

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

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

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 18, 2004

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find WFNO, L.L.C. (“WFNO”), licensee of radio station WFNO (AM), Norco, Louisiana, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.1745 of the Commission's Rules (“Rules”).¹ Specifically, we find WFNO apparently liable for operating at times, or with modes or power, other than those specified and made a part of the license.

II. BACKGROUND

2. On December 8, 2003, the FCC Enforcement Bureau’s New Orleans Office (“New Orleans Office”) received information 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.

3. 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.

4. 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 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.

III. DISCUSSION

¹ 47 C.F.R. § 73.1745.

5. Section 73.1745 of the Rules states that no broadcast station shall operate at times or with modes or power, other than those specified and made a part of the license. 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.

6. Based on the evidence before us, we find WFNO willfully² and repeatedly³ violated Section 73.1745 of the Rules by operating at times, or with modes or power, other than those specified and made part of the license.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for failure to maintain directional pattern within prescribed parameters is \$7,000. In addition, the base forfeiture amount for operating with excessive power is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), 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.⁵ While WFNO was operating with excessive power at night and an improper directional pattern at night, we believe that, in this case, both violations are related to the same action. Therefore, considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ WFNO, L.L.C., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.1745 of the Rules by operating at time, or with modes or power, other than that specified on the station authorization.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of

² 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’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ The 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.” 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

the release date of this NAL, WFNO, L.C.C., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. 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.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL 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.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins

⁸ See 47 C.F.R. § 1.1914.

District Director, New Orleans Office
Enforcement Bureau

Attachment