number and wait several hours or days for a return call with instructions on where to request the public inspection file does not constitute making the file available during regular business hours. Moreover, on August 5, 2013, when the agent from the Kansas City Office contacted the appropriate receptionist during regular business hours to inspect the Station’s public inspection file, the receptionist was unaware of the file’s location. Based on the evidence before us, we find that Cochise apparently willfully and repeatedly violated Section 73.3526(c) of the Rules by failing to make available the Station’s public inspection file.

### C. Proposed Forfeiture and Reporting Requirement

11. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violation of the main studio rule is \$7,000 and for violation of public file rules is \$10,000.<sup>36</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>37</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Cochise is apparently liable for a total forfeiture in the amount of \$17,000.

12. We further order Cochise to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>38</sup> signed under penalty of perjury by an officer or director of Cochise, stating that it has established a fully staffed main studio for the Station. Cochise must provide the address and phone number for the main studio, and a description of the staffing and equipment installed at the main studio. Cochise must also certify that its public inspection file is located at the main studio and that it is available to the public during

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<sup>31</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>32</sup> 47 C.F.R. § 73.3526(b).

<sup>33</sup> 47 C.F.R. § 73.3526(c).

<sup>34</sup> See *supra* para. 4.

<sup>35</sup> See *CSSI Non-Profit Educational Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 3087 (Enf. Bur. 2013) (licensee apparently violated Section 73.3527 by not providing immediate access to a public inspection file upon initial request). See also *Availability of Locally Maintained Records for Inspection by Members of the Public*, Public Notice, 13 FCC Rcd 17959 (1998).

<sup>36</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>37</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>38</sup> 47 C.F.R. § 1.16.

regular business hours. This statement must be provided to the Kansas City Office at the address listed in paragraph 15 within thirty (30) calendar days of the release date of this NAL.

#### IV. ORDERING CLAUSES

13. 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, Cochise Broadcasting LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of Sections 73.1125(a) and 73.3526(c) of the Rules.<sup>39</sup>

14. **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, Cochise 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.

15. **IT IS FURTHER ORDERED** that Cochise Broadcasting LLC **SHALL SUBMIT** a written statement, as described in paragraph 12, 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 NE Colbern Rd., 2nd Floor, Lees Summit, MO 64086. Cochise shall also e-mail the written statement to SCR-Response@fcc.gov.

16. 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. Cochise shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>40</sup> 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

<sup>39</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1125(a), 73.3526(c).

<sup>40</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

17. 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.<sup>41</sup> 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.

18. 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.<sup>42</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Kansas City Office, 520 NE Colbern Rd., 2nd Floor, Lees Summit, MO 64086, and include the NAL/Acct. No. referenced in the caption. Cochise Broadcasting LLC also shall e-mail the written response to SCR-Response@fcc.gov.

19. 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.

20. **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 Cochise Broadcasting LLC at their address of record and to their counsel, Susan A. Marshall, Fletcher, Heald and Hildreth, at 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>41</sup> See 47 C.F.R. § 1.1914.

<sup>42</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).