

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

In the Matter of)	
)	
Taylor Broadcasting Company)	File No: EB-10-DT-0054
)	NAL/Acct. No.: 201232360003
Licensee of AM Station WJTB)	Facility ID #: 64644
Elyria, Ohio)	FRN: 0011431749
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 13, 2012

Released: February 13, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Taylor Broadcasting Company (Taylor Broadcasting), licensee of AM Station WJTB in Elyria, Ohio (Station), apparently willfully and repeatedly violated Section 73.1125(a) of the Commission’s rules (Rules)¹ by failing to maintain a management and staff presence at their main studio. We conclude that Taylor Broadcasting is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). We also direct Taylor Broadcasting to submit within thirty (30) calendar days a statement under penalty of perjury certifying that it is now operating its main studio in compliance with the Rules.

II. BACKGROUND

2. On March 30, 2010, at 2:20 p.m., agents from the Enforcement Bureau’s Detroit Office (Detroit Office) attempted to conduct an inspection of the Station’s main studio located at 105 Lake Avenue in Elyria, Ohio. When the agents arrived at the main studio, they found the door to the main studio locked and, through the front window, observed that the studio appeared to be empty. The agents knocked on the door several times, but no one answered. While agents were knocking on the door to the studio, a car pulled into the parking lot and a woman got out and approached the agents. The agents identified themselves as FCC agents and the woman identified herself as “Ms. Taylor.” The agents explained to Ms. Taylor that they were there to inspect the station. Ms. Taylor stated that the agents would need to speak to “Mr. Taylor” if they wanted to inspect the station and provided the agents two telephone numbers for Mr. Taylor. The agents returned to their vehicle and attempted to call Mr. Taylor on the numbers provided by Ms. Taylor. The agents were unable to reach Mr. Taylor and left the main studio without obtaining access to conduct an inspection.

3. On May 24, 2010, the Detroit Office issued a Letter of Inquiry to Taylor Broadcasting Company concerning staffing at the Station’s main studio.² Taylor Broadcasting submitted a response to the *LOI* on June 21, 2010.³ In the *LOI Response*, Taylor Broadcasting reported that station personnel do

¹ 47 C.F.R. §§ 73.1125, 73.1225(a).

² Letter of Inquiry from James A. Bridgewater, District Director, Detroit Office, Northeast Region, Enforcement Bureau, to James E. Taylor, Taylor Broadcasting, dated May 24, 2010 (*LOI*).

³ Letter from James E. Taylor, Chief Executive Officer, Taylor Broadcasting Company, to James A. Bridgewater,

not have specific days and times that they work, but rather are "scheduled as needed." Taylor Broadcasting claimed that the agents were not able to gain access to the main studio because they did not push the entry buzzer.

4. On August 19, 2010, at 11:18 a.m., the agents again attempted to conduct an inspection of the Station's main studio at 105 Lake Avenue in Elyria, Ohio. The agents found that the front door to the main studio was locked and there was no entry buzzer on the outside of the locked door, contrary to Taylor Broadcasting's representation in the *LOI Response*. Agents knocked on the door several times, but no one answered. The agents left the main studio without being able to conduct an inspection.

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act")⁴ 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. 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.⁵ 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 Act⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁹

A. Main Studio Staffing Violation

6. Section 73.1125(a) of the Rules requires broadcast stations to maintain a main studio.¹⁰ The Commission has interpreted Section 73.1125 (also known as the "Main Studio Rule") to require, among other things, that a licensee maintain a "meaningful management and staff presence" at its main studio.¹¹

District Director, Detroit Office, Northeast Region, Enforcement Bureau, dated June 21, 2010 (*LOI Response*) at 1.

⁴ 47 U.S.C. § 503(b).

⁵ 47 U.S.C. § 312(f)(1).

⁶ H.R. Rep. No. 97-765, 97th 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 ...").

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

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

⁹ 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."

¹⁰ 47 C.F.R. § 73.1125(a).

¹¹ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 (1988) ("*Main Studio and Program Origination Rules*"), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

Specifically, the Commission has found that a main studio “must, at a minimum, maintain full-time managerial and full-time staff personnel.”¹² Although management personnel need not be “chained to their desks” during normal business hours, they must “report to work at the main studio on a daily basis, spend a substantial amount of time there and...use the studio as a ‘home base.’”¹³

7. On March 30, 2010, and August 19, 2010, when agents attempted to conduct an inspection at the Station’s main studio during regular business hours, the agents found that the building was locked and there were no station personnel present.¹⁴ Taylor Broadcasting’s claim that station personnel are “scheduled as needed” has not resulted in “meaningful management and staff presence” at the Station’s main studio, as evidenced by the fact that the agents found the main studio locked and empty on two occasions. Accordingly, based on the evidence before us, we find that Taylor Broadcasting apparently willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain a full-time management and staff presence at the Station’s main studio during regular business hours.

B. Proposed Forfeiture and Reporting Requirement

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount is \$7,000 for violation of the main studio rule.¹⁵ 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.¹⁶ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that an upward adjustment is warranted because Taylor’s continued failure to comply with the Commission’s main studio requirements even after being advised of the rules in the *LOI* demonstrates a deliberate disregard for the Rules. We therefore conclude that Taylor Broadcasting is apparently liable for a total forfeiture in the amount of \$10,000.

9. We also direct Taylor Broadcasting to submit a statement signed under penalty of perjury by an officer or director of Taylor Broadcasting that the Station’s main studio is staffed full-time by full-time managerial and staff personnel (listing the names of the staff and manager and the hours and days worked).

IV. ORDERING CLAUSES

10. 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, Taylor Broadcasting Co. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE**

¹² See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 & n.2 (1991) (“*Jones Eastern*”) (noting that, “This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered ‘meaningful.’”), *clarified*, 7 FCC Rcd 6800 (1992) (“*Jones Eastern II*”). See also *Birach Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2635 (Enf. Bur. 2010).

¹³ *Jones Eastern II*, 7 FCC Rcd at 6802.

¹⁴ We also note that, although Ms. Taylor arrived at the Station during the first attempted inspection on March 30, 2010, we are not sure if she is a station employee. Even assuming she is an employee, a single employee does not constitute a “meaningful management and staff presence.”

¹⁵ *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*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

in the amount of ten thousand dollars (\$10,000) for violations of Section 73.1125(a) of the Rules.¹⁷

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

12. **IT IS FURTHER ORDERED** that Taylor Broadcasting Company **SHALL SUBMIT** a sworn statement, as described in paragraph 9, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335-1552.

13. 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 Account Number and FRN Number 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. 20554.¹⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Taylor Broadcasting will send electronic notification on the date said payment is made to NER-Response@fcc.gov.

14. 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. The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan 48335-1552 and must include the NAL/Acct. No. referenced in the caption. Taylor Broadcasting also shall email the written response to NER-Response@fcc.gov.

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.

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 73.1125(a).

¹⁸ See 47 C.F.R. §1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Taylor Broadcasting Company at 105 Lake Avenue, Elyria, Ohio 44035-5013.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau