

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

In the Matter of)	
)	EB-08-IH-5274
Nassau Broadcasting III, L.L.C.)	Facility ID No. 39806
)	NAL/Account No. 201032080035
Licensee of Station WWEG(FM))	FRN 0011378676
Myersville, Maryland)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 23, 2010

Released: August 23, 2010

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Nassau Broadcasting III, L.L.C. (“Nassau” or the “Licensee”), licensee of Station WWEG(FM), Myersville, Maryland (the “Station”), failed to conduct a contest substantially as announced or advertised, in apparent willful and repeated violation of Section 73.1216 of the Commission’s rules.¹ Based upon our review of the record, we find that Nassau is apparently liable for a forfeiture in the amount of \$4,000.

II. BACKGROUND

2. The Commission received a complaint on June 16, 2008 (the “Complaint”), alleging that the Station failed to conduct a “Father’s Day” contest in accordance with its advertised terms and the Commission’s rules.² Specifically, the Complainant states that promotions broadcast by the Station stated that the contest was open “through June 13, 2008.”³ When the Complainant attempted to enter the contest on June 13, 2008, she was informed by Station staff that the contest winner had been picked on June 12, 2008, and already announced on June 13, 2008.⁴

3. Based on the allegations contained in the Complaint, the Enforcement Bureau sent a letter of inquiry to the Licensee.⁵ On July 17 and 20, 2009, Nassau filed its responses to the LOI collectively the “Responses”.⁶ In its Responses, the Licensee states that it conducted the contest, entitled the “Father

¹ See 47 C.F.R. § 73.1216 (the “Contest Rule”).

² See Complaint to Federal Communication Commission filed June 16, 2008, No. 08-C00028380-1 (“Complaint”).

³ See *id.* at 1. The Complaint also states that the Station disclosed this information on its website.

⁴ See *id.*

⁵ See Letter from Rebecca Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Nassau Broadcasting III, L.L.C., dated June 10, 2009 (the “LOI”).

⁶ See Letter from Janet Fitzpatrick Moran, Esq., Patton Boggs, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 17, 2009 (“Initial Response”); Letter from Carly T. Didden, Patton Boggs, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, July 20, 2009 (“Revised Response”) (correcting the first page of the Initial Response). The substantive responses in the Initial Response and the Revised Response (collectively, the “Responses”) are the same.

Time Contest” (the “Contest”). The Licensee states that, to enter the Contest, listeners were instructed to “log on to 1069 the Eagle dot com,”⁷ the Station’s website, “[f]rom May 22, 2008 *through* June 13th 2008 . . . [and] to send a photo of their Dad from the past, to show how ‘Father Time’ has aged their father.”⁸ At 7:20 a.m. each day, the Station announced daily winners, who won “a round of golf . . . or Deluxe Car Washes and Oil Changes . . .”⁹ Those daily winners also became eligible for a chance to win an Alfred Hammel watch, the Contest’s grand prize.¹⁰ The “Official Contest Rules,” posted on the Station’s website, and Contest promotions broadcast by the Station stated that the grand prize winner would be picked by random drawing on June 13, 2008.¹¹

4. Nassau asserts that the Contest promotions “indicate clearly that the contest winners would be announced at 7:20 a.m.” and that the “winner [of the grand prize] would be selected *on* June 13, 2008.”¹² While acknowledging in its Responses that the winner was selected the evening of June 12, 2008,¹³ Nassau nevertheless claims that the Complainant could no longer enter the Contest when she arrived at the Station after 8:30 a.m. on June 13th because the Contest had ended at 7:20 a.m. on June 13th. Nassau maintains that, even under these circumstances, the “Contests [sic] material terms were fully and accurately disclosed and the Contest was conducted substantially as advertised.”¹⁴

III. DISCUSSION

5. Under Section 503(b)(1) of the Communications Act of 1934, as amended (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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁹ “Repeated” means that the act was committed or omitted more than once, or lasts more

⁷ See Responses at Exhibits B-C (Written Transcript of Pre-recorded Spot; Live Spot).

⁸ *Id.* at Exhibit E (Official Contest Rules) (emphasis added). See also *id.* at Exhibits B-C.

⁹ *Id.* at Exhibit B. See also *id.* at Exhibits C & E.

¹⁰ See *id.* at Exhibits B-C & E.

¹¹ See *id.* at Exhibits B-C & E.

¹² *Id.* at 5 (emphasis added).

¹³ See *id.* at 3.

¹⁴ *Id.* at 5.

¹⁵ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁸ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁹ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

than one day.²⁰ 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.²¹ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.²² As described in greater detail below, we conclude under this procedure that Nassau is apparently liable for a forfeiture for its apparent violation of Section 73.1216 of the Commission's rules.

6. Section 73.1216, the Commission's contest rule, provides: "A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term."²³ Material terms under the rule "include those factors which define the operation of the contest and which affect participation therein,"²⁴ and generally include, among other things, instructions on "how to enter or participate; eligibility restrictions; . . . whether prizes can be won; when prizes can be won; . . . the extent, nature and value of prizes; [and] time and means of selection of winners; . . ." ²⁵ Additionally, "the obligation to disclose the material terms arises at the time the audience is first told how to enter or participate and continues thereafter."²⁶ Finally, disclosure of material terms must be by announcements broadcast on the station; non-broadcast disclosures of material terms can be made to supplement, but not substitute for, broadcast announcements.²⁷

7. Licensees, as public trustees, have the affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements,²⁸ and to conduct their contests substantially as announced.²⁹ A broadcast announcement concerning a contest is false, misleading, or deceptive "if the net impression of the announcement has a tendency to mislead the public."³⁰

²⁰ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

²¹ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²² See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

²³ 47 C.F.R. § 73.1216.

²⁴ *Id.* Note 1(b).

²⁵ *Id.*

²⁶ *Id.*, Note 2.

²⁷ See *id.* ("material terms should be disclosed periodically by announcements broadcast on the station conducting the contest"). Posting contest rules on a station's website does not satisfy Section 73.1216's requirement that a licensee broadcast the material terms of a contest it conducts. See, e.g., *AK Media Group*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 7541, 7543 ¶ 7 (Enf. Bur. 2000) (forfeiture paid); *Service Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8494, 8498 (Enf. Bur., Investigations & Hearings Div. 2009) (forfeiture paid) ("*Service Broadcasting*").

²⁸ See *WMJX, Inc.*, Decision, 85 FCC 2d 251, 269 (1981) (holding that proof of actual deception is not necessary to find violations of contest rules, and that the licensee, as a public trustee, has an affirmative obligation to prevent the broadcast of false, misleading or deceptive contest announcements); *Amendment of Part 73 of the Commission's Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 FCC 2d 1072 (1976).

²⁹ See *Headliner Radio, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 2962 (Mass Media Bur. 1993) (finding that the airing of a misleading advertisement concerning a licensee's contest violated the Commission contest rules because the contest was not then conducted "substantially as announced or advertised").

³⁰ *WMJX Inc.*, 85 FCC 2d at 263 (citing *Eastern Broadcasting Corp.*, Decision, 14 FCC 2d 228, 229 (1968)).

8. In this case, we agree with Nassau that its Contest rules and promotions “clearly” stated that the grand prize winner would be chosen “on June 13, 2008.”³¹ Although the daily winners were announced at 7:20 a.m. each day,³² the “Official Contest Rules” and the Station’s on-air and website promotions stated that the Contest would run “through” June 13, 2008, without mention of a specific time that day for the grand prize drawing.³³ By selecting the grand prize winner on June 12, 2008,³⁴ which is a day before the announced expiration of the contest entry period, the Station violated the advertised material terms of the Contest. Accordingly, we disagree with Nassau’s contention that it conducted the Contest “substantially” as advertised.³⁵

9. Based upon the evidence before us, we find that the Licensee apparently willfully and repeatedly violated Section 73.1216 of the Commission’s rules. The Commission’s Forfeiture Policy Statement specifies a base forfeiture amount of \$4,000 for violation of Section 73.1216.³⁶ In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act,³⁷ which include 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.³⁸ Taking this standard into account, and based upon the facts and circumstances presented here, we find that a forfeiture in the amount of \$4,000 is appropriate in this case.³⁹

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Act,⁴⁰ and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission’s rules,⁴¹ that Nassau Broadcasting III, L.L. C., licensee of Station WWEG(FM), Myersville, Maryland, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$4,000 for apparently willfully and repeatedly violating Section

³¹ Responses at 5. *See also id.* at Exhibits A (CD recording), B-C, & E.

³² *See id.*

³³ *See id.* at Exhibit E; Complaint at 1. In addition to stating that it would conduct the drawing “on June 13, 2008,” by stating that it would conduct the Contest “through” June 13, 2008, the Licensee promoted the impression that it would conduct the drawing on that day rather than the day before, June 12, 2008. *See, e.g.*, Merriam-Webster’s Collegiate Dictionary, Eleventh Edition, available at www.merriam-webster.com/dictionary/through (defining “through” as a “function word to indicate a period of time” that is “during the entire period of” or “to and including”); *Oil Shale Broadcasting Company (KWSR)*, 70 FCC 2d 984 (1976) (subsequent history omitted) (calculating the number of contestants by including those winning on Friday in the days “Monday through Friday”).

³⁴ *See* Responses at 3.

³⁵ *Id.* at 5.

³⁶ *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, 17113 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. § 1.80(b).

³⁷ *See* 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(c)(4).

³⁸ *See id.*

³⁹ *See AMFM Broadcasting Licenses, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1529, 1533 (Enf. Bur., Investigations and Hearings Div., 2009) (forfeiture paid) (finding that selection of contest winners prior to the close of the contest was “misleading and deceptive without clarification to the public of the Contest’s rules and procedures that would allow it” and increasing base forfeiture of \$4,000 to \$6,000 because of licensee’s history of violations).

⁴⁰ *See* 47 U.S.C. § 503(b).

⁴¹ *See* 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

73.1216 of the Commission's rules.⁴²

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release of this Notice, Nassau Broadcasting, III, L.L.C. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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[s] 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. 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.⁴³ Nassau Broadcasting III, L.L.C., will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov, and Judy Lancaster@fcc.gov.

13. The response, if any, must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington D.C. 20554 and **SHALL INCLUDE** the NAL/Acct. No. referenced above. In addition, a copy of the response must also be transmitted via e-mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh@fcc.gov, and Judy.Lancaster@fcc.gov.

14. 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.

15. **IT IS FURTHER ORDERED** that the complaint in this proceeding **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the complaint proceeding **IS HEREBY TERMINATED**.⁴⁴

⁴² See 47 C.F.R. § 73.1216.

⁴³ See 47 C.F.R. § 1.1914.

⁴⁴ For the purposes of the forfeiture proceeding initiated by this *NAL*, Nassau shall be the only party to this proceeding.

16. **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 Nassau Broadcasting III, L.L.C., 619 Alexander Road, 3rd Floor, Princeton, New Jersey 08540-6003, and to its counsel, Janet Fitzpatrick Moran, Esquire, Patton Boggs, LLP, 2500 M Street, N.W., Washington, D.C. 20037-1350.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau