

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

In the Matter of )
) Facility ID No. 140763
Windy City Broadcasting, LLC ) NAL/Acct. No. MB-202241410008
) FRN: 0023928856
To Renew Station W280EM, Chicago, Illinois ) File No. 0000119009
)

FORFEITURE ORDER

Adopted: May 23, 2022

Released: May 23, 2022

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Windy City Broadcasting, LLC (Licensee), licensee of FM translator station W280EM, Chicago, Illinois (Station). We find that Licensee willfully and repeatedly violated sections 74.1263(c) and (e) of the Commission’s rules by discontinuing operation of the Station without timely requesting special temporary authority (STA),1 willfully and repeatedly violated section 74.1251(c) of the Commission’s rules by failing to notify the Commission of the Station’s change in primary station,2 and willfully violated section 1.65 of the Commission’s rules by failing to maintain completeness and accuracy of the pending renewal application.3

II. BACKGROUND

1. On March 15, 2022, the Media Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of eight thousand dollars (\$8,000) to Licensee for these violations.4 The NAL gave the Licensee thirty days to pay the full amount of the proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.5

2. As noted in the NAL, section 74.1263(c) of the rules requires an FM translator licensee to notify the Commission of its intent to discontinue operations for 10 or more consecutive days, and Commission approval is required for such discontinued operation to continue beyond 30 days.6 Here, the record evidence indicates that the Station was silent for over 11 months.7 Licensee failed to notify the FCC of the Station’s discontinued operation by the deadline. Licensee also failed to request an STA for

1 See 47 CFR §§ 74.1263(c), 74.1263(e).

2 See 47 CFR § 74.1251(c).

3 See 47 CFR § 1.65.

4 Windy City Broadcasting, LLC, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-276 (MB Mar. 15, 2022) (NAL).

5 Id. at 6, para. 18.

6 47 CFR § 74.1263(c).

7 See NAL at 3, para. 10.

the Station to remain silent within 30 days,<sup>8</sup> in violation of section 74.1263(e) of the rules.<sup>9</sup>

3. Section 74.1251(c) of the rules requires that changes in the primary FM station being retransmitted by a translator must be submitted to the FCC in writing.<sup>10</sup> Licensee did not rebroadcast its authorized primary station for some period of time, and did not notify the Commission of this change in the Station's primary station.

4. Finally, under section 1.65 of the rules, an applicant is responsible for the continuing accuracy and completeness of the information furnished in a pending application or in Commission proceedings involving a pending application.<sup>11</sup> Whenever the information furnished in a pending application is no longer substantially accurate and complete in all significant respects, the applicant must, as promptly as possible and in any event within 30 days, amend the application so as to furnish the additional or correct information.<sup>12</sup> Licensee failed to timely amend the renewal application after the information furnished on it was no longer substantially accurate. Accordingly, we issued the *NAL*.

5. On April 13, 2022, the Licensee submitted a written response in which it did not dispute that it had violated the rules but requested that we reduce or cancel the proposed forfeiture based on the Licensee's claimed inability to pay it.<sup>13</sup> The Response included copies of Licensee's federal tax returns for 2018, 2019, and 2020 in support of this request.

### III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),<sup>14</sup> section 1.80 of the rules,<sup>15</sup> and the Commission's *Forfeiture Policy Statement*.<sup>16</sup> In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account 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 such other matters as justice may require.<sup>17</sup>

7. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed 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; or (3) some other reliable and objective documentation that accurately reflects the respondent's

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<sup>8</sup> In the *NAL*, we found that Licensee requested an STA over 3 months late. *See Id.*

<sup>9</sup> 47 CFR § 74.1263(e).

<sup>10</sup> 47 CFR § 74.1251(c).

<sup>11</sup> 47 CFR § 1.65.

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

<sup>13</sup> Response to Notice of Apparent Liability for Forfeiture of Windy City Broadcasting, LLC (dated Apr. 13, 2022) (Response).

<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 CFR § 1.80.

<sup>16</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999).

<sup>17</sup> 47 U.S.C. § 503(b)(2)(E).

current financial status.<sup>18</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>19</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>20</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>21</sup>

8. Here, the Licensee has provided us with federal tax return schedules for the years 2018, 2019, and 2020.<sup>22</sup> These returns show gross revenues of \$50,000, \$150,000, and \$115,000, respectively, while the Station operated at a loss of \$68,803 in 2019 and a loss of \$96,462 in 2020. The forfeiture in this case (\$8,000), would constitute approximately 7.6% percent of Licensee's average gross revenues. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,<sup>23</sup> although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.<sup>24</sup> Consistent with these cases, we are unwilling to cancel the forfeiture altogether. Instead we find that given Licensee's average gross revenue and operating losses, a reduction in the total forfeiture amount to \$4,000, approximately four percent of Licensee's average annual gross revenue, is appropriate for the violations involved in this case.<sup>25</sup>

9. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>26</sup>

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<sup>18</sup> See *NAL* at 8, para. 22.

<sup>19</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

<sup>20</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>21</sup> *Id.*

<sup>22</sup> The Licensee has also provided us with financial documentation for the years 2019, 2020, and 2021. However, we consider Licensee's tax returns as the most reliable financial information. See *Coleman Enterprises, Inc.*, 15 FCC Rcd 24385, 24389 (2000) (considering tax returns to be the most reliable financial information provided by licensee, as compared to unaudited cash flow statements and bank summaries).

<sup>23</sup> *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, 34 FCC Rcd 5302, 5304 (MB 2019).

<sup>24</sup> See *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period).

<sup>25</sup> See *Hawkins Broadcasting Company*, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

<sup>26</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. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

and repeatedly<sup>27</sup> violated sections 74.1263(c) and (e), 74.1251(c), and 1.65 of the Commission's rules.<sup>28</sup> However, for the reasons set forth above, we find that reducing the forfeiture to four thousand dollars (\$4,000) is warranted.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,<sup>29</sup> that Windy City Broadcasting, LLC **SHALL FORFEIT** to the United States the sum of four thousand dollars (\$4,000) for willfully and repeatedly violating sections 74.1263(c) and (e), 74.1251(c), and 1.65 of the Commission's rules.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),<sup>30</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:<sup>31</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>32</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.

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<sup>27</sup> Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Red at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>28</sup> 47 CFR §§ 74.1263(c), 74.1263(e), 74.1251(c), 1.65.

<sup>29</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>30</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>31</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>32</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Windy City Broadcasting, LLC, and its counsel, Shainis & Peltzman, Chartered, c/o Aaron P. Shainis, 1850 M Street, Suite 240, Washington, DC 20036, as well as emailed to [aaron@s-plaw.com](mailto:aaron@s-plaw.com).

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
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