

Federal Communications Commission

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

In the Matter of )
Minority Business & Housing Development, Inc. ) File No. EB-06-NY-275
Licensee of Station WYGG ) NAL/Acct. No. 200832380002
Asbury Park, New Jersey )
Facility ID # 19867 ) FRN: 0007512528

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 20, 2007

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Minority Business & Housing Development, Inc. ("MBHD"), licensee of FM radio station WYGG in Asbury Park, New Jersey, apparently willfully and repeatedly violated Section 1.1310 of the Commission's Rules ("Rules), by failing to comply with radio frequency radiation ("RFR") maximum permissible exposure ("MPE") limits applicable to facilities, operations, or transmitters;1 Section 73.1350(a) of the Rules, by operating with an excessive antenna height from an unauthorized location;2 and Section 73.3527(a) of the Rules, by failing to maintain a public inspection file.3 We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),4 that MBHD is apparently liable for forfeiture in the amount of twenty-five thousand dollars (\$25,000). We also admonish MBHD for failing to post its station license, failing to maintain a station log, and failing to designate a chief operator, as required under Sections 73.1230, 73.1800, 73.1820, and 73.1870 of the Rules.

II. BACKGROUND

2. WYGG's station license (File No. BLED-19940304KZ) authorizes WYGG to operate with an antenna height of 14 meters above ground level ("AGL") at the coordinates 40° 13' 01" north latitude and 074° 00' 33" west longitude. The station license also provides that the licensee must "reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from

1 47 C.F.R. § 1.1310. See also Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), recon. granted in part, First Memorandum Opinion and Order, 11 FCC Rcd 17512 (1996), recon. granted in part, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 13494 (1997) ("Guidelines").

2 47 C.F.R. § 73.1350(a).

3 47 C.F.R. § 73.3527(a).

4 47 U.S.C. § 503(b).

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radiofrequency electromagnetic fields in excess of FCC guidelines.”<sup>5</sup> On its most recent license renewal application (File No. BRED-20060125AGT) for station WYGG, granted May 24, 2006, MBHD certified that there had been FCC violations during the preceding license term, and indicated that it had implemented steps to correct the violations. MBHD also certified on the application that the documentation required by the Rules has been placed in the station’s public inspection file, and that its facility complies with the maximum permissible radiofrequency electromagnetic exposure limits for controlled and uncontrolled environments.

3. On November 16, 2006, an agent from the Commission’s New York Office monitored WYGG using a standard FM car radio and observed that the station could be heard from a distance of approximately 20 miles away, which was significantly further than the station’s predicted coverage area. Using an FCC direction finding vehicle, the agent monitored station WYGG on 88.1 MHz, and found that the station was operating from an antenna mounted on the roof of 601 Bangs Avenue, Asbury Park, New Jersey 07712, at coordinates 40° 13’ 01” north latitude and 074° 00’ 36” west longitude, approximately 83 meters west of the station’s authorized location. The antenna was mounted at a height of 43.9 meters AGL, which exceeded its authorized antenna height by 29.9 meters. The Enforcement Bureau previously issued a forfeiture in the amount of thirteen thousand dollars (\$13,000) to MBHD for, *inter alia*, operating WYGG from this unauthorized location at the same unauthorized antenna height.<sup>6</sup>

4. After identifying the station’s location, the agent then entered the building located at 601 Bangs Avenue and identified himself to the front desk clerk. The clerk indicated that he had a key to the roof and contacted the building manager, who escorted the agent to the roof. To access the roof, it was necessary to unlock a padlocked door that led into a poorly illuminated elevator equipment room, which was followed by an unlocked door leading outside to the lower level of the roof. The roof had an upper level, which could only be accessed by climbing a ladder mounted on the side wall. The agent observed WYGG’s transmitting antenna approximately 8 feet above the upper roof level mounted on a pole approximately 3 feet away from the top of the ladder. The agent also observed a set of cellular antennas mounted on the side wall around the edges of the upper roof, and a set of 8 thick cables laid across the upper roof within several feet of WYGG’s antenna. Using a personal RF safety monitor, the agent determined that there was an area near the top of the ladder leading to the upper roof that met or exceeded the general population RFR MPE limits. There were no warning signs or barriers on the rooftop to prevent access to the area in question. The agent observed WYGG’s transmitter operating at an output power of 240 watts. In response to questions, the building manager stated that workers routinely gain access to the roof by obtaining a key from the front desk or the office on the 11<sup>th</sup> floor and that workers

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<sup>5</sup> All broadcast licensees were required to come into compliance with RFR MPE limits as of September 1, 2000 or file an Environmental Assessment. *See Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13540; 47 C.F.R. § 1.1307(b)(5). In addition, all broadcast licensees must demonstrate compliance with the RFR MPE limits, or file an Environmental Assessment and undergo environmental review by Commission staff, when filing for an initial construction permit, license, renewal or modification of an existing license. *See Guidelines, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd at 13538; 47 C.F.R. § 1.1307(b)

<sup>6</sup> The Philadelphia Office issued a NAL to MBHD on December 30, 2002, in the amount of \$13,000 for unauthorized antenna height and location and no EAS equipment installed. *See Minority Business & Housing Development, Inc.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200332400003 (rel. December 30, 2002). MBHD did not dispute the violations and after issuance of a Forfeiture Order and Memorandum Opinion and Order, MBHD paid the forfeiture on November 17, 2004. *See Minority Business & Housing Development, Inc.*, Forfeiture Order, 18 FCC Rcd 9422 (2003), Memorandum Opinion and Order, 19 FCC Rcd 8929 (2004). Notices of Violation (“NOV”) were issued by the FCC’s Philadelphia Office on May 30, 2002 and July 24, 2002, citing MBHD for unauthorized antenna height and location, unauthorized antenna type, no public file, no EAS equipment installed, no station logs, and no chief operator designation or review. The July 24, 2002 NOV also cited MBHD for failure to respond to the first NOV.

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recently accessed the roof to work on the cellular equipment. She also stated that she was unaware of any RFR hazards on the roof.

5. Immediately after the rooftop inspection on November 16th, the agent inspected WYGG's main studio, located on the 7<sup>th</sup> floor of the building. During the inspection, the agent observed that there was no public file, no chief operator designation, no station license posted, and very few station logs. The agent observed in the station's records a 2-year lease agreement which commenced on April 1, 2005, between the building owner and WYGG's station manager, for the lease of 601 Bangs Avenue, Suite 705. The lease also specified the installation of one antenna on the roof. During the 2002 investigation, building management for 601 Bangs Avenue stated that, based on engineering drawings, the WYGG antenna was mounted on the roof of the building 144 feet (43.9 meters) above ground level, which exceeds its authorized antenna height by 29.9 meters. The agent advised the station manager that MBHD was in violation of the FCC's Rules for operating from an unauthorized location and height, for excessive levels of RFR on the rooftop, for not having a public file, and detailed other violations found. The agent informed the station manager that these were many of the same violations for which MBHD received an NOV and forfeiture in 2002. The station manager admitted that the station did not have a public inspection file, that there was no designated chief operator, and that their contract engineer, who comes by occasionally, is the only one who knows anything about the transmission system or knows how to operate the EAS equipment. The manager stated that he was not aware of the RFR issue and he made no mention of any signs posted or procedures to follow regarding RFR.

6. On November 20, 2006, agents from the Commission's New York and Philadelphia Offices conducted a RFR survey of radio station WYGG on the rooftop of 601 Bangs Avenue, Asbury Park, New Jersey. Agents contacted building management, who instructed the agents to obtain the key for the padlocked door from the office on the 11<sup>th</sup> floor. After opening the padlocked door that led into the elevator equipment room, the agents observed two small, inconspicuous signs near the unlocked door that led to the rooftop. One was a small RFR sign posted to the left of the door by a wireless service provider indicating that the RFR levels may exceed FCC Standards for general public exposure. The sign did not indicate which areas on the roof exceeded the public or general population limits. The second was a small white paper sign glued to the right of the access door advising of a "radio frequency hazard" and that "anyone who has to climb the ladder to the top out of this door please contact the radio station on 7<sup>th</sup> floor suite 705." Two phone numbers for the station were listed on the sign. Neither warning sign was clearly visible because the elevator equipment room was not illuminated. The view of the small white sign to the right of the access door was blocked by a large piece of electrical equipment.

7. The agents then proceeded to the upper rooftop to conduct RFR measurements. There were still no warning signs or barriers on the rooftop to prevent access to hazardous areas. Using a calibrated RFR meter, the agents determined that the occupational and general population limits were exceeded in an area about 5 feet around WYGG's antenna support pole. The agents made a total of 12 spatially averaged measurements one foot from WYGG's antenna support pole at a single location where the highest RFR levels were detected. The measurements showed that the RFR level was 158% of RFR MPE occupational limit, and 790% of the general population RFR MPE limit, or 1.58 mW/cm<sup>2</sup>

8. Immediately after making the RFR measurements, an agent contacted the station manager at one of the numbers listed on the warning sign in order to determine whether WYGG was able to comply with the station license's requirement that the "licensee must reduce power or cease operation to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines."<sup>7</sup> The agent stated to the station manager that workers were about to go on the roof and asked the manager if there were any hazards for persons working on the upper level roof. The manager indicated that there were no hazards on the roof but that the workers should not go too close to

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<sup>7</sup> WYGG FM Broadcast Station License, File No. BLED-19940304KZ, granted May 15, 1995.

the antenna. The agent repeatedly informed the manager that men would be working near the antenna on the upper roof and asked if there would be a problem. The manager stated that the antenna has been up there for 5 or 6 years and that people had worked on the roof before and nothing happened. The agent called the manager back about 10 minutes later, explained that he was still concerned about RFR from the antenna, and asked if it would be possible to temporarily turn off the power to the station so that the men could work safely on the roof. The manager said that he would ask the station operators to turn off the station. A few minutes later, the manager called the agent back and said he was going to the station himself to turn off the station. Shortly thereafter, the manager called the agent again, stating that he was at the studio and was turning off the station for 30 minutes. The agent asked the manager if it would be safe for the men to go to the upper roof, and the manager said that it would. The agents then observed that the radio transmitter for station WYGG was still active and operating with an output power of 240 watts.

9. Several minutes later, the station manager came to the rooftop. When agents asked why the power to the station was not turned off after he agreed to do so, the manager explained that he thought that turning off the audio to the radio station was sufficient. The agents explained that the transmitter itself must be turned off in order to eliminate the RFR emanating from the antenna. After the WYGG transmitter was turned off, the agents conducted additional RFR measurements in the same location under WYGG's antenna with the calibrated RFR meter. No RFR emissions were detected when station WYGG was off the air, which indicated that WYGG was responsible for 100% of the emissions measured earlier. Therefore, the RFR emissions from WYGG were 158% of RFR MPE occupational limit, and 790% of the general population RFR MPE limit, or 1.58 mW/cm<sup>2</sup>. The agents explained to the manager that the RFR levels due to WYGG's transmission exceeded the occupational and general population MPE limits, creating an RFR hazard, and that the problem should be addressed as soon as possible. The agents also advised the manager that, in addition to the RFR violations, the station was still in violation for operating at an unauthorized location and height.

10. On November 21, 2006, an agent from the New York Office called the licensee, MBHD, and spoke to MBHD's Executive Director, Dr. Philius Nicholas. The agent explained all the violations found and noted that these were some of the same violations cited in the NOV and NAL issued in 2002. Dr. Nicholas stated that he previously submitted an application to move WYGG to 601 Bangs Avenue, at an increased height and lower power. The agent explained that WYGG was never authorized to operate from that location and height and FCC records show that the construction permit application (File No. BPED-20020808ADH) was never granted and was in fact dismissed per the applicant's request.

11. On November 27, 2006, MBHD submitted a Special Temporary Authority ("STA") application, File No. BLSTA-20061127AFU, to the Audio Division of the FCC's Media Bureau requesting authority for station WYGG to remain silent. On November 30, 2006, the Audio Division granted, by Official Letter, 1800B3-ALM, MBHD's request for an STA to remain silent for a period not to exceed 180 days.

12. On January 4, 2007, MBHD submitted a STA application, File No. BSTA-20070104ACJ, to the Audio Division requesting authority to operate station WYGG from a site other than the licensed site and other than 601 Bangs Avenue. In the request, MBHD stated that its licensed site is no longer available and requested an STA in order to resume broadcasting. On January 4, 2007, the Audio Division granted the STA, which was set to expire on April 4, 2007.<sup>8</sup> On January 18, 2007, the Audio Division informed the New York Office that MBHD had notified them that WYGG had gone back on the air. Before reinstating the station's official "on-air" status, the Audio Division requested that the New York Office

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<sup>8</sup> On April 3, 2007, MBHD submitted an application for Extension of the STA, File No. BESTA-20070403ACK, and an application for Construction Permit, File No. BPED-20070403ABV, to operate station WYGG from 414 Asbury Avenue. On July 23, 2007, the Audio Division granted MBHD a 36-month Construction Permit. The STA extension application was accepted for filing and was granted on October 11, 2007.

re-inspect WYGG to determine if the station was operating with the facilities authorized by the STA.

13. On January 30, 2007, agents conducted an inspection of WYGG's new facilities, located at 414 Asbury Avenue, Asbury Park, New Jersey 07712, with the station manager. The agents determined that the station was operating at the location, antenna height, and power authorized by the STA. The STA letter and chief operator designation were posted at the studio, and there were labeled folders in the public file for all required elements, but the file was incomplete. Specifically, there were no quarterly issues/programs listings in the file. The agents explained what kind of entries needed to be made according to FCC Rules. The transmitting antenna was located on the roof of a building next door to 414 Asbury Avenue, mounted on a pole approximately 20 feet above the roof at the south west corner of the building. The agents used a calibrated RFR meter to determine if any areas on the roof exceeded the public or occupational RFR MPE limits. The agents conducted several sets of spatial average measurements under the WYGG antenna, and determined that the levels were in compliance with the occupational and general population RFR MPE limits.

### **III. DISCUSSION**

14. 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>9</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

#### **A. Compliance with RFR Limits**

15. Section 1.1310 of the Rules requires licensees to comply with occupational and general population MPE limits for electric and magnetic field strength and power density for transmitters operating at frequencies from 300 kHz to 100 GHz. The MPE limits specified in Table 1 of Section 1.1310 are used to evaluate the environmental impact of human exposure to RFR and apply to "...all facilities, operations and transmitters regulated by the Commission"<sup>11</sup> Table 1 in Section 1.1310 of the Rules provides that, for stations operating in the frequency range of 30 MHz to 300 MHz, the occupational/controlled RFR MPE limit given in terms of mW/cm<sup>2</sup> is 1.0 mW/cm<sup>2</sup>, and the general population/uncontrolled RFR MPE limit is 0.20 mW/cm<sup>2</sup>. Because it operates on 88.1 MHz, these limits apply to station WYGG. Licensees bear the responsibility to restrict access to areas that exceed the RFR MPE limits or to modify the facility and operation so as to bring the station's operation into compliance

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<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</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."

<sup>11</sup> See 47 C.F.R. §§ 1.1307(b), 1.1307(b)(1), 1.1310.

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with the RFR exposure limits prior to worker or public access to the impacted area.<sup>12</sup>

16. Whether the general population/controlled RFR MPE limit or the general population/uncontrolled RFR MPE limit applies in an area depends on who is being exposed to the RFR.<sup>13</sup> In situations where persons are exposed as a consequence of their employment, provided those persons are fully aware of the potential for exposure and can exercise control over their exposure, the occupational/controlled MPE limits apply.<sup>14</sup> In situations where the general public may be exposed, or where persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure, the general population/ uncontrolled MPE limits apply.<sup>15</sup> In the case of WYGG, the general population limits apply. The roof where WYGG's antenna was located may not have been accessible by the general public, but it was accessible by workers who were not aware of their potential for exposure and could not exercise control over it. The building manager and station manager both stated that they were not aware of the RFR hazard and reported to the agents that workers routinely access the roof. Although warning signs were posted inside near the roof access door, these signs were inconspicuous due to poor illumination and a large piece of electrical equipment blocked the view of one of the signs.<sup>16</sup> Moreover, the areas on the rooftop that exceeded the general population RFR MPE limit were not marked in any way. Thus, the workers were "exposed as a consequence of their employment, [were not] fully aware of the potential for exposure, and [could] not exercise control over their exposure."<sup>17</sup> Therefore, even though access to the roof was controlled by a padlocked door, we find that the rooftop was subject to the Commission's general population limits.<sup>18</sup>

17. On November 16, 2006, an agent from the New York Office conducted a preliminary RFR survey on the roof of 601 Bangs Avenue and determined that there was an area near the WYGG antenna that met or exceeded the general population RFR MPE limits. At that time, WYGG station management was warned of excessive RFR levels on the roof.

18. On November 20, 2006, agents returned to the rooftop and found that an area on the upper rooftop near the WYGG antenna exceeded both the general population RFR MPE limits. Specifically, measurements made using a calibrated RFR meter showed that the area on the upper rooftop near the WYGG antenna measured 790% of the general population RFR MPE limit, or 1.58 mW/cm<sup>2</sup>. Accordingly, because the RFR MPE limits were exceeded and because agents had determined that WYGG's antenna was solely responsible for the RFR emissions on the rooftop, MBHD was responsible

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<sup>12</sup> 47 C.F.R. §§ 1.1307(b)(1), 1.1307(b)(5), 1.1310. Additional guidance is provided in Office of Engineering and Technology, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields* (1997) ("OET Bulletin 65").

<sup>13</sup> *Entravision Holdings, LLC*, 22 FCC Rcd 2279, 2283 (EB 2007). *See also*, *OET Bulletin 65* at 1 – 10.

<sup>14</sup> The limits of occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. 47 C.F.R. § 1.1310, Note 1 to Table 1.

<sup>15</sup> 47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>16</sup> *See Americom Las Vegas Limited Partnership*, 19 FCC Rcd 9643 (Enf. Bur. 2004), *affirmed* 12 FCC Rcd 14286 (2006).

<sup>17</sup> 47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>18</sup> *See id.* *See also A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002); *Entravision Holdings, LLC*, 22 FCC Rcd 2279, (EB 2007); *Infinity Broadcasting of Tampa, Florida*, 22 FCC Rcd 2288 (EB 2007).

for ensuring compliance with the RFR Rules.

19. Agents found that there were no warning signs, barriers or any other markings placed on the roof to prevent access to hazardous areas. Although roof access was limited by a padlocked door, workers routinely obtained the key and had complete access to all areas on the roof, including the area that was above the occupational and general population RFR MPE limits, without any apparent knowledge of the level of RFR emissions on the roof. When informed by FCC agents that workers needed to access a hazardous area on the rooftop, station personnel failed to appropriately reduce power or cease operation to protect persons having access to the site. Based on the evidence before us, we find that MBHD violated Section 1.1310 of the Rules by producing power density levels in excess of the general population RFR MPE limits and by failing to adequately protect workers from areas that exceeded these limits. MBHD's certification in its 2006 License Renewal Application that its "facility complies with the maximum permissible radiofrequency electromagnetic exposure limits"<sup>19</sup> demonstrates that MBHD was aware of its responsibilities pursuant to the Commission's RFR Rules. Additionally, New York agents warned MBHD about the excessive levels of RFR on the roof on November 16, 2006, and a subsequent inspection on November 20, 2006, revealed that the RFR emissions continued to greatly exceed the general population MPE. Consequently, we find that MBHD's violation was willful. The power density levels were in excess of the general population limits for more than one day, therefore, the violation was repeated.

#### **B. Station Location and Antenna Height**

20. Section 73.1350(a) of the Rules provides that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules and is in accordance with the terms of the station authorization.<sup>20</sup> On November 16 and 20, 2006, agents found that WYGG was operating from an unauthorized location with an antenna height that exceeded the station's authorized antenna height by 29.9 meters. This resulted in a coverage area far exceeding its allowable coverage area as defined by the 60 dB $\mu$  service contour. At the time of the inspection, WYGG had a current lease agreement with the building owner which specified the installation of one antenna on the roof, and the station manager later stated to the agent that the antenna has been on the roof for "five or six years." MBHD previously had been warned of this violation in NOV's and a NAL.<sup>21</sup> Notwithstanding this prior enforcement action and the oral warning on November 16, 2006 regarding the station's unauthorized location and antenna height, WYGG was still operating from the unauthorized facilities on November 20, 2006. Based on the evidence before us, we find that, by operating with an excessive antenna height from an unauthorized location, MBHD apparently willfully and repeatedly violated Section 73.1350(a) of the Rules by failing to operate its station in accordance with the terms of the station authorization.

#### **C. Public Inspection File**

21. Section 73.3527(a) of the Rules provides that every permittee or licensee of an AM, FM, or TV station in the noncommercial educational broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(11).<sup>22</sup> On November 16, 2006, an agent inspected WYGG's main studio and found that the station did not maintain any public inspection file. During the inspection, the station manager admitted that the station did not have a public inspection file. MBHD previously had been warned of this violation in NOV's issued in

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<sup>19</sup> See WYGG 2006 Renewal Application, Section III, Question 6.

<sup>20</sup> 47 C.F.R. § 73.1350(a)

<sup>21</sup> See *supra* n. 4.

<sup>22</sup> 47 C.F.R. § 73.3527(a)

2002.<sup>23</sup> On January 30, 2007, agents inspected WYGG's new main studio and found that, although a public file had been created, it did not contain any quarterly issues/programs listings. Based on the evidence before us, we find that MBHD apparently willfully and repeatedly violated Section 73.3527(a) of the Rules by failing to maintain a public inspection file.

**D. Posting of Station License, Station Logs, and Chief Operator Designation**

22. Section 73.1230 of the Rules provides that the licensee of each broadcast station must post the station license and any other instrument of station authorization in a conspicuous place and in such a manner that all terms are visible at the place the licensee considers to be the principal control point of the station.<sup>24</sup> During the studio inspection on November 16, 2006, the agent observed that the station license was not posted, and could not be found anywhere in the studio. We therefore admonish MBHD for violating Sections 73.1230 of the Rules.

23. Section 73.1800 of the Rules provides that the licensee of each broadcast station must maintain a station log as required by Section 73.1820, and Section 73.1820(a)(iii) provides that all stations must make log entries of each test and activation of the Emergency Alert System (EAS) pursuant to the requirements of part 11 of the Rules and the EAS Operating Handbook.<sup>25</sup> During the inspection on November 16, 2006, the agent found station logs, including EAS logs, only for December 2004 through April 2005 and several printouts of EAS activations still attached to the EAS equipment only for March 2006 to April 8, 2006. The agent observed that the EAS equipment was out of printer paper so that more recent EAS activations could not be logged. There were no other station logs or EAS logs present. We therefore admonish MBHD for violating Sections 73.1800 and 73.1820 of the Rules.

24. Section 73.1870 of the Rules provides that the licensee of each AM, FM, TV or Class A TV broadcast station must designate a person to serve as the station's chief operator and that the designation of the chief operator must be in writing with a copy of the designation posted with the station license.<sup>26</sup> During the November 16, 2006 studio inspection, the agent observed that there was no written chief operator designation. During the inspection, WYGG's station manager admitted that there was no designated chief operator. We therefore admonish MBHD for violating Section 73.1870 of the Rules.

**E. Forfeiture Amount**

25. The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines ("*Forfeiture Policy Statement*")<sup>27</sup> does not specify a base forfeiture for violation of the RFR maximum permissible exposure limits in Section 1.1310.<sup>28</sup> However,

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<sup>23</sup> See *supra* n. 4.

<sup>24</sup> 47 C.F.R. § 73.1230.

<sup>25</sup> 47 C.F.R. §§ 73.1800, 73.1820(a)(iii).

<sup>26</sup> 47 C.F.R. § 73.1870.

<sup>27</sup> *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon denied*, 15 FCC Rcd 303 (1999).

<sup>28</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover,



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the Commission has determined that an appropriate base forfeiture amount for violation of the RFR MPE limits is \$10,000, reflecting the public safety nature of the rules.<sup>29</sup> The base forfeiture amount for exceeding the authorized antenna height is \$5,000, and the base forfeiture amount for violation of the public file rule is \$10,000.<sup>30</sup> In assessing the proposed 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 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.<sup>31</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that MBHD is apparently liable for a \$25,000 forfeiture for willfully and repeatedly exceeding the RFR MPE limits in violation of Section 1.1310 of the Rules, operating its station at an unauthorized location with an unauthorized antenna height in violation of Section 73.1350(a) of the Rules, and failing to maintain a public inspection file in violation of Section 73.3527(a) of the Rules.

#### IV. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, .314 and 1.80 of the Commission's Rules, Minority Business & Housing Development, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Sections 73.1350(a), 1.1310 and 73.3527(a) of the Rules.<sup>32</sup>

27. **IT IS FURTHER ORDERED** that Minority Business & Housing Development, Inc. **IS ADMONISHED** for its violations of Sections 73.1230, 73.1800, 73.1820(a)(iii), and 73.1870 of the Rules.<sup>33</sup>

28. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Minority Business & Housing Development, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

29. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account

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to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

<sup>29</sup> *A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002).

<sup>30</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>31</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>32</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1350(a), 1.1310, and 73.3527(a). *See also Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), *recon. granted in part, First Memorandum Opinion and Order*, 11 FCC Rcd 17512 (1996), *recon. granted in part, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 13494 (1997) (“*Guidelines*”).

<sup>33</sup> 47 C.F.R. §§ 73.1230, 73.1800, 73.1820(a)(iii), 73.1870.

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number 911-6106.

30. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption.

31. 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 practices ("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.

32. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>34</sup>

33. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Minority Business & Housing Development, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office  
Enforcement Bureau

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<sup>34</sup> See 47 C.F.R. § 1.1914.