

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

In the Matter of)
Townsquare Media of Flint, Inc.)
Licensee of AM Station WLCO)
Lapeer, Michigan)
File No.: EB-11-DT-0223
NAL/Acct. No.: 201232360006
Facility ID # 14225
FRN: 0004282216

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 4, 2012

Released: June 4, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Townsquare Media of Flint, Inc. (Townsquare), licensee of AM Station WLCO in Lapeer, Michigan (Station), apparently willfully and repeatedly violated Section 73.1745(a) of the Commission’s rules (Rules)1 by operating at times other than those specified in its license. We conclude that Townsquare is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. Station WLCO is authorized to operate only during daytime hours and must cease operating at sunset. During the month of September of each year, the Station must cease operating at 7:45 p.m. Eastern Daylight Time (EDT). On September 12, 2011, in response to a complaint of nighttime operation, an agent from the Enforcement Bureau’s Detroit Office monitored the Station beginning at 7:45 p.m. EDT and observed that the Station continued to operate until at least 8:45 p.m. EDT, when the agent ceased monitoring.

3. On October 12, 2011, the agent inspected the Station and notified the Station’s General Manager and Chief Engineer that the agent observed the Station operating at nighttime, in direct contravention of its daytime-only authorization. Both the General Manager and Chief Engineer stated that they were not aware that the Station was operating after sunset. Later that day, the Chief Engineer reported to the agent via electronic mail that he discovered that the battery in the transmitter’s control unit had died, which resulted in the transmitter not automatically shutting down at sunset. The Chief Operator further reported that the battery had been replaced and that an alarm system was programmed into the transmitter’s control unit so that, going forward, Station personnel will be notified if the transmitter does not shut down at sunset.

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act),2 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

1 47 C.F.R. § 73.1745(a).

2 47 U.S.C. § 503(b).

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.³ 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,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Operation at Times not Authorized by Station’s License

5. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license.⁸ Station WLCO is a daytime-only station, and its license specifies that the Station must cease operating at 7:45 p.m. EDT during the month of September. On September 12, 2011, an agent from the Detroit Office observed the Station operating after sunset. The Chief Engineer later reported to the agent that the battery in the transmitter’s control unit had died, which resulted in the transmitter not shutting down at sunset. Based on the evidence before us, we find that Townsquare apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by operating at times not specified in its license.

B. Proposed Forfeiture Amount

6. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for exceeding power limits is \$4,000.⁹ 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.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant

³ 47 U.S.C. § 312(f)(1).

⁴ 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 . . .”).

⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁶ 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).

⁷ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

⁸ 47 C.F.R. § 73.1745(a).

⁹ *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.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

case, we conclude that Townsquare is apparently liable for a total forfeiture of \$4,000 for operating its daytime-only station after sunset.

IV. ORDERING CLAUSES

7. 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 of the Commission's rules, Townsquare Media of Flint, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 73.1745(a) of the Commission's rules.¹¹

8. **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, Townsquare Media of Flint, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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 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. Regardless of the form of payment, 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. 20554.¹² If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Townsquare will send electronic notification on the date said payment is made to NER-Response@fcc.gov.

10. 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 1.16 and .80(f)(3) of the Rules.¹³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway Street, Farmington Hills, Michigan, 48335, and include the NAL/Acct. No. referenced in the caption. Townsquare also shall e-mail the written response to NER-Response@fcc.gov.

11. 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.

¹¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 73.1745(a).

¹² See 47 C.F.R. § 1.1914.

¹³ 47 C.F.R. §§ 1.16, 1.80(f)(3).

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Townsquare Media of Flint, Inc. at G3338 Bristol Road, Burton, Michigan 48529, and to Townsquare Media of Flint, Inc. c/o Townsquare Management Company, LLC 240 Greenwich Avenue Greenwich, Connecticut 06830.

FEDERAL COMMUNICATIONS COMMISSION

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