

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

In the Matter of)	
)	File Number EB-03-OR-296
WFNO, L.L.C.)	
Licensee of AM Station WFNO in Norco, La.)	NAL/Acct. No.200432620003
Metairie, Louisiana)	
)	FRN 0007 637 523

FORFEITURE ORDER

Adopted: September 7, 2004

Released: September 9, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand six hundred dollars (\$5,600) to WFNO, L.L.C. (“WFNO”), licensee of radio station WFNO (AM), Norco, Louisiana, for willful and repeated violation of Section 73.1745 of the Commission's Rules (“Rules”).¹ The noted violations involve WFNO’s operation at times, or with modes or power, other than those specified and made a part of the license.

2. On February 18, 2004, the Commission’s New Orleans, Louisiana, Field Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to WFNO for a forfeiture in the amount of seven thousand dollars (\$7,000).² WFNO responded to the *NAL* on March 17, 2004.

II. BACKGROUND

3. On December 8, 2003, the FCC Enforcement Bureau’s New Orleans Office (“New Orleans Office”) received information indicating that AM station WFNO was operating at a high power level at night causing interference to the reception of another station. WFNO is authorized to operate at 5000 watts daytime, 750 watts nighttime, with two directional antenna patterns.

¹ 47 C.F.R. § 73.1745.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432620003 (Enf. Bur. New Orleans Office, released February 18, 2004).

4. On December 8, 9, and 10, 2003, and January 5 and 6, 2004, New Orleans Office agents measured the field strength of WFNO during both daytime and nighttime hours, and found that the signal strength was unchanged.

5. On January 8, 2004, the New Orleans Office agents inspected WFNO. During the inspection, the station's chief operator confirmed that the station was not switching to its nighttime power and directional pattern, but was instead operating continuously using its daytime pattern at 50% of its authorized daytime operating power. The chief operator stated that the station had operated in this manner since at least mid-November 2003 because the control lines that changed antenna mode failed.

6. In its response to the *NAL*, WFNO admits the violation but requests reduction of the proposed monetary forfeiture. WFNO argues that it has a history of overall compliance, made voluntary disclosures, made good faith efforts to come into compliance and was cooperative during and after the inspection.

III. DISCUSSION

7. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that the Commission, in examining WFNO's response, 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.⁵

8. Section 73.1745 of the Rules requires that no broadcast station operate at times, or with modes or power, other than those specified and made a part of the license. WFNO admits that it violated this rule and knew of the violation. We conclude that, on December 8, 9 and 10, 2003 and January 5 and 6, 2004, WFNO exceeded nighttime power limits and operated at night with daytime directional parameters, in willful⁶ and repeated⁷ violation of Section 73.1745 of the Rules.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" *See Southern California Broadcasting Co., supra*.

⁷ As provided by 47 U.S.C. § 312(f)(2), a violation that occurs more than once is "repeated." The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. *See* H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *See Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

9. We find that no reduction is warranted on the basis of voluntary disclosure or good faith. While voluntary disclosure of violations⁸ before detection by the Commission or correction of violations before notification by the Commission does warrant a reduction, neither circumstance exists here. In this case, WFNO made disclosures and took steps to correct the violation only after the Commission notified it of its violation of Section 73.1745 of the Rules during the inspection on January 8, 2004.⁹

10. WFNO recognizes that remedial efforts are “not normally considered by the Bureau as a mitigating factor” but argues that they should be considered in this case because of “unique circumstances” including its cooperation and the promptness of its remedial efforts. We find no “unique circumstances” and conclude that no mitigation is warranted on the basis of WFNO’s post-notification remedial efforts. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “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.”¹⁰

11. We do find that WFNO has a history of overall compliance and that the proposed \$7,000 forfeiture should be reduced to \$5,600 on this basis.

12. We have examined WFNO’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that WFNO willfully and repeatedly violated Section 73.1745 of the Rules and that reduction of the proposed \$7,000 monetary forfeiture to \$5,600 is warranted.

13. WFNO has provided no information indicating that it has achieved compliance with Section 73.1745 of the Rules. Accordingly, we will require, pursuant to Section 308(b) of the Act,¹¹ that WFNO L.L.C. report to the Enforcement Bureau no more than thirty (30) days following the release of this order how it plans to achieve compliance with Section 73.1745. WFNO’s report must be submitted in the form of an affidavit or declaration signed by an officer or director.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² WFNO L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for willfully and repeatedly violating Section 73.1745 of the Rules.

⁸ See, e.g., *T-Mobile USA, Inc.*, 18 FCC Rcd 3501 (2003).

⁹ In both cases cited by WFNO, *Barinowski Investment Company, L.P.*, 18 FCC Rcd 25067, 25070 (2003), and *Hoffman Communications, Inc.*, 18 FCC Rcd 26624 (Enf. Bur. 2003), the violator took steps to correct the violation before being notified by the Commission.

¹⁰ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹¹ 47 U.S.C. § 308(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

15. **IT IS FURTHER ORDERED** that, pursuant to Section 308(b) of the Act, WFNO must submit the report described in Paragraph 13, above, no more than thirty (30) days following the release of this *Order*, to the Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A820, Washington, D.C. 20554, Attention: Thomas D. Fitz-Gibbon, Esq.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

17. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by regular mail and Certified Mail Return Receipt Requested to WFNO, L.L.C., 110 Veterans Memorial Blvd, Suite 300, Metairie, Louisiana 70005, and its counsel, Joseph Chautin III, Hardy, Carey & Chautin, Attorneys at Law, 110 Veterans Memorial Blvd., Suite 300, Metairie, LA 70005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.