

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

In the Matter of)	
)	
Radio License Holding XI, LLC)	File No: EB-09-IH-0574
)	Facility ID No.: 73227
Licensee of Station WLS(AM),)	NAL/Acct. No.: 201232080012
Chicago, Illinois)	FRN: 0014650006

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 2, 2012

Released: February 3, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we assess a monetary forfeiture in the amount of forty-four thousand dollars (\$44,000) against Radio License Holding XI, LLC (“Radio License” or the “Licensee”), licensee of Station WLS(AM), Chicago, Illinois (“the Station”), for its apparent willful violation of section 317 of the Communications Act, as amended (“the Act”), and section 73.1212 of the Commission’s rules.¹ These provisions generally require a licensee to make sponsorship identification announcements whenever it broadcasts matter in return for money, service, or other valuable consideration. As discussed below, we find that Radio License apparently violated section 317 of the Act and the Commission’s sponsorship identification rule.

II. BACKGROUND

2. The Commission received a complaint alleging that, on March 19, 2009, at 2:29 p.m., the Station aired program matter on behalf of an organization called Workers Independent News (“WIN”) without adequately disclosing the fact that it was an advertisement, rather than a news story.² The Enforcement Bureau (“Bureau”) issued a letter of inquiry (“LOI”) to the Licensee concerning the allegations raised in the Complaint.³ The Licensee responded to the LOI on February 18, 2011.⁴

3. In its *Response*, Radio License states that, during the period March 18 to May 30, 2009, it aired program matter on behalf of WIN, in return for consideration or the promise of consideration

¹ See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212.

² See FCC Form 2000E, Complaint No. 09-C00104365-1 (“*Complaint*”).

³ See Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, to Radio License Holding XI, LLC, dated January 19, 2011 (“*LOI*”).

⁴ See Letter from Dennis P. Corbett, Nancy A. Ory, and F. Scott Pippin, Counsel to Radio License Holding XI, LLC, Lerman Senter PLLC, to Paul Noone, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated February 18, 2011 (“*LOI Response*” or “*Response*”).

provided by WIN.⁵ Next, Radio License explains that the program matter consisted of a total of 45 ninety-second spots, 27 fifteen-second promotional announcements, 2 two-hour programs, and 1 one-hour program.⁶ Radio License further explains that all of the program matter listed immediately above complied with the Commission's sponsorship identification requirements⁷ except for 11 of the 45 ninety-second spots.⁸ Regarding these 11 announcements, Radio License states that all of these 11 spots referenced "Workers Independent News" and identified the narrator, but did not specifically state that the program matter was sponsored, paid for, or furnished by WIN.⁹ Despite this omission, Radio License contends that the announcements satisfy the Commission's sponsorship identification requirements.¹⁰

4. Radio License provided recordings and transcripts for the announcements at issue.¹¹ The transcript of one of these announcements, in its entirety, is as follows:

Workers Independent News, I'm Doug Cunningham. As Federal Economic Stimulus dollars flow to Chicago, State Representative Joe Lyons says it's more critical than ever that the State put together a capital bill to take maximum advantage of the stimulus to put Chicago back to work.

(Joe Lyons quote) "Unfortunately for the past 2 or 3 years, with the situation we've had in this state, the time wasn't right to put a capital bill together. One of the major issues that we will have to do before we adjourn the general assembly is get a capital bill to tap into some of that [f]ederal [m]oney that can make putting (mumbled word – at :39 of the clip) people to work and getting good jobs to people here in Illinois all the easier."

Lyons says securing funding for the capital bill will allow projects to be bonded out, improving not only employment and the economy, but Chicago's infrastructure as well.

(Joe Lyons quote) "Ask anybody in Chicago about the crumbling street situation. Ask anybody who's been waiting for a school addition or new windows or some project that's being done for education, ask anybody who's been for any kind of a capital project across the state, we have not had that umph that we need to kick-start this whole thing and there's going to be federal matching funds on the transportation end of it to get this done for CTA or RTA.["]

⁵ See *id.* at 2.

⁶ See *id.* at 2-3.

⁷ See 47 C.F.R. § 73.1212.

⁸ Specifically, Radio License explains that the one-hour and two-hour paid programs each included the statement "Workers Independent News is a paid program sponsored by Workers Independent News," 34 of the 45 ninety-second spots contained an introductory statement noting that "[t]his message is paid for by the Workers Independent News Network," and the 27 fifteen-second promotional announcements each encouraged listeners to tune in for a "Workers Independent News" special the following Saturday. See *LOI Response* at 3. With respect to the 27 fifteen-second promotional announcements, Radio License notes that they promoted WIN by name, and argues that they raise no FCC-compliance issues. See *id.* We agree. Those promotional announcements clearly identified WIN as the sponsor of the announcements and therefore satisfied our sponsorship identification requirements. See 47 C.F.R. § 73.1212.

⁹ See *LOI Response* at 3.

¹⁰ See *id.*

¹¹ See *id.* at Exhibits A & B.

The capital bill could make Olympics infrastructure preparation easier, should Chicago land the 2016 Olympic Games. As Illinois Director of Veteran's Affairs, Dan Grant, says as construction projects ramp up, existing [s]tate programs to help veterans can be used in combination with them to multiply job opportunities for veterans.

(Dan Grant quote) "For example, a tax credit for employers who hire veterans, we have veterans employment preference for [s]tate jobs."

Doug Cunningham, Workers Independent News.¹²

5. The Licensee offers several arguments in support of its contention that the referencing of "Workers Independent News" in the 11 announcements at issue satisfies the sponsorship identification requirements. First, it argues that each of the 11 announcements identified the sponsor thereof by name and thus satisfied the underlying purpose or "basic requirement" of section 73.1212(f).¹³ In addition, the Licensee contends that the program matter was identifiable as paid programming because it "was included with other commercial matter and not embedded within [the Station's] news content."¹⁴ Finally, the Licensee notes that the complainant was aware that the material was paid programming because he/she stated that "[o]ne of the advertisers is 'Workers Independent News' and that '[a]ds from 'WIN' are intermixed with legitimate news/talk programming."¹⁵

III. DISCUSSION

6. Section 317(a)(1) of the Act and section 73.1212(a) of the Commission's rules require broadcast stations to broadcast an announcement disclosing whenever any matter is broadcast in exchange for valuable consideration "directly or indirectly paid or promised to or charged or accepted by, the station so broadcasting" at the time the material is aired.¹⁶ Specifically, section 317(a)(1) provides:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.¹⁷

Section 73.1212(a) of the Commission's rules, which implements section 317(a)(1) of the Act, further provides:

¹² See *id.* at Exhibit A, Spot # C463, and Exhibit B (audio recording), Track 6.

¹³ *LOI Response* at 3-4. See 47 C.F.R. § 73.1212(f).

¹⁴ See *LOI Response* at 4.

¹⁵ See *id.* (citing *Complaint*).

¹⁶ 47 U.S.C. § 317(a); 47 C.F.R. § 73.1212(a).

¹⁷ 47 U.S.C. § 317(a)(1).

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

- (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and
- (2) By whom or on whose behalf such consideration was supplied: *Provided, however,* That “service or other valuable consideration” shall not include any service or property furnished without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.¹⁸

7. The Commission has explained that the sponsorship identification rules are “grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them.”¹⁹ The disclosures required by the sponsorship identification rules provide listeners and viewers with information concerning the source of material in order to prevent misleading or deceiving those listeners and viewers.²⁰

8. Radio License does not maintain that sponsorship identification provisions of the Act and the rules are inapplicable to the 11 promotional announcements at issue; instead, it argues that the announcements satisfied the Act and the rules. We reject Radio License’s contention that the 11 announcements at issue, which were informational program material related to a state legislative issue impacting the local economy of Chicago, satisfy the Commission’s sponsorship identification requirements. We note that Radio License offers no precedent in support of its argument that, because each of the announcements identified “Workers Independent News” by name, they satisfied the “basic requirement” of section 73.1212(f) and thus fulfill the sponsorship identification requirements.²¹ Section 73.1212(f) in pertinent part provides that “[i]n the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor’s corporate or trade name. . . shall be deemed sufficient for the purpose of this section”²² As Radio License acknowledges,²³ section 73.1212(f) applies in instances of broadcast matter advertising commercial products or services, while the announcements at issue do not involve commercial products or services and thus do not fall within the

¹⁸ 47 C.F.R. § 73.1212(a).

¹⁹ See, e.g., *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593-94 (2005).

²⁰ See *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686 (2007), Forfeiture Order, 24 FCC Rcd 14830, 14834 ¶ 12 (2009) (forfeiture reduced and paid).

²¹ See *LOI Response* at 3-4. This decision is consistent with prior Commission precedent. See, e.g., *Midwest Radio-Television, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 512 (1974) (assessing forfeiture for a violation of sponsorship identification laws and noting that “This is Jack Douglas speaking for the Minnesota School Boards Association,” is not sufficient identification as there was no indication that the announcement was sponsored or paid for by the association); *Lamar A. Newcomb*, Memorandum Opinion and Order, 1 FCC 2d 1395 (1965) (assessing forfeiture for a violation of sponsorship identification laws and noting that the program sponsored by Reverend Dale Crowley identified by announcement of the words “Dale Crowley” does not constitute sufficient identification because there was no indication that the Reverend Crowley was sponsoring or paying for the program).

²² 47 C.F.R. § 73.1212(f).

²³ See *LOI Response* at 3-4.

purview of this subsection.²⁴ In addition, we disagree that the underlying purpose of the rule was satisfied because the name itself, “Workers Independent News,” in contrast to a corporate or trade name, implies or creates the impression of an objective news program rather than an attempt at persuasion. We therefore find this argument to be without merit.

9. Radio License also contends, without precedential support, that the announcements at issue satisfy the sponsorship identification requirements because they were “included with other commercial matter and not embedded within [the Station’s] news content” and thus were, presumably, identifiable by listeners as paid programming.²⁵ We are not persuaded by this argument. Since the subject matter of the 11 announcements at issue related to a state legislative issue impacting the local economy of Chicago, it would not have been apparent to listeners from the announcements themselves that they were sponsored programming, even if commercial programming preceded and succeeded the 11 spots. In addition, the name “Workers Independent News,” content, format and duration of the announcements were not consistent with typical commercial matter. Finally, the fact that the complainant may have been aware that the material he complained about was paid programming does not absolve the Licensee from complying with the Commission’s sponsorship identification requirements.

10. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁶ 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.²⁷ 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,²⁸ and the Commission has so interpreted the term in the section 503(b) context.²⁹ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.³⁰ The Commission will then issue a forfeiture if it finds, by a

²⁴ See, e.g., *Jacor Broadcasting of Colorado, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 9969 (1997), Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 7892 (1993) (applying section 73.1212(f) in a case that involved announcements promoting the commercial services and attractions of a city). See also *Commission Reminds Broadcast Licensees and Cable Operators of Sponsorship Identification Requirements Applicable to Paid-For “Public Service” Messages*, Public Notice, 6 FCC Rcd 5861, 5861 ¶ 4 (1991) (stating “[t]he provisions of Section [] 73.1212(f) . . . do not apply unless ‘commercial products or services’ are being advertised.”).

²⁵ See *LOI Response* at 3-4.

²⁶ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). See also 47 U.S.C. § 503(b)(1)(D) (providing that any person who is determined by the Commission to have violated any provision of section 1464 shall be liable for a forfeiture penalty).

²⁷ 47 U.S.C. § 312(f)(1).

²⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

³⁰ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.³¹

11. The Commission's forfeiture guidelines establish a base forfeiture amount of four thousand dollars (\$4,000) for sponsorship identification violations.³² In addition, the Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act³³ and section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³⁴ Based upon our review of the record in this case and the statutory factors identified above, we find that Radio License is apparently liable for a forfeiture in the amount of forty-four thousand dollars (\$44,000). This represents the base amount for each of the 11 instances in which a WIN-sponsored announcement was broadcast without disclosing that the announcement was sponsored, paid for, or furnished by WIN.

IV. ORDERING CLAUSES

12. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,³⁵ and sections 0.111, 0.311, 0.314, and 1.80 of the Commission's rules,³⁶ that Radio License Holding XI, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of forty-four thousand dollars (\$44,000) for its apparent willful violation of the sponsorship identification requirements of section 317 of the Communications Act of 1934, as amended, and section 73.1212 of the Commission's rules.

13. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Radio License Holding XI, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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/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.

³¹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

³² See *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, 17115 (1997), *recons. denied*, 15 FCC 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80.

³³ See 47 U.S.C. § 503(b)(2)(E).

³⁴ 47 C.F.R. § 1.80(a)(4).

³⁵ See 47 U.S.C. §§ 317, 503(b).

³⁶ See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1212.

20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Radio License Holding XI, LLC must also send electronic notification on the date said payment is made to Terry.Cavanaugh@fcc.gov, Anjali.Singh@fcc.gov, and Melissa.Marshall@fcc.gov.

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 Commission's rules. The written statement shall be mailed to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554, and **MUST INCLUDE** the NAL/Account Number referenced above. To the extent practicable, any response should also be sent by e-mail to Terry.Cavanaugh@fcc.gov, Anjali.Singh@fcc.gov, and Melissa.Marshall@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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 the *Complaint* **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the *Complaint* proceeding **IS HEREBY TERMINATED**.³⁷

18. **IT IS FURTHER ORDERED**, that a copy of this Notice of Apparent Liability for Forfeiture shall be sent, by Certified Mail/Return Receipt Requested, to Radio License Holding XI, LLC, at its address of record and to its counsel, Dennis P. Corbett, Nancy A. Ory, and F. Scott Pippin, Lerman Senter PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁷ For purposes of the forfeiture proceeding initiated by this *NAL*, Radio License Holding XI, LLC, shall be the only party to this proceeding.