

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

|                              |   |                             |
|------------------------------|---|-----------------------------|
| In the Matter of             | ) |                             |
|                              | ) |                             |
| Nassau Broadcasting II, LLC, | ) | File No.: EB-10-PA-0079     |
| Debtor-in-Possession         | ) |                             |
|                              | ) | NAL/Acct. No.: 201232400002 |
| Licensee of Station WPLY     | ) |                             |
| Mount Pocono, Pennsylvania   | ) | FRN: 0003759685             |
| Facility ID #67060           | ) |                             |

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

**Adopted:** January 19, 2012

**Released:** January 19, 2012

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Nassau Broadcasting II, LLC, Debtor-in-Possession ("Nassau Broadcasting"), licensee of AM Station WPLY in Mount Pocono, Pennsylvania, apparently willfully and repeatedly violated section 73.1745(a) of the Commission's Rules ("Rules")<sup>1</sup> by operating its station with only one of its four authorized directional antennas at a reduced power of 250 Watts during daytime hours without a Special Temporary Authorization (STA), in direct contravention of the terms of its station authorization. We also find that Nassau Broadcasting willfully and repeatedly violated section 73.3526 of the Rules<sup>2</sup> by failing to maintain and make available for inspection a local public inspection file at Station WPLY's main studio. We conclude that Nassau Broadcasting is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000). We further direct Nassau Broadcasting to submit a written statement signed under penalty of perjury stating that Station WPLY is now in compliance with sections 73.1745(a) and 73.3526 of the Rules.

**II. BACKGROUND**

2. On March 25, 2010, agents from the Enforcement Bureau's Philadelphia Office conducted a random inspection of Station WPLY's main studio in Stroudsburg, Pennsylvania with several staff members, including the station engineer and the station sales director. During the inspection, the agent found that Station WPLY did not have a local public inspection file and the station engineer and sales director both admitted that the station had never maintained a local public inspection file.

3. After conducting the inspection at Station WPLY's main studio on March 25, 2010, the agents proceeded to the Station's transmitter site and inspected Station WPLY's four antenna structures with the station engineer. During the inspection, the station engineer identified for the agent the one tower (antenna structure number 1215954) that was being used by the station. The station engineer reported that Station WPLY had been transmitting from only one of its four authorized antenna structures

<sup>1</sup> 47 C.F.R. § 73.1745(a).

<sup>2</sup> 47 C.F.R. § 73.3526

with only 250 Watts instead of its authorized daytime power of 1000 Watts. The station engineer further reported that the station had not obtained an STA to operate at variance from its licensed facilities.

4. On April 5, 2010, Nassau Broadcasting notified the agents in the Philadelphia Office that they filed an application for an STA that day to operate the station at reduced power using only one of the station's four authorized towers.<sup>3</sup> The Commission granted the application on April 6, 2010.

5. On April 12, 2010, an agent contacted Crown Castle, the entity that maintains Station WPLY's towers. Crown Castle reported that they had been maintaining Station WPLY's antenna structures for eight years and, during that time, only one tower was in operation. When the agent contacted Nassau Broadcasting regarding the report from Crown Castle, Nassau confirmed that, since it obtained the station in 2000, it had operated with only one tower at reduced power without ever having obtained an STA prior to the STA that was granted on April 6, 2010.

### III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended ("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.<sup>4</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>5</sup> 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,<sup>6</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>7</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>8</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

#### A. Unauthorized Operation

7. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times, or

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<sup>3</sup> See File No. BSTA-20100405ABU.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

<sup>7</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

<sup>8</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) ("*Callais Cablevision, Inc.*") (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>9</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."

with modes or power, other than those specified and made part of the license.<sup>10</sup> Station WPLY's license specifies that the station must operate with a power of 1000 Watts during daytime hours. During the March 25, 2010 inspection, Nassau Broadcasting admitted that it was operating Station WPLY from only one of its four authorized towers at a reduced power of 250 Watts without an STA. Nassau Broadcasting later admitted that it had been broadcasting with only one tower at reduced power without an STA since it purchased Station WPLY in 2000. Based on the evidence before us, we find that Nassau Broadcasting apparently willfully and repeatedly violated section 73.1745(a) of the Rules by operating Station WPLY with a mode and level of power that were in direct contravention of its station authorization.

## **B. Public Inspection File**

8. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM or FM station shall maintain a public inspection file containing the material, relating to that station, described in Section 73.3526(e) of the Rules.<sup>11</sup> Section 73.3526(b)(1) of the Rules requires that the public inspection file shall be maintained at the station's main studio.<sup>12</sup> Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours.<sup>13</sup> During the March 25, 2010 inspection, agents attempted to review Station WPLY's public inspection file, but there was no file available for review at the main studio location. Station WPLY's engineer and sales manager both admitted to the agents that Nassau Broadcasting has never maintained a public inspection file for Station WPLY at its main studio. Based on the evidence before us, we conclude that Nassau Broadcasting apparently willfully and repeatedly violated section 73.3526 of the Rules.

## **C. Proposed Forfeiture Amount**

9. Pursuant to the Commission's *Forfeiture Policy Statement*, and section 1.80 of the Rules, the base forfeiture amount for operating the station in direct contravention of the terms of its station authorization is \$4,000, and the base forfeiture amount for violation of the public file rule is \$10,000.<sup>14</sup> 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, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>15</sup> Because Nassau Broadcasting was in violation of our Rules since its purchase of Station WPLY in 2000, we find that upward adjustments of \$2,000 for the public file violation and \$1,000 for the unauthorized operation violation are warranted. Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Nassau Broadcasting is apparently liable for a \$17,000 forfeiture.

10. We also direct Nassau Broadcasting to submit a written statement pursuant to section 1.16 of the Rules,<sup>16</sup> signed under penalty of perjury by an officer or director of Nassau Broadcasting, stating that it is currently maintaining a public inspection file that is in full compliance with the requirements under section 73.3526 of the Rules, and that it is either operating consistent with its station authorization or has a

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<sup>10</sup> 47 C.F.R. § 73.1745(a).

<sup>11</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>12</sup> 47 C.F.R. § 73.3526(b)(1).

<sup>13</sup> 47 C.F.R. § 73.3526(c)(1).

<sup>14</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> 47 C.F.R. § 1.16.

valid STA. This statement must be provided to the Philadelphia Office at the address listed in paragraph 15, *infra*, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

#### 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, 0.204(b), 0.311, 0.314, and 1.80 of the Commission's Rules, Nassau Broadcasting II, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for violations of sections 73.1745(a) and 73.3526 of the Rules.<sup>17</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Nassau Broadcasting **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **IT IS FURTHER ORDERED** that Nassau Broadcasting II, LLC **SHALL SUBMIT** a sworn statement as described in paragraph 10 to the Enforcement Bureau Office listed in paragraph 15 within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

14. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Nassau Broadcasting shall also send electronic notification to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov) on the date said payment is made.

15. The written statement 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 1.80(f)(3) and 1.16 of the Rules.<sup>19</sup> The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, and must include the NAL/Account number referenced in the caption. The statement should also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

16. 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)

<sup>17</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 73.1745(a), 73.3526.

<sup>18</sup> See 47 C.F.R. § 1.1914.

<sup>19</sup> See 47 C.F.R. §§ 1.80(f)(3), 1.16.

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.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Nassau Broadcasting at 22 S. 6<sup>th</sup> Street, Stroudsburg, Pennsylvania, 18360.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski  
Acting District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau