

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

In the Matter of	)	
	)	
Birach Broadcasting Corporation	)	File No.: EB-10-DT-0337
	)	NAL/Acct. No.: 201232360007
Licensee of Station WOAP(AM)	)	FRN: 0003766847
Owosso, Michigan	)	Facility ID No.: 41682
	)	

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

Adopted: June 14, 2012

Released: June 14, 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 Birach Broadcasting Corporation (Birach), licensee of AM Station WOAP in Owosso, Michigan (Station),<sup>1</sup> apparently willfully and repeatedly violated Section 73.1745(a) of the Commission's rules (Rules)<sup>2</sup> by operating at times other than those specified in its license. We conclude that Birach is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000). We further direct Birach to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury that it is currently operating in compliance with Section 73.1745(a) of the Rules.

**II. BACKGROUND**

2. On October 21, 2010, the Enforcement Bureau's Detroit Office (Detroit Office) received a complaint from a licensed broadcast station that it was receiving interference at night from Station WOAP. Specifically, the complainant reported that, although Station WOAP does not have authority to operate after sunset, the complainant heard the station operating between 9 p.m. and 11 p.m. on October 19, 2010.

3. Station WOAP is authorized to operate during the daytime only.<sup>3</sup> Accordingly, during the month of October, the Station must cease broadcasting at local sunset time, which is 6 p.m. Eastern Standard Time. On October 26, 2010, an agent of the Detroit Office monitored the Station and observed that the Station continued to operate after local sunset time, albeit at reduced power.<sup>4</sup>

<sup>1</sup> On April 11, 2012, Birach filed an application for authorization to assign Station WOAP and Station WMJH(AM), Rockford, Michigan. See File No. BAL-20120410ACE.

<sup>2</sup> 47 C.F.R. § 73.1745.

<sup>3</sup> See File No. BR-20040324ADX.

<sup>4</sup> In October 2010, 6 p.m. EST was equivalent to 7 p.m. local Eastern Daylight Time (EDT) in Owosso, Michigan. On October 26, 2010, the agent monitored the Station beginning at 5:57 p.m. EDT. The agent observed that the Station continued to operate after 7 p.m. EDT (at reduced power) and was still operating when the agent heard the Station's call sign identification at 8 p.m. EDT.

4. On October 27, 2010, the agent spoke to the Station's Chief Operator, who reported that he believed the Station had post-sunset authority (PSSA). The Station's Chief Operator also reported to the agent that the Station had a construction permit to build modified facilities that would allow nighttime operation and that he therefore believed operating the Station at nighttime at a low power would not cause any interference.

5. According to Commission records, although Station WOAP was granted a PSSA on February 28, 2007,<sup>5</sup> the Commission suspended the Station's PSSA on March 7, 2007.<sup>6</sup> The agent also found that the Commission granted the Station a construction permit to modify its facilities to operate with 50 kilowatts daytime and 4.5 kilowatts nighttime directional, but Birach never constructed the modified facilities.<sup>7</sup>

### III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>8</sup> 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.<sup>9</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>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>12</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>13</sup>

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<sup>5</sup> See File No. BL-19971024AG.

<sup>6</sup> See *Suspension Of Use Of Recently Recalculated Presunrise And Postsunset Service Authorizations And Directions For Continued Presunrise And Postsunset Operation During March 2007 By Am Stations In Areas With Daylight Saving Time*, Public Notice, 22 FCC Rcd 4567 (2007).

<sup>7</sup> See *Applications of 1090 Investments, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 16447 (MB 2008). 1090 Investments LLC is the Station's former licensee.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</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 [A]ct (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>11</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>12</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>13</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." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

**A. Failure to Operate Station Within Terms Authorized by Station License**

7. Section 73.1745(a) of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.”<sup>14</sup> Station WOAP is only authorized to operate during the daytime and therefore must cease operating at local sunset time. On October 26, 2010, an agent observed that the Station continued operating after 6 p.m. EST, which is the local sunset time during the month of October. Based on the evidence before us, we find that Birach apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by failing to operate within the terms of the Station’s authorization.

**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 for exceeding the power limit is \$4,000.<sup>15</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>16</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Birach is apparently liable for a total forfeiture in the amount of four thousand dollars (\$4,000).

9. We further order Birach to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>17</sup> signed under penalty of perjury by an officer or director of Birach stating that it is operating Station WOAP in compliance with Section 73.1745(a) of the Rules. This statement must be provided to the Detroit Office at the address listed in paragraph 14, below, within thirty (30) calendar days of the release date of this NAL.

**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, 0.311, 0.314, and 1.80 of the Commission’s rules, Birach Broadcasting Corporation 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 Rules.<sup>18</sup>

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, Birach Broadcasting Corporation **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 Birach Broadcasting Corporation **SHALL SUBMIT** a written statement, as described in paragraph 9, above, within thirty (30) calendar days of the release date

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<sup>14</sup> 47 C.F.R. § 73.1745(a).

<sup>15</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>16</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>17</sup> 47 C.F.R. § 1.16.

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.1745(a).

of this Notice of Apparent Liability for Forfeiture and Order. Birach Broadcasting Corporation shall also e-mail the written statement to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must also be submitted. An FCC Form 159 may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments 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. 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>19</sup> 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](mailto:ARINQUIRIES@fcc.gov). Birach Broadcasting shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto: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.<sup>20</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Detroit Office, 24897 Hathaway St, Farmington Hills, Michigan 48335, and include the NAL/Acct. No. referenced in the caption. Birach Broadcasting Corporation also shall e-mail the written response to [NER-Response@fcc.gov](mailto: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.

16. **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 first class mail, to Birach Broadcasting Corporation at 21700 Northwestern Hwy., Tower 14, Suite 1190, Southfield, MI 48075.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>19</sup> See 47 C.F.R. § 1.1914.

<sup>20</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).