
Federal Communications Commission

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

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| In the Matter of |) | |
| |) | |
| Boulder Community Broadcast Association, Inc. |) | File Number: EB-07-DV-193 |
| Licensee of KGNU |) | |
| Denver, Colorado |) | NAL/Acct. No.: 200832800002 |
| Facility ID# 31349 |) | FRN: 0006024319 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 21, 2007

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Boulder Community Broadcast Association, Inc. ("BCBA"), in Boulder, Colorado, apparently willfully and repeatedly violated Section 73.1745(a) of the Commission's Rules ("Rules")¹ by failing to operate KGNU(AM) in accordance with the station's authorized power as specified on the station's license. We conclude, pursuant to Section 503(b) of the Act,² that BCBA is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. KGNU(AM) is authorized to operate with a non-directional pattern on 1390 kHz with 5000 watts during daytime hours and 139 watts during nighttime hours. Daytime is defined as the "period of time between local sunrise and local sunset" and nighttime is defined as the period "between local sunset and local sunrise."³ In Denver, Colorado, during the month of April, local sunrise occurs at 6:30 a.m., and local sunset occurs at 7:45 p.m.⁴

3. On April 26, 2007, in response to a complaint, an agent from the Enforcement Bureau's Denver Office monitored KGNU(AM) through the post-sunset nighttime hours with a spectrum analyzer, and determined that KGNU(AM) failed to reduce its power to its licensed nighttime power level of 139 watts. The agent continued monitoring the station on April 27, 28 and 29, 2007, throughout the post-sunset nighttime hours and determined that on each night, KGNU(AM) failed to reduce its power to its licensed nighttime power of 139 watts.

4. On April 30, 2007, a Denver agent contacted KGNU about the over-power operation.

¹ 47 C.F.R. § 73.1745(a).

² 47 U.S.C. § 503(b).

³ 47 C.F.R. § 73.14.

⁴ All times indicated are local Mountain Daylight Savings Time.

KGNU(AM)'s engineer indicated to the agent that a March 16, 2007, software update had corrupted the remote control input and output systems. According to the KGNU(AM) engineer, this meant that the system was unable to switch the transmitter to low power at sunset or switch to full power at sunrise. It also meant that the system was no longer able to dial out to the preprogrammed BCBA numbers to inform station personnel that the transmitter had failed to reduce power at sunset.

5. On May 4, 2007, a Denver agent contacted KGNU(AM), requesting to review the station's logs covering April 1 through May 3, 2007. On May 9, 2007, a representative of KGNU(AM) provided the Denver Office with a letter acknowledging the remote control failure and the immediate actions undertaken by KGNU(AM) to fully restore the remote control system, including manually ensuring the power was reduced at the station at sunset. Also, KGNU(AM) provided copies of remote control telemetry readings for the period January 18, 2007, to April 24, 2007, that confirmed KGNU(AM)'s remote control problems.

6. On December 7, 2007, Denver agents inspected KGNU(AM)'s operations at the transmitter site and viewed additional remote control telemetry readings on the station's remote control unit that showed KGNU(AM) operated with daytime power levels of 5000 watts 24 hours a day for the period from March 17, 2007, to April 30, 2007. The station's remote control readings directly corresponded to the Denver agent's observations from April 26, 2007, through April 29, 2007, of KGNU(AM) operating at power levels exceeding its authorized nighttime power during nighttime hours.

III. DISCUSSION

7. 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.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

8. The Rules state that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules and in accordance with the terms of the station license.⁷ Specifically, Section 73.1745(a) of the Commission's Rules states that no broadcast station shall operate at times or with modes or power, other than those specified and made part of the license. During the month of April, KGNU(AM) is authorized to operate at 5000 watts between 6:30 a.m., and 7:45 p.m. After 7:45 p.m., and before 6:30 a.m., KGNU(AM) is authorized to operate at 139 watts.

9. Between April 26, 2007, and April 29, 2007, monitoring by a Denver agent revealed that KGNU(AM) was not reducing its operating power after 7:45 p.m., as required by its authorization. Further investigation by Denver agents revealed that telemetry readings made by KGNU(AM) showed that KGNU(AM) was operating at 5000 watts 24 hours a day, from March 17, 2007, to April 30, 2007,

⁵ 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).

⁶ 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."

⁷ 47 C.F.R. § 73.1745(a).

confirming the Denver agent's observations between April 26, 2007, and April 29, 2007. BCBA was aware of the requirement to operate KGNU(AM) at the power levels authorized on its license, but failed to do so. Therefore, the violation was willful. The violation occurred on more than one day, therefore, the violation was repeated.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000 per violation.⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that BCBA is apparently liable for a \$4,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Boulder Community Broadcast Association, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 73.1745(a) of the Rules.¹⁰

12. **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, Boulder Community Broadcast Association, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado 80226 and must include the NAL/Acct. No. referenced in the caption.

15. 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.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1745(a).

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16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.¹¹

17. 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 Boulder Community Broadcast Association, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver District Office
Western Region
Enforcement Bureau

¹¹ See 47 C.F.R. § 1.1914.