

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

In the Matter of	)	
	)	
WIN RADIO BROADCASTING CORP.	)	Facility ID No.: 141566
	)	NAL/Acct. No.: MB-202341410012
Licensee of FM Translator Station W232DE,	)	FRN: 0010174837
Potomac, Maryland	)	File No. BLFT-20190507ACA as modified by File No. 0000199978

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

**Adopted: June 27, 2023**

**Released: June 27, 2023**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (Bureau) has in a Letter Order issued concurrently with this action<sup>1</sup> granted an application of WIN Radio Broadcasting Corp. (WIN) for a license to cover modified facilities of FM translator station, W232DE, Potomac, Maryland (Station),<sup>2</sup> subject to further enforcement action for related apparent violations. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find that WIN failed to file a required form to obtain consent to use a different antenna and apparently willfully violated section 74.1251 of the Commission's rules (Rules)<sup>3</sup> by constructing and operating with an unauthorized antenna. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand five hundred dollars (\$7,500).

**II. BACKGROUND**

2. A more detailed history along with related facts and arguments appears in the concurrent Letter Order and need not be repeated in depth here. Section 74.1251(b)(2) of the Rules requires FM translator licensees to request and receive authority prior to making any changes to their antenna system.<sup>4</sup> The request must be made by formal application on Form 349.<sup>5</sup> In 2016, the Bureau granted WIN's request for authority to modify the Translator's facilities using a Shively model 6810 directional antenna.<sup>6</sup> In 2017, another broadcaster in the market alleged that WIN had not constructed as authorized. WIN later conceded in the Application to license the modified facilities that it had substituted a different directional

<sup>1</sup> *WIN Radio Broad. Corp.*, Letter Order, File No. BLFT-20190507ACA (rel. June X, 2023).

<sup>2</sup> Application of WIN Radio Broadcasting Corp. for License, Application File No. BLFT-20190507ACA (filed May 7, 2019) (Application). We note that, as a result of an approved but not yet licensed move to Channel 268 the Translator's call sign will become W268DN.

<sup>3</sup> 47 CFR § 74.1251.

<sup>4</sup> *Id.* § 74.1251(b)(2).

<sup>5</sup> *Id.* § 74.1251(b).

<sup>6</sup> Application File No. BPFT-20160129AUE (rec. Jan 29, 2016/granted Aug. 9, 2016), Exh. 12-B-1 (Permit Application/Construction Permit).

antenna, *i.e.*, a Jampro model JLLP-2.<sup>7</sup> The antenna originally requested differed from that actually built in manufacturer, size, weight, and shape. WIN stated that it substituted a lighter antenna for a heavier one so that it could mount the antenna on the tower without constructing additional bracing.<sup>8</sup> The Letter Order rejects WIN's argument that no prior authority was needed to substitute an antenna capable of achieving the same directional pattern and mounted in accordance with manufacturer instructions. The Rules make no such exception.

### III. DISCUSSION

3. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$7,500. In this case, WIN failed to file an application for authority to alter its antenna system as required by section 74.1251(b) of the Rules.<sup>9</sup> It then constructed and operated with an unauthorized antenna, an apparent violation of section 74.1251(b)(2).

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/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.<sup>10</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>11</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,<sup>12</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>13</sup> Section 312(f)(2) 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."<sup>14</sup>

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amounts of \$3,000 for failure to file a required form or information and \$10,000 for construction or operation without an instrument of authorization for the service.<sup>15</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "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>16</sup>

6. In this case, WIN failed to timely file an application to modify its antenna system as required by section 74.1251(b) of the Rules WIN and then constructed and operated a nonconforming

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<sup>7</sup> See Application, Exh. 9.

<sup>8</sup> *Id.*

<sup>9</sup> 47 CFR § 74.1251(b).

<sup>10</sup> See 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

<sup>13</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>14</sup> 47 U.S.C. § 312(f)(2).

<sup>15</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80 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); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

antenna for which it held no authorization.<sup>17</sup> WIN professed a belief that antenna substitution was permissible<sup>18</sup> but that explanation is “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”<sup>19</sup> As discussed above, the base forfeiture amounts for these violations are \$3,000 and \$10,000 respectively, *i.e.*, a total of \$13,000. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,<sup>20</sup> we will reduce the forfeiture from the base amount to \$7,500 because, as an FM translator, the Station is providing a secondary service.<sup>21</sup>

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,<sup>22</sup> and sections 1.80 and 0.283(d) of the Commission’s rules,<sup>23</sup> that WIN Radio Broadcasting Corp., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand five hundred dollars (\$7,500)** for its apparent willful violation of section 74.1251(b) of the Commission’s rules.<sup>24</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission’s rules,<sup>25</sup> within thirty (30) days of the release date of this *NAL*, WIN Radio Broadcasting Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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>26</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to [Irene.Bleiweiss@fcc.gov](mailto:Irene.Bleiweiss@fcc.gov). Below are instructions that payors should follow based on the form of payment selected:<sup>27</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

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<sup>17</sup> See 47 CFR § 74.1251(b).

<sup>18</sup> *Supra* note 7.

<sup>19</sup> *Southern California*, 6 FCC Rcd at 4387, para. 3.

<sup>20</sup> *Supra* note 15.

<sup>21</sup> The Bureau has reduced forfeiture amounts for rule violations by secondary stations in prior cases. See, e.g., *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288 (Aud. Div. 2009) (FM translator station); *Soul's Harbor Assembly of God Church*, Forfeiture Order, 24 FCC Rcd 8406 (Aud. Div. 2009) (LPFM station); *School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896, 2989 (Aud. Div. 2008) (Class D FM station); *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021).

<sup>22</sup> 47 U.S.C. § 503(b).

<sup>23</sup> 47 CFR §§ 1.80 and 0.283.

<sup>24</sup> *Id.* § 74.1251(b).

<sup>25</sup> *Id.* § 1.80.

<sup>26</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>27</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).

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>28</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. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 would be associated with FCC Bill Number 12345678). 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.
- 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. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 would be associated with FCC Bill Number 12345678). 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.

10. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.<sup>29</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

11. The written response 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(g)(3) of the Rules.<sup>30</sup> The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to [Irene.Bleiweiss@fcc.gov](mailto:Irene.Bleiweiss@fcc.gov) to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

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<sup>28</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>29</sup> See 47 CFR § 1.1914.

<sup>30</sup> *Id.* §§ 1.16 and 1.80(g)(3).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>31</sup>

12. 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.<sup>32</sup>

13. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Richard S. Yoon, President, WIN Radio Broadcasting Corp., 100-25 Queens Blvd., Suite 1CC, Forest Hills, N.Y., 11375 and by electronic mail to richardyoondmd@yahoo.com. A copy shall also be sent to Station's representative, David O'Connor, Esq., Wilkinson Barker Knauer, LLP, 1800 M St., NW, Suite 800N, Washington, D.C. 20036 and by electronic mail to doconnor@wbklaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>31</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>32</sup> 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).