

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

In the Matter of)	
)	
Four Corners Broadcasting, LLC)	
Licensee of:)	
)	
Station KIQX(FM) and Station WHB352, Durango, Colorado;)	File No.: EB-FIELDWR-12-00004043 Facility ID No.: 22174
)	
Station KRSJ(FM) and Station WLD73, Durango, Colorado;)	File No.: EB-FIELDWR-12-00004038 Facility ID No.: 22036
)	
Station KIUP(AM) and Station WPNG746 Durango, Colorado)	File No.: EB-FIELDWR-12-00004044 Facility ID No.: 22039
)	
)	NAL/Acct. No.: 201432800001
)	FRN: 0003779816

FORFEITURE ORDER

Adopted: December 16, 2014

Released: December 17, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this order, we impose a penalty of \$25,000 against Four Corners Broadcasting, LLC (Four Corners) for operating three studio-transmitter link (STL) stations at an unauthorized location. Four Corners does not deny the operations but asks that the forfeiture be reduced due to inadvertent errors made by its staff along with staff issues that were beyond its control. Given the extended nature of the violation and the lack of mitigating circumstances under our precedent, we see no reason to reduce the forfeiture.

2. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Four Corners, licensee of Station KIQX(FM) and its associated studio-transmitter link (STL) Station WHB352 operating on frequency 948.5 MHz, Station KRSJ(FM) and its associated STL Station WLD73 operating on frequency 947.0 MHz, and Station KIUP(AM) and its associated STL Station WPNG746 operating on frequency 951.875 MHz, in Durango, Colorado, for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 1.903(a) of the Commission's rules (Rules).² The noted violations involve operation of the three STL Stations (STL Stations) from a location not authorized by their respective FCC licenses.

II. BACKGROUND

3. On October 25, 2013, the Enforcement Bureau's Denver Office (Denver Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL) for twenty-five thousand dollars (\$25,000) to

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

Four Corners for failing to operate the STL Stations from their authorized locations.³ In response to the *NAL*, Four Corners does not deny the violations, but requests cancellation or reduction because it took action after receiving notices from the Denver Office concerning the violations, and because it was unable to correct the violations because of staffing issues beyond its control.⁴ It also questions the upward adjustment added to the proposed forfeiture.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 Four Corners' 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

5. We affirm the *NAL*'s finding that Four Corners violated Section 301 of the Act and Section 1.903(a) of the Rules.¹⁰ Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio, except under and in accordance with the Act and with a license.¹¹ Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission.¹²

6. As reflected in the *NAL*, during an inspection conducted on August 24, 2012, an agent from the Denver Office determined that the STL Stations were operating from a location approximately 0.6 miles from their authorized location. Further, the agent determined that the STL Stations had been operating at the unauthorized location since August 2007. In addition, while Four Corners filed applications to remedy the violations after receiving Notices of Violation,¹³ in September 2012, all three applications were "returned" to Four Corners by the Commission on February 20, 2013, and subsequently, on May 14, 2013, letters dismissing the applications were also sent to Four Corners.¹⁴

³ *Four Corners Broadcasting, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 14659 (Enf. Bur. 2013) (*NAL*). A recitation of the facts of this case can be found in the *NAL* and is incorporated herein by reference.

⁴ See Response of Four Corners Broadcasting, LLC, to Denver Office, Western Region, Enforcement Bureau (Nov. 25, 2013) (on file in EB-FIELDWR-12-00004038, EB-FIELDWR-12-00004043, and EB-FIELDWR-12-00004044) (*NAL Response*).

⁵ See *NAL Response* at 3–4.

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 *NAL*, *supra* note 3.

¹¹ 47 U.S.C. § 301.

¹² 47 C.F.R. § 1.903(a).

¹³ See *Four Corners Broadcasting*, Notice of Violation, V201232800069 (Sept. 27, 2012); *Four Corners Broadcasting*, Notice of Violation, V201232800070 (Sept. 27, 2012); *Four Corners Broadcasting*, Notice of Violation, V201232800071 (Sept. 27, 2012) (*Notices*).

¹⁴ All three applications were dismissed because the applications were not amended within 60 days of the date shown on the "Notice of Application Return" letters. See Station WHB352, File No. 0005469361 (filed Oct. 29,

7. On July 23, 2013, a Denver Office agent conducted a follow-up inspection of the STL Stations and found that the STL Stations continued to be in operation at the unauthorized location. Thus, on October 25, 2013, the Denver Office issued the NAL, finding that Four Corners willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating the STL Stations from a location not authorized by their respective FCC licenses. Thereafter, on October 30, 2013, Four Corners submitted applications with the FCC to modify the transmitter site of the STA Stations, which were ultimately granted in January, 2014.¹⁵

8. In response to the NAL, Four Corners requests cancellation or reduction of the \$25,000 forfeiture, first arguing that it took immediate steps to remedy the violation after being notified by the Denver Office in the *Notices* and that any subsequent failure was due to inadvertent staff error, including an unanticipated illness and unavailability of one of its key employees.¹⁶ We find that neither of these arguments justify a reduction of the proposed forfeiture. It is well established that corrective action taken to come into compliance with the Rules is expected after notice from the Commission, and does not nullify or mitigate any prior forfeitures or violations.¹⁷ We also note that neither the negligent acts nor omissions of station employees excuse a licensee's rule violation.¹⁸

9. Four Corners also argues that the proposed upward adjustment of the base forfeiture amount “is outrageous and cannot be sustained” because the precedent cited for the upward adjust is two Notices of Apparent Liability,¹⁹ asserting that because they were neither final determinations of liability, nor paid, relying on them violates Section 504(c) of the Act.²⁰ We disagree. Section 504(c) states that “[i]n any case where the Commission issues a notice of apparent liability looking toward the imposition

2012; returned Feb. 20, 2013; dismissed May 14, 2013); Station WLD73, File No. 0005469286 (filed Oct. 29, 2012; returned Feb. 20, 2013; dismissed May 14, 2013); Station WPNG746, File No. 0005469317 (filed Oct. 29, 2012; returned Feb. 20, 2013; dismissed May 14, 2013).

¹⁵ Consistent with the requirements of the NAL, Four Corners brought the STL Stations into compliance as of January 14, 2014. *See* Station WHB352, File No. 0005990417 (granted Jan. 14, 2014); Station WLD73, File No. 0005990764 (granted Jan. 14, 2014); Station WPNG746, File No. 0005989664 (granted Jan 14, 2014).

¹⁶ *NAL Response* at 1–3. Four Corners also states that it did not receive the “returned” applications in February 2013, but does acknowledge that it received the May 2013 letters dismissing the applications. *Id.* at 2–3.

¹⁷ *See, e.g., CB Radio, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 8836, 8839–40 (2007) (noting that “it is well established that post-investigational efforts to correct a violation do not mitigate the forfeiture or warrant a reduction in the assessed forfeiture amount”); *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875–76 (2002) (finding that a downward adjustment of an aggregate forfeiture was not warranted where the carrier lacked an effective antenna compliance program at the time of the violations and only corrected such violations after the Commission brought them to its attention).

¹⁸ *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7439, para. 18 (2004) (where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation). Four Corners also appears to allege that the Denver Office agent should not have conducted the follow-up inspection of the STL Stations on July 23, 2013, because the two FM stations and one AM station that operate the STL Stations had received Alternative Broadcast Inspection Program (ABIP) Certificates (Certificates) on June 28, 2013. *See NAL Response* at 2, n.2, and Exhibit A. Four Corners' violations concerning the STL Stations began, and Four Corners had notice of the violations and the FCC's open investigation of the ongoing violations, prior to the awarding of these ABIP Certificates, and given the continuing unresolved nature of the violations, the FCC's July 23, 2013, inspection, which was limited to the continued unauthorized operation of the STL Stations, was a proper inspection.

¹⁹ The two Notices of Apparent Liability cited were *Remel, Inc. and Its Corporate Parent Thermal Fisher Scientific, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 8778 (2013) (forfeiture paid) (*Remel NAL*) and *Union Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 7061 (Enf. Bur. 2013) (forfeiture paid) (*Union Broadcasting NAL*). We note that while Four Corners argues that these were both staff decisions, the *Remel NAL* was issued by the Commission.

²⁰ 47 U.S.C. § 504(c). *NAL Response* at 4.

of a forfeiture under this chapter, that fact shall not be used, in any other proceeding before the Commission, to the prejudice of the person to whom such notice was issued, unless (i) the forfeiture has been paid, or (ii) a court of competent jurisdiction has ordered payment of such forfeiture, and such order has become final.²¹ We see no error in the Denver Office relying on prior Commission and staff precedent to determine what level of forfeiture to propose, as the forfeiture in the *NAL* is a proposal and Four Corners was afforded an opportunity to respond. In any event, the Section 504(c) argument is moot, as both the *Remel NAL* and *Union Broadcasting NAL* were paid after each of the notices were issued. We find that the precedent continues to support the upward adjustment of the proposed forfeiture, given the long duration of Four Corners' violation of Section 301 of the Act and Section 1.903(a) of the Rules.²² Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$25,000 is warranted.

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(f)(4) of the Commission's rules, Four Corners Broadcasting, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 301 of the Act and Section 1.903(a) of the Rules.²³

11. 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 Four Corners Broadcasting, LLC, shall send electronic notification of payment to WR-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 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

²¹ 47 U.S.C. § 504(c).

²² See *NAL*, 28 FCC Rcd at 14662, para. 6 n.20.

²³ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.903(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>.

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.

12. 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.

13. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Four Corners Broadcasting, LLC, at 190 Turner Drive, Suite G, Durango, Colorado 81303, and to its counsel, Frank R. Jazzo, Esquire, at Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁷ See 47 C.F.R. § 1.1914.