

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

In the Matter of)	
)	
Hoosier Public Radio Corporation)	File No.: EB-FIELDNER-12-00004400
)	NAL/Acct. No.: 201232320002
Licensee of Station WRFM-FM)	FRN: 0006402911
Wilkinson, Indiana)	Facility ID No.: 173964

FORFEITURE ORDER

Adopted: October 28, 2013

Released: October 28, 2013

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Hoosier Public Radio Corporation (Hoosier), licensee of Non-Commercial Educational Station WRFM-FM, in Wilkinson, Indiana (Station), for willfully and repeatedly violating Section 73.1350(a) of the Commission's rules (Rules).¹ The noted violation involved Hoosier's failure to maintain and operate its broadcast station in accordance with the terms of the Station's authorization.

II. BACKGROUND

2. On March 8, 2012, the Enforcement Bureau's Chicago Office (Chicago Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)² to Hoosier for operating its Station on 89.1 MHz from an unauthorized location without a special temporary authorization (STA). Specifically, the Chicago Office found that Hoosier had operated on September 28, 2010, and February 10 and 14, 2011, from an antenna mounted on a farm silo at the approximate geographic coordinates of 39° 50' 15" North Latitude and 85° 37' 30" West Longitude in Jackson Township, Hancock County, Indiana (hereinafter referred to as the "Farm Silo"), which is approximately three miles from the Station's authorized transmitter location. The Chicago Office also determined that spurious emissions from the Station's operation at the Farm Silo caused harmful interference to the Federal Aviation Administration (FAA) on February 10, 2011.

3. Hoosier submitted a response to the *NAL*, in which it does not dispute that it was operating from the Farm Silo, but claims that it had filed an STA request with the Commission to operate at that location.³ Hoosier also claims that there is insufficient evidence to support the finding in the *NAL* that the Station was causing interference to the FAA from the Farm Silo on February 10, 2011, and that therefore the

¹ 47 C.F.R. § 73.1350(a).

² *Hoosier Public Radio Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2319 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

³ *Hoosier Public Radio Corporation*, Request for Review at 2-8 (April 10, 2012) (on file in EB-10-CG-0743) (*NAL Response*). We do not address in this Order any of the issues raised by Hoosier in its *NAL Response* that do not relate to the violations at issue in the *NAL*. See 47 C.F.R. § 1.80(f)(3).

\$4,000 upward adjustment proposed in the *NAL* for the FAA interference was not warranted.⁴ Hoosier further requests a reduction to the proposed forfeiture based on its history of compliance with the Rules and its inability to pay.⁵

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁶ Section 1.80 of the Rules,⁷ and the *Forfeiture Policy Statement*.⁸ In examining Hoosier's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account 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.⁹ As discussed below, we have considered Hoosier's response in light of these statutory factors and find that a cancellation or reduction of the forfeiture is not warranted.

5. We reject Hoosier's claim that it had authority on the dates at issue in the *NAL* to operate from the Farm Silo pursuant to an STA. According to the Commission's records, Hoosier did not submit a valid STA request until February 16, 2011.¹⁰ The STA, which was granted the next day, authorized Hoosier to operate from a Church Steeple located at 310 S. Main Street, Wilkinson, Indiana (hereinafter referred to as the "Church Steeple"), not from the Farm Silo.¹¹ Hoosier does not provide any evidence to support its claim that it filed STA requests with the Commission prior to February 14, 2011, for the Farm Silo.¹² Indeed, the only letter Hoosier submitted with the *NAL Response* was the letter it submitted to the Commission along with the STA request that the Media Bureau dismissed on February 16, 2011, for the

⁴ *NAL Response* at 10-13.

⁵ *Id.*

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ See BSTA20110216ABX. Although Hoosier first filed an STA request on February 14, 2011, it was dismissed on February 16, 2011, because the description of the site and geographical coordinates provided in the STA request did not match. See BSTA20110214AAJ. See also Letter from Charles N. Miller, Engineer, Audio Division, FCC Media Bureau, to Hoosier Public Radio Corporation (Feb. 16, 2011) (on file in EB-FIELDNER-12-00004400).

¹¹ See BSTA20110216ABX.

¹² Throughout its *NAL Response*, Hoosier makes several statements without supporting documentation and/or identifying dates regarding STA requests it allegedly filed prior to February 2011. See *NAL Response* at 3 ("the first and second request was never acted on," "the two discrete paper filed applications were not denied and were accepted by inclusion in February 2012 in conjunction with the 3d and 4th STA request," "WRFM-FM has previously provided the copies of two mailed filings for the STA requests which were properly filed via mail . . . applications and their authenticity were confirmed when Staff granted the current STA," "grant of the current STA was not allowed until it was determined the filings were in fact made"). Contrary to Hoosier's claim, the Media Bureau's grant of the STA request on February 17, 2011, did not validate Hoosier's claim that it submitted an STA request prior to February 2011, nor was the STA retroactive to the dates on which Hoosier claims it previously submitted STA requests. Even if the STA grant could be applied retroactively, it would be meaningless with regard to Hoosier's operation at the Farm Silo because the STA granted on February 17, 2013, authorized operation at the Church Steeple, not the Farm Silo.

Church Steeple site.¹³ Even assuming Hoosier had filed an STA request prior to February 14, 2011, Commission precedent is clear that, contrary to Hoosier's assertion, authority to operate at variance from a license must be received prior to commencement of such operation.¹⁴ We therefore find that Hoosier willfully and repeatedly violated Section 73.1350(a) of the Rules by failing to operate its Station in accordance with the terms of its station authorization on September 28, 2010, and February 10 and 14, 2011.

6. We also find that the \$4,000 upward adjustment based on the interference caused by the Station to the FAA on February 10, 2011, is fully supported by the evidence. On February 10, 2011, after receiving a report from the FAA of interference on aeronautical frequency 126.83 MHz, an agent from the Chicago Office determined that there was a spurious emission emanating from the Farm Silo on 126.83 MHz.¹⁵ The agent immediately contacted Hoosier, and its owner, Martin Hensley, directed the agent to locate the circuit breaker and turn off the transmitter. With the assistance of the farm's owner, the agent located the circuit breaker and turned off the transmitter. After turning off the Station's power, the agent confirmed that the spurious emissions on 126.83 MHz had ceased. While waiting for Mr. Hensley to arrive, the agent drove around the area and confirmed that there were no other signals in the area on aeronautical frequency 126.83 MHz. When Mr. Hensley later arrived at the Farm Silo, he replaced the transmitter and the agent confirmed that the Station no longer produced spurious emissions on 126.83 MHz.¹⁶ We therefore find that the proposed upward adjustment in the amount of \$4,000 is warranted.

7. We find no basis for reducing the forfeiture based on Hoosier's inability to pay. When faced with claims alleging an inability to pay, the Commission has determined that gross revenues are generally the best indicator of an individual or entity's ability to pay a forfeiture.¹⁷ As stated in the *NAL*, 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

¹³ See *NAL Response* at Exhibit D.

¹⁴ See *NAL Response* at 3, 7. Section 73.1635(a)(1) of the Rules, 47 C.F.R. § 73.1635(a)(1), provides that a "request for a STA should be filed with the FCC in Washington, DC at least 10 days prior to the date of the proposed operation." See also Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Lauren A. Colby, Esq., Counsel, Humberto Lopez dba Benavides Communications, 21 FCC Rcd 1248, 1251, n. 25 (Med. Bur. 2006) (special temporary authority must be sought to permit the operation of a broadcast facility for a limited period at variance from its authorization, and that authority must be received prior to the commencement of such operation). We also note that Section 73.1635(a)(1) of the Rules specifically states that the STA request must be submitted with the FCC in Washington, DC. 47 C.F.R. § 73.1635(a)(1). To the extent Hoosier argues that it sent copies of the STA requests to the Chicago Office (see *NAL Response* at 7), such copies would not constitute a proper filing under Section 73.1635(a)(1) of the Rules. Furthermore, Hoosier mistakenly believes that agents from the Chicago Office assented to the Station's operation from the Farm Silo because they did not direct him to permanently shut down the Station. An agent's goal is to ensure a station's compliance with the Commission's rules without disrupting service to the station's listeners, if possible. Here, the agents from the Chicago Office did not direct Hoosier to shut down the Station, but rather advised Hoosier to obtain an STA. In doing so, they neither approved operation from the Farm Silo nor impacted the FCC's authority to assess a forfeiture for the time period during which Hoosier operated the Station from an unauthorized location.

¹⁵ *NAL*, 27 FCC Rcd at 2320, para. 4.

¹⁶ *Id.* at 2320, para. 4, n. 3.

¹⁷ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

reliable and objective documentation that accurately reflects the petitioner's current financial status.¹⁸ Hoosier claims that it is not required to file tax returns because it has no income.¹⁹ In lieu of tax returns, Hoosier submits a "Financial Statement" that it claims is a "standard yearly reporting of a Not for Profit."²⁰ The Financial Statement was not prepared according to GAAP and there is no evidence that it was prepared by an objective third party. The Financial Statement is a single page and lists two categories for each year – equity and debt. Under the equity category, which is most relevant for our purposes here, the statement lists "income" and "cash on hand," which Hoosier indicates were zero for each year.²¹ We find it entirely implausible that a corporation operating a radio station could have zero income and zero cash on hand. We therefore conclude that the financial documentation submitted by Hoosier is neither a reliable nor objective reflection of Hoosier's current financial status and we decline to reduce the proposed forfeiture on this basis.

8. We likewise decline to grant Hoosier's request for cancellation based on its history of compliance with the Commission's rules. While it is true that no prior sanctions have been issued to Hoosier, the investigation at issue here has revealed that Hoosier never constructed the Station at the location authorized in the Station's license, which was granted in 2008.²² We therefore find that a reduction for history of compliance is not warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Hoosier Public Radio Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 73.1350(a) of the Commission's rules.²³

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁴ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁵ Hoosier Public Radio Corporation shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in

¹⁸ *NAL*, 27 FCC Rcd at 2322, para. 15.

¹⁹ *NAL Response* at 8.

²⁰ *Id.*; see also Exhibit D to *NAL Response*.

²¹ Under the debt category, Hoosier lists "transmitter package" and "facilities." For each year, the transmitter package is valued at \$9,000 while the facilities range in value from \$12,000 to \$36,000.

²² See BLED20081001ATR. Station WRFM-FM's licensed coordinates are 39° 52' 46" North Latitude and 85° 38' 11" West Longitude.

²³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1350(a).

²⁴ 47 C.F.R. § 1.80.

²⁵ 47 U.S.C. § 504(a).

²⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Hoosier Public Radio Corporation at 15 Wood Street, Greenfield, Indiana, 46140.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau

²⁷ See 47 C.F.R. § 1.1914.