

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

In the Matter of)
Boonville Broadcasting Company, Inc.) NAL Account No.: 201432080007
Licensee of Station WEJK(FM), Boonville,) FRN No.: 0003770237
Indiana) Facility ID No.: 6424
) File No.: EB-09-IH-1908

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 20, 2014

Released: March 20, 2014

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Boonville Broadcasting Company, Inc. (Boonville), licensee of Station WEJK(FM), Boonville, Indiana (Station), apparently willfully violated Section 73.1216 of the Commission's rules by failing to conduct a contest substantially as announced, including undue delay in concluding the contest, and by failing to fully and accurately disclose the material terms of the contest.¹ As a result, we find Boonville apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. The Commission received a complaint alleging that several radio stations licensed to South Central Communications Corporation (South Central) conducted a weekly contest entitled "Par 3 Shoot Out" (Contest) but did not conduct the Contest substantially as announced or advertised.² The Complaint alleges that at least one participant and "weekly winner" in the Contest did not receive the promised prize of a Victoria National Golf Club hat, nor was the contestant placed in a drawing to win a Lexus or other prizes as promised in the Contest's official rules.³

3. In response to the Complaint, on December 10, 2009, the Enforcement Bureau (Bureau) issued a letter of inquiry to South Central concerning these allegations.⁴ South Central filed a response on January 22, 2010. In its response, South Central acknowledges that it conducted the Contest and aired related promotional announcements over several stations.⁵

¹ See 47 C.F.R. § 73.1216.

² Complaint to Federal Communications Commission, Form 2000E, No. 09-C00136930-1 (July 16, 2009) (on file in EB-09-IH-1908) (Complaint).

³ *Id.*

⁴ Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to South Central Communications Corporation (Dec. 10, 2009) (on file in EB-09-IH-1908) (LOI).

⁵ Letter from Anne Goodwin Crump and Lee G. Petro, Fletcher, Heald & Hildreth, P.L.C., Counsel to Boonville Broadcasting Company, Inc. and to South Central Communications Corporation, File No. EB-09-IH-1908, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 22, 2010) (on file in EB-09-IH-1908) (LOI Response). We address South Central's conduct relating to the Contest for its licensed stations in a concurrent NAL also released today.

Although Station WEJK(FM) is licensed to Boonville, South Central provided programming to Station WEJK(FM) pursuant to a time brokerage agreement.⁶ Accordingly, South Central notes, its LOI Response addresses both licensees' actions respecting conduct of the contest and Station WEJK(FM).⁷

4. According to the LOI Response, the Contest was to be conducted in two phases. The first phase was intended to consist of an 18-week, online golf competition, scheduled to begin on June 26, 2008, and end on October 30, 2008.⁸ During this phase, a prize consisting of a hat from the Victoria National Golf Club was to be awarded to the contestant who achieved the best score each week.⁹ Each such weekly online winner, plus one write-in contestant, would then be eligible to participate in the second phase of the Contest, originally scheduled for early November 2008.¹⁰ In the second phase, the remaining contestants were to participate in an actual golf competition in which each "finalist" would have one shot at a par three hole.¹¹ The finalist that hit a golf ball closest to the pin would win a \$350 gift certificate to a golf store.¹² In addition, any finalist that hit a hole-in-one would be awarded a Lexus automobile.¹³ The LOI Response states that the Contest was conducted entirely online.¹⁴

5. The LOI Response further states that the online portion of the Contest was conducted from June 26, 2008, through early November 2008, and that a winner was selected each week.¹⁵ The LOI Response denies the allegation that the promised golf hats were not awarded, claiming that they were made available for pick-up by the weekly winners.¹⁶ The LOI Response acknowledges, however, that the second phase of the Contest was postponed in November 2008, initially due to inclement weather.¹⁷ The LOI Response states that after this postponement, the employee administering the Contest was terminated and then staff "simply forgot" about the Contest.¹⁸ The LOI Response claims that receiving the LOI from the Commission was a reminder of this inadvertent oversight,¹⁹ and the Contest's final phase was

⁶ The LOI Response also notes that Boonville is owned by one of South Central's principals. *See* LOI Response at 2.

⁷ LOI Response at 2. Because South Central's employees acted within the scope of the time brokerage agreement and the LOI Response expressly encompasses the actions of Station WEJK(FM), we attribute the LOI Response to both South Central and Boonville. *See infra* notes 34–35 and accompanying text.

⁸ *See* LOI Response at 3; Exhibit 2.

⁹ *See* LOI Response at 3.

¹⁰ *Id.*

¹¹ *Id.* According to the LOI Response, no one chose to enter as a write-in contestant. *Id.* at 3.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *See id.* at 2–5. The LOI Response further notes that instead of conducting the Contest through the promotions department, which was the usual practice, the Contest was conducted through the interactive sales department. *Id.* at 2–3.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 2–3, 5.

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.* at 4.

subsequently resumed.²⁰ Prior to doing so, however, the Contest rules were changed to exclude professional golfers and club pros.²¹ The LOI Response states that the rules were changed “in the interest of fairness,” although no one was actually declared ineligible as a result of this modification.²² The LOI Response also states that the second phase of the Contest was completed on January 19, 2010, and that because of the delay, additional prizes were awarded to each finalist.²³

III. DISCUSSION

6. Pursuant to Section 503(b)(1) of the Communications Act of 1934, as amended (Act), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁴ 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.²⁵ 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,²⁶ and the Commission has so interpreted the term in the Section 503(b) context.²⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁸ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²⁹ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.³⁰ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.³¹ As described in greater detail below, we conclude under this procedure that Boonville is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated failure to conduct a broadcast contest substantially as announced.

7. Under Section 73.1216 of the Commission’s rules, a broadcast licensee must conduct station-sponsored contests “substantially as announced or advertised” and must fully and

²⁰ *Id.* at 3.

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.* at 4–5. The additional prizes consisted of a \$25.00 gift certificate for a golf store and a catered lunch.

²⁴ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²⁵ 47 U.S.C. § 312(f)(1).

²⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁷ *See, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*S. Cal. Broad.*).

²⁸ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (assessing a forfeiture for a cable television operator’s repeated signal leakage).

²⁹ *S. Cal. Broad. Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision.*, 16 FCC Rcd at 1362, para. 9.

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³¹ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

accurately disclose the “material terms” of such contests.³² Material terms include, among other things, any eligibility restrictions, means of selection of winners, and the extent, nature, and value of prizes.³³ Regarding these requirements, the Commission has noted that “[t]he standards are high, for while contests are particularly susceptible to abuse, abuses can be prevented by diligent licensee attention to the planning and the conduct of contests.”³⁴

8. As an initial matter, to the extent that the LOI Response implies that the Contest is not subject to Section 73.1216 because the stations conducted the Contest entirely online,³⁵ we reject that argument. In this regard, the LOI Response states that while the stations promoted the Contest, they did not actually conduct the Contest over-the-air.³⁶ Per the LOI Response, the promotions were intended simply to encourage listeners to visit the website where the Contest could be played.³⁷ Yet the Commission has previously found just such a distinction insufficient to shield a licensee from liability, finding a violation under Section 73.1216 in a case where the licensee aired promotional announcements for a contest purportedly conducted principally via its website.³⁸

9. We note that Commission precedent limits application of the contest rule to licensees that “broadcast[] or advertise[] information about a contest [they] conduct[].”³⁹ Although South Central devised the Contest, the record establishes that Boonville not only participated in the overall conduct of the Contest, but held itself out to the public as the entity conducting the contest,⁴⁰ and as such, remains responsible. In this regard, Boonville called on listeners to visit its own website at “1071jackfm.com,” where they could then link to the Contest website.⁴¹ Similarly, the Station listed information regarding the Contest on the WEJK website under the “Contests” tab, where it states: “[a]t JACK-fm, we’re proud that we don’t do goofy

³² 47 C.F.R. § 73.1216.

³³ *Id.*, notes 1(b) and 2.

³⁴ *Honeyradio, Inc.*, Memorandum Opinion and Order, 69 FCC 2d 833, 838, para. 12 (1978) (holding licensee responsible for mistakes made during its conduct of a contest, and affirming a \$5,000 forfeiture for violation of Section 73.1216 of the rules) (quoting *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Proposed Rulemaking, 53 FCC 2d 934, 935, para. 4 (1975)). See generally *Multicultural Radio Broadcasting Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21555, 21558, para. 7 (Enf. Bur. 2007) (forfeiture paid) (*Multicultural Radio*) (citing *Honeyradio, Inc.*).

³⁵ LOI Response at 2–5.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *AMFM Broad. Licenses, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1529, 1532, para. 8 (Enf. Bur. 2009) (forfeiture paid) (finding Section 73.1216 applicable where licensee aired promotional announcements for a contest that it claimed it conducted principally via its website) (*AMFM Broad.*). See also *Clear Channel Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343, 346, para. 6 (Enf. Bur. 2012) (forfeiture paid) (finding Section 73.1216 applicable where licensee aired promotional announcements on the station for a contest that it claimed it “conducted on the Station Websites”) (*Clear Channel*).

³⁹ 47 C.F.R. § 73.1216; see, e.g., *Multicultural Radio*, 22 FCC Rcd at 21558, para. 7.

⁴⁰ See LOI Response at Exhibit 3.

⁴¹ *Id.*

contests on the air. Instead, we do them here.”⁴² Thus, we find that Boonville is a responsible licensee under the Commission’s contest rule.

10. We further note that the time brokerage arrangement between Boonville and South Central is not sufficient to shield Boonville, as the licensee of Station WEJK(FM), from responsibility in this matter. Indeed, the Commission’s policy concerning time brokerage agreements holds licensees primarily responsible for all programming aired on their stations, and for maintaining compliance with Commission rules during the life of those arrangements.⁴³ As the Commission noted at the time that it so stated, where stations choose to enter into time brokerage agreements, they must “retain control over, and responsibility for, all programming,”⁴⁴ including compliance with applicable laws and regulations.⁴⁵ Therefore, while we recognize that South Central’s employees may have devised the Contest, we nevertheless hold Boonville, as the Station’s licensee, responsible for ensuring compliance in the conduct of the Contest.⁴⁶

A. Boonville Failed to Conduct Contest Substantially as Announced or Advertised

11. We find that Boonville violated Section 73.1216 of the Commission’s rules by failing to conduct the Contest substantially as announced or advertised. First, the notification letters sent to contestants on December 30, 2009, impermissibly altered the rules of the Contest by excluding professional golfers and club pros from eligibility.⁴⁷ Although the LOI Response characterizes this as a minor change,⁴⁸ we note that Section 73.1216 defines material terms as those including any “eligibility restrictions.”⁴⁹ In prior cases, we have found contest rule violations when licensees changed the prize,⁵⁰ or altered the time or means of selecting a

⁴² *Id.*

⁴³ See *Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming*, Policy Statement, 82 FCC 2d 107, 113-114, paras. 15–17 (1980) (*Part-Time Programming Policy Statement*) (in time brokerage arrangements, focus for Commission enforcement of rules to remain on licensee, not broker) citing *The Cosmopolitan Broad. Corp.*, 59 FCC 2d 558 (1976), *recons. denied*, 61 FCC 2d 257 (1976) *rev’d on other grounds*, 581 F.2d 917 (D.C. Cir. 1978).

⁴⁴ *Part-Time Programming Policy Statement*, 82 FCC 2d at 113, para. 15. When the Commission decided to attribute certain such agreements under the ownership rules, in response to the concerns expressed by some parties that continued time brokerage would result in licensees abdicating their responsibilities as station operators, the agency chose to continue to allow cooperative arrangements between separately owned stations “as long as each licensee retains control of its station and complies with the Communications Act, the Commission’s rules and policies and the antitrust laws.” *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2787, *recon.*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, 7 FCC Rcd 6387, 6401 (1992) (“we emphasize that the licensee is ultimately responsible for all programming aired on its station, regardless of its source.”).

⁴⁵ See *Jerry Russell dba The Russell Co.*, Forfeiture Order, 22 FCC Rcd 48, 49–50, para. 6 (Enf. Bur. 2007) (where licensee held responsible for lapses and consequent rule violations of time broker) *recons. dismissed*, Memorandum Opinion and Order, 22 FCC Rcd 9065 (Enf. Bur. 2007).

⁴⁶ See *id.*

⁴⁷ LOI Response at 4.

⁴⁸ *Id.*

⁴⁹ 47 C.F.R. § 73.1216.

⁵⁰ *Multicultural Radio*, 22 FCC Rcd at 21560, para. 13 (finding station failed to conduct contest substantially as advertised by awarding only two TVs, instead of the five initially announced).

winner,⁵¹ after the contest has commenced. Likewise, changing a contest's eligibility requirements after it has begun violates the rule.⁵²

12. Secondly, we find that Boonville failed to complete the Contest within the promised timeframe. According to the Contest's rules, the 18 weekly winners were to compete in a one-hole event in which the ball stroked closest to the pin would win the grand prize, a \$350.00 gift certificate to a golf store.⁵³ Although this event was supposed to occur in early November 2008,⁵⁴ there was "a significant delay,"⁵⁵ and the event did not take place until January 19, 2010—over one year after the originally-scheduled date.⁵⁶ Moreover, it was not until after we received the instant Complaint and initiated this investigation that the event was held and the Contest completed.⁵⁷ Under Commission precedent, such delay constitutes a failure to conduct the Contest substantially as announced.⁵⁸

13. The LOI Response argues that the lapse in completing the Contest was not intentional, but rather an oversight related to the termination of the employee involved in administering the Contest.⁵⁹ According to the LOI Response, after that employee left, the staff "simply forgot" about the Contest.⁶⁰ The LOI Response adds that the Contest did not have the same safeguards utilized in typical broadcast contests because it was an entirely new type of venture, operated by one employee outside the normal chain of command.⁶¹ Neither negligence nor inadvertence, however, can absolve licensees of liability in such cases.⁶² Similarly, the

⁵¹ See, e.g., *Nassau Broad. III, L.L.C.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12347, 12350, para. 8 (Enf. Bur. 2010) (forfeiture paid) (finding station failed to conduct contest in accordance with its advertised material terms by selecting grand prize winner day before announced expiration of contest entry period).

⁵² See *Clear Channel Broad. Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4072, 4076, para. 9 (Enf. Bur. 2006) (forfeiture paid) (finding that licensee impermissibly changed contest eligibility requirements by barring participants from submitting multiple entries, where the contest rules did not specify such a restriction).

⁵³ LOI Response at 4.

⁵⁴ See *id.* at Exhibit 2.

⁵⁵ *Id.* at 3.

⁵⁶ See *id.* at 3–4.

⁵⁷ The LOI Response notes that corrective actions were not taken until receipt of the Commission's LOI that "forcibly reminded [the station] of its inadvertent oversight." LOI Response at 4.

⁵⁸ See, e.g., *Saga Communications of New England, L.L.C.*, Forfeiture Order, 24 FCC Rcd 11934, 11936–37, para. 7 (Enf. Bur. 2009) (*Saga Communications*) (where the Bureau found that unreasonable delay in awarding prizes is a failure to conduct contest substantially as announced), *aff'd*, Memorandum Opinion and Order, 25 FCC Rcd 3289 (Enf. Bur. 2010), *aff'd*, Order on Review, 26 FCC Rcd 16678 (2011). See generally *Public Notice Concerning Failure of Broadcast Licensees to Conduct Contests Fairly*, Public Notice, 45 FCC 2d 1056 (1974); *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Notice of Proposed Rulemaking, 53 FCC 2d 934 (1975); *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 FCC 2d 1072, 1073 (1976).

⁵⁹ See LOI Response at 8–9.

⁶⁰ *Id.* at 3.

⁶¹ *Id.*

⁶² See *Nationwide Communications Inc.*, Notice of Apparent Liability for Forfeiture, 9 FCC Rcd 175 (Mass Med. Bur. 1994) (forfeiture for violating contest rules imposed, notwithstanding licensee's contention that its failure to conduct a contest substantially as announced was due to "inadvertence"), *forfeiture reduced*, Memorandum Opinion

(continued....)

award of additional prizes to the finalists who participated in the final stage of the Contest⁶³ does not excuse the apparent rule violation.⁶⁴ While this aspect of the rule violation would, standing alone, warrant monetary forfeiture, because (as described in paragraph 10) we find that Booneville violated the rule on other grounds, it is not necessary for us to rely upon the delay as the basis for our calculation of the monetary forfeiture in this case.

B. Booneville Failed to Disclose Material Terms of the Contest

14. We also find that Booneville failed to fully and accurately disclose the material terms of the Contest, as required by the rule.⁶⁵ As noted above, such material terms include “the extent, nature, and value of prizes.”⁶⁶ The Contest’s official rules provided to the Bureau specify that weekly winners would receive a hat from Victoria National Golf Club, and that the Grand Prize was a \$350.00 gift certificate to the Tom Howard Golf Superstore.⁶⁷ The advertisements relating to the Contest that were broadcast over the air, however, state only that contestants can qualify to win a Lexus automobile—they do not mention the hat or the \$350.00 gift certificate.⁶⁸ As such, the on-air announcements failed to describe the actual extent, nature, and value of the prizes to be awarded. Moreover, none of the on-air announcements described any of the procedures by which prizes would be awarded, including the fact that the Lexus automobile would only be awarded to a finalist hitting a hole-in-one.⁶⁹ The on-air announcement therefore also failed to describe the means of selection of winners. The LOI Response contends that the most effective method of informing potential contestants of the Contest rules was to include the rules on the website, which it implies is mitigating or exculpating.⁷⁰ Yet the Commission requires “stations to broadcast all of the material terms of a contest” that they conduct.⁷¹ Although rules announced through non-broadcast means (e.g., online) can supplement broadcast announcements, they cannot act as a substitute for broadcast announcements.⁷² Thus, the

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and Order, 9 FCC Rcd 2054 (Mass Med. Bur. 1994) (licensee’s history of compliance with Commission rules warranted forfeiture reduction).

⁶³ LOI Response at 9.

⁶⁴ *E.g.*, *Saga Communications*, 24 FCC Rcd at 11937, para. 8 (additional prizes awarded as recompense not mitigating); *Capstar TX Ltd. Partnership (WKSS(FM))*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636, 10640, para. 9 (Enf. Bur. 2005) (forfeiture paid) (licensee’s remedial efforts undertaken after complaint lodged not mitigating) (citing *AT&T Wireless Services, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 21866, 21871, para. 14 (2002)).

⁶⁵ 47 C.F.R. § 73.1216.

⁶⁶ *See supra*, para. 7; 47 C.F.R. § 73.1216, note 1(b).

⁶⁷ LOI Response at Exhibit 2.

⁶⁸ *Id.* at Exhibit 3. Regarding its failure to include the automobile in the printed rules, the LOI Response notes that the prize was not included as part of the Contest as originally planned but was added later. *Id.* at 4.

⁶⁹ *Id.* at Exhibit 3.

⁷⁰ *See id.* at 4.

⁷¹ *AK Media Group, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 7541, 7543, para. 7 (Enf. Bur. 2000) (*AK Media Group*).

⁷² *Id.*; *see also Clear Channel Broad. Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 2734, 2735, para. 7 (Enf. Bur. 2000) (holding that posting rules on the station’s website, in the absence of broadcast recitations, does not satisfy rule’s requirements).

Contest's material terms were not accurately disclosed over the air. While this aspect of a contest rule violation would, standing alone, warrant monetary forfeiture, because (as described above in Paragraph 10) we find that the rule was violated on other grounds, it is not necessary for us to rely upon the deficient announcements to inform our calculation of the monetary forfeiture proposed below, and we do not do so in this case.

15. Finally, regarding the allegation that at least one participant and weekly winner in the Contest did not receive the promised prize of a Victoria National Golf Club hat, the LOI Response contains persuasive evidence to the contrary. Through sworn declarations, the LOI Response credibly submits that all of the golf hats were made available for pick-up by the weekly winners at each station.⁷³

16. Based upon the evidence before us, we find that Boonville apparently willfully and repeatedly violated Section 73.1216 of the Commission's rules because the Contest was not conducted substantially as announced or advertised. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of four thousand dollars (\$4,000) for violation of Section 73.1216.⁷⁴ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act and Section 1.80 of the Commission's rules, which include the nature, circumstances, extent, and gravity of the violation, 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.⁷⁵ Based upon the facts and circumstances presented here, we propose a forfeiture in the amount of four thousand dollars (\$4,000).⁷⁶ We note that the forfeiture amount assessed here does not exceed the maximum monetary forfeiture permissible under the Act and the Commission's rules.⁷⁷

IV. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁷⁸ and Sections 0.111, 0.204, 0.311, and 1.80 of the Commission's rules,⁷⁹ that Boonville Broadcasting Company, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of four thousand dollars

⁷³ See LOI Response at 2–3, 5; Declarations of John P. Engelbrecht, Timothy Huelsing, and Paul Brayfield. See *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to Worldcom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18134, para. 193 (1998) (citing 47 C.F.R. § 1.17 (in light of their duty to be truthful and accurate in their representations to the Commission, statements provided by Commission licensees in response to investigatory or adjudicatory matters within the Commission's jurisdiction are awarded substantial weight in the absence of persuasive evidence to the contrary)).

⁷⁴ See 47 C.F.R. § 1.80(b).

⁷⁵ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4).

⁷⁶ See *Clear Channel*, 27 FCC Rcd at 347–48, para. 9.

⁷⁷ See 47 U.S.C. § 503(b)(2); 47 C.F.R. § 1.80(b). See also Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, amended by Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (codified as amended at 28 U.S.C. § 2461 note (4)); *Inflation Adjustment of Maximum Forfeiture Penalties*, Rules and Regulations, 73 Fed. Reg. 44663, 44664 (July 31, 2008) (applicable for violations that occurred after Sept. 2, 2008, but before Sept. 13, 2013); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); *Inflation Adjustment of Maximum Forfeiture Penalties*, Rules and Regulations, 78 Fed. Reg. 49370 (Aug. 14, 2013) (applicable for violations that occurred after Sept. 13, 2013).

⁷⁸ 47 U.S.C. § 503(b).

⁷⁹ 47 C.F.R. §§ 0.111, 0.204, 0.311, 1.80.

(\$4,000) for apparently willfully and repeatedly violating Section 73.1216 of the Commission's rules.⁸⁰

18. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules,⁸¹ that within thirty (30) days of the release date of this NAL, Boonville Broadcasting Company, 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. 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. Boonville Communications Corporation shall send electronic notification of payment to Terry.Cavanaugh@fcc.gov, Kenneth.Scheibel@fcc.gov and Guy.Benson@fcc.gov, on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁸² 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.

20. Any request for full payment 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. 20554.⁸³ 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.

21. The response, if any, must be mailed to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications

⁸⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 1.80, 73.1201.

⁸¹ 47 C.F.R. § 1.80.

⁸² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁸³ See 47 C.F.R. § 1.1914.

Commission, 445 12th Street, SW, Room 4-C330, Washington, D.C. 20554, and **SHALL INCLUDE** the NAL/Acct. number referenced above. In addition, to the extent practicable, a copy of the response, if any, should also be transmitted via e-mail to Terry.Cavanaugh@fcc.gov, Kenneth.Scheibel@fcc.gov, and Guy.Benson@fcc.gov.

22. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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. **IT IS FURTHER ORDERED**, that the Complaint referenced in this proceeding **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the complaint proceeding **IS HEREBY TERMINATED**.⁸⁴

24. **IT IS FURTHER ORDERED**, that copies of this NAL shall be sent, by First Class Mail and Certified Mail, to Lee Petro, Esquire, Counsel for Boonville Broadcasting Company, Inc., Drinker Biddle, 1500 K Street, N.W., Washington, DC 20005-1209.

FEDERAL COMMUNICATIONS COMMISSION

Theresa Z. Cavanaugh
Chief, Investigations and Hearings Division
Enforcement Bureau

⁸⁴ For purposes of the forfeiture proceeding initiated by this *NAL*, Boonville Broadcasting Company, Inc. shall be the only party to this proceeding.