

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
J & J Broadcasting, Inc.)	File No.: EB-FIELDNER-12-00004568 ¹
)	NAL/Acct. No.: 201232360008
Licensee of Radio Stations WIMI(FM) and)	FRN: 0015161508
WJMS(AM), Ironwood, Michigan)	Facility ID Nos.: 57226, 57223
Antenna Structure Owner)	ASR No.: 1035236

FORFEITURE ORDER

Adopted: June 30, 2015

Released: June 30, 2015

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$10,500 against J & J Broadcasting, Inc. (J & J), licensee of FM Station WIMI and AM Station WJMS (collectively, the Stations) for failing to maintain and make available the required quarterly issues/programs lists in the Stations' public inspection file and failing to timely notify the Commission of a change in the ownership of its antenna structure number 1035236 (Antenna Structure). The issues/programs lists inform the public regarding a broadcaster's treatment of community issues and the requirement to maintain such lists is part of a broadcaster's obligations as a public trustee. In addition, ensuring timely and accurate antenna ownership reporting allows the Commission to quickly contact structure owners in the event of a tower lighting outage or other threat to public safety.

2. J & J does not deny the violations, but requests cancellation or reduction of the penalty proposed against it based on its purported good faith efforts to meet its regulatory obligations, inability to pay, and history of compliance. However, J & J failed to correct its antenna ownership registration information until after issuance of the proposed forfeiture and cannot show that the issues/programs lists were removed from the Stations' public inspection file just prior to Commission inspection. In addition, the financial documentation submitted by J & J does not support its inability to pay claim. However, we find that reducing the forfeiture to \$10,500 is appropriate based on J & J's demonstrated history of compliance.

II. BACKGROUND

3. In February 2010, J & J acquired the Stations and Antenna Structure by purchasing Roberts Broadcasting, Inc.² On September 14, 2011, an agent from the Enforcement Bureau's Detroit Office inspected the Stations' main studio and found that five quarterly issues/programs lists were

¹ The investigation initiated under File No. EB-11-DT-0200 was subsequently assigned File No. EB-FIELDNER-12-00004568. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² See *J & J Broad., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 10054, 10054, paras. 2–3 (Enf. Bur. 2012) (*NAL*). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

missing from the public inspection file.³ The agent also determined that the registration for the Antenna Structure still identified Roberts Broadcasting as the owner instead of J & J.⁴

4. On August 21, 2012, the Enforcement Bureau (Bureau) issued the *NAL* proposing a \$13,000 forfeiture against J & J for its apparent willful and repeated violation of Sections 73.3526(e)(12) and 17.57 of the Commission's rules (Rules) by failing to maintain and make available the quarterly issues/programs lists in the Stations' public inspection file and failing to immediately notify the Commission upon a change in the Antenna Structure's ownership.⁵

5. On September 17, 2012, J & J filed a response to the *NAL*, arguing that the proposed forfeiture should be cancelled or reduced.⁶ J & J states that the failure to properly notify the Commission of the change in the Antenna Structure's ownership was an oversight and that it took immediate action to correct the violation.⁷ J & J further claims that it prepared the missing quarterly issues/programs lists, but those documents were taken out of the Stations' public inspection file by a member of the public shortly before the Commission's inspection.⁸ J & J also argues that it "has been experiencing financial difficulties," warranting forfeiture cancellation or reduction.⁹ Finally, J & J notes that it has not been the subject of an enforcement forfeiture action before and maintained a long history of compliance.¹⁰

III. DISCUSSION

6. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹¹ Section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ When we assess forfeitures, Section 503(b)(2)(E) requires that we 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 such other matters as justice may require."¹⁴ As discussed below, we have fully considered J & J's response to the *NAL*, and find that its history of compliance merits a reduced forfeiture.

A. J & J Did Not Demonstrate Good Faith Compliance Efforts Warranting Forfeiture Cancellation or Reduction

7. J & J does not contest the *NAL*'s conclusions that it failed to make available the quarterly issues/programs lists in the Stations' public inspection file or that it failed to properly notify the Commission upon a change in the Antenna Structure's ownership.¹⁵ Nevertheless, J & J requests cancellation or

³ *Id.* at 10054, para. 2.

⁴ *Id.* at 10054, para. 3.

⁵ *See id.* at 10056–57, para. 10; 47 C.F.R. §§ 17.57, 73.3526(e)(12).

⁶ J & J Broadcasting, Inc., Response to Notice of Apparent Liability (Sep. 20, 2012) (on file in EB-FIELDNER-12-00004568) (*NAL Response*).

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 1–2.

¹⁰ *Id.* at 2.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ *NAL*, 27 FCC Rcd at 10055–56, paras. 5–7.

reduction of the forfeiture because it claims it made good faith efforts to correct the violations.¹⁶ While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹⁷ As the Commission has repeatedly stated, “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁸ In December 2010, J & J filed a notification of the change in the Antenna Structure’s ownership.¹⁹ However, the Commission promptly rejected this filing as deficient and directed J & J to refile its ownership change notification.²⁰ J & J concedes that it did not file a proper notification of the ownership change until October 2012, over a year after the inspection by the Bureau agent.²¹ As J & J knew that its initial Antenna Structure ownership filing was defective and failed to take any corrective action until well after inspection, we find no basis to reduce the forfeiture.²²

8. We similarly find no basis to reduce the forfeiture based on J & J’s claim that the missing quarterly issues/programs lists were taken out of the Stations’ public inspection file by a member of the public shortly before inspection by the Bureau agent.²³ The Commission may reduce a proposed penalty when a violation arose “just prior” to a Commission inspection,²⁴ but J & J states that the issues/programs lists were removed on July 6, 2011, over two months before the inspection of the Stations.²⁵ As the Stations’ licensee, J & J is charged with knowledge of the full range of its regulatory obligations and ultimately bears the responsibility for the failure to maintain the issues/programs lists.²⁶ J & J failed to ensure that the public inspection file for the Stations remained complete. The mere fact that the missing issues/programs lists may have resulted from the actions of a third party does not diminish J & J’s

¹⁶ *NAL Response* at 1–2.

¹⁷ *See, e.g., Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture “based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation”); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) (“The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.”) (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) (“[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .”).

¹⁸ *See, e.g., Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”).

¹⁹ *See NAL Response* at 1; Universal Licensing System, Unprocessable Filing, Reference Number 0004526267 (on file in EB-FIELDNER-12-00004568).

²⁰ *See Notice of Immediate Dismissal*, FCC Form 694, sent to Gerald Hackman, President, J & J Broadcasting, Inc. (Dec. 9, 2010) (on file in EB-FIELDNER-12-00004568).

²¹ *See NAL Response* at 3.

²² *See Sutro Corp.*, 19 FCC Rcd at 15277, para. 10 (finding that “periodic unsuccessful attempts to register the tower do not rise to the level of good faith efforts to comply that would entitle [filer] to further mitigation of the assessed forfeiture amount”).

²³ *NAL Response* at 2.

²⁴ *See, e.g., Vernon Broad., Inc.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1275 (1986) (cancelling a \$1,000 AM tower fencing violation where the evidence indicated that the fencing was vandalized just prior to inspection).

²⁵ *NAL Response* at 2.

²⁶ *See, e.g., Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

liability for the violation.²⁷ As a result, we find that J & J did not demonstrate good faith compliance efforts warranting forfeiture cancellation or reduction.

B. J & J Did Not Demonstrate an Inability to Pay Warranting Forfeiture Cancellation or Reduction

9. J & J contends that it is unable to pay the forfeiture due to “financial difficulties” and submitted documentation providing information regarding its revenues.²⁸ With regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.²⁹ While the Commission has in a few limited cases looked to other factors, including profits and losses, to determine ability to pay, those cases involved licensees in severe financial distress.³⁰ J & J has failed to demonstrate that it is experiencing a level of financial distress that would qualify it for an exception to our gross revenues inability to pay analysis.³¹ Consequently, based on our review of the financial documents provided by J & J, we decline to cancel or reduce the forfeiture on inability to pay grounds.³²

C. J & J Demonstrated a History of Compliance Warranting a Forfeiture Reduction

10. Finally, J & J requests cancellation or reduction of the forfeiture based on its history of compliance with the Rules.³³ While we do not find that a cancellation is appropriate, we do find that J & J’s history of compliance warrants a forfeiture reduction.³⁴ Accordingly, based on the record before us and in light of the applicable statutory factors, we impose a penalty of \$10,500 against J & J for willfully and repeatedly violating Sections 73.3526(e)(12) and 17.57 of the Rules by failing to maintain and make available the quarterly issues/programs lists in the Stations’ public inspection file and failing to immediately notify the Commission upon a change in the Antenna Structure’s ownership.

²⁷ See *Steckline Commc’ns, Inc.*, Forfeiture Order, 29 FCC Rcd 1082, 1084, para. 5 (Enf. Bur. 2014) (finding violations willful even in the event of third-party tampering with station equipment because the party continued to operate the station at variance from authorized parameters).

²⁸ See *id.* at 1–2.

²⁹ See *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); see also *Tommie Salter*, Forfeiture Order, 30 FCC Rcd 1041 (Enf. Bur. 2015) (finding reduced forfeiture fell within the percentage range that the Commission previously found acceptable).

³⁰ See e.g., *First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996); *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995).

³¹ See, e.g., *Martin Broad, Inc.*, Forfeiture Order, 28 FCC Rcd 1923, 1925, para. 5 (Enf. Bur. 2013) (three years of an operating loss or no taxable income does not qualify as severe financial distress warranting deviation from gross revenues policy).

³² The forfeiture falls within the percentage range that the Commission has previously found acceptable. See *supra* note 31. If J & J finds it financially infeasible to make full payment of the forfeiture amount within 30 days, it can request an installment plan, as described in paragraph 14 of this Forfeiture Order.

³³ *NAL Response* at 2.

³⁴ See, e.g., *Ohana Media Grp., LLC*, Forfeiture Order, 30 FCC Rcd 109, 111, para. 6 (Enf. Bur. 2015) (reducing forfeiture for history of compliance); *Duhamel Broad. Enters.*, 30 FCC Rcd 101, 103, para. 6 (Enf. Bur. 2015) (same); *Alpha & Omega Commc’ns, LLC*, Forfeiture Order, 29 FCC Rcd 9502, 9504, para. 8 (2014) (same).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁵ and Section 1.80 of the Rules,³⁶ J & J Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand five hundred dollars (\$10,500) for willfully and repeatedly violating Sections 73.3526(e)(12) and 17.57 of the Rules.³⁷

12. 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 of this Forfeiture Order.³⁸ 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.³⁹

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. J & J Broadcasting, Inc. shall send electronic notification of payment to William Reed at william.reed@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁰ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

14. 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, SW, Room 1-A625, Washington, DC 20554.⁴¹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

³⁵ 47 U.S.C. § 503(b).

³⁶ 47 C.F.R. § 1.80.

³⁷ 47 C.F.R. §§ 17.57, 73.3526(e)(12).

³⁸ 47 C.F.R. § 1.80.

³⁹ 47 U.S.C. § 504(a).

⁴⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴¹ See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Mr. Gerald J. Hackman, President, J & J Broadcasting, Inc., 63120 Phantom Lake Road, Iron River, WI 54847.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau