

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

In the Matter of)	
)	
Reier Broadcasting Company Inc.)	File No. EB-03-ST-167
)	
Licensee of Radio Stations KOBB-FM and KZLO-FM)	NAL/Acct. No. 200432980002
Bozeman, Montana)	
Facility ID Nos.:16776 and 55676)	FRN 0001631233

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 20, 2004

By the District Director, Seattle Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Reier Broadcasting Company Inc. (“RBC”), licensee of FM radio broadcast stations KOBB-FM and KZLO-FM in Bozeman, Montana, has apparently willfully and repeatedly violated Section 73.1350(a) of the Commission’s Rules (“Rules”) by relocating stations KOBB-FM and KZLO-FM prior to obtaining Commission authority.¹ We also find that RBC has apparently willfully and repeatedly violated Section 73.1560(b) by failing to operate stations KOBB-FM and KZLO-FM in accordance with the stations’ authorized power.² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ that RBC is apparently liable for forfeiture in the amount of sixteen thousand dollars (\$16,000).

II. BACKGROUND

2. RBC is the licensee of KOBB-FM and KZLO-FM, Bozeman, Montana. RBC is authorized to operate station KOBB-FM on 93.7 MHz with 100 kilowatts Effective Radiated Power (ERP) from

¹ 47 C.F.R. § 73.1350(a).

² 47 C.F.R. § 73.1560(b).

³ 47 U.S.C. § 503(b).

45°41'35" north latitude and 110°58'50" west longitude.⁴ RBC is also authorized to operate station KZLO-FM on 99.9 MHz with 100 kilowatts Effective Radiated Power (ERP) from 45°41'34" north latitude and 110°58'57" west longitude.⁵ On January 8, 2003, the Commission granted RBC's applications for construction permits ("CPs") to move the stations' transmitters approximately six miles to the east of their licensed site.⁶ On or about April 23, 2003, the Commission's Seattle Office obtained information that radio stations KZLO-FM and KOBB-FM were transmitting from a location other than their licensed site without a special temporary authority (STA) to do so.⁷ The information indicated that RBC was operating the stations at the same location as KBOZ(AM), approximately seven miles southwest of the stations' licensed site prior to January 8, 2003.⁸

3. On June 18, 2003, the Seattle Office issued a Letter of Inquiry ("LOI") to RBC concerning the operation of KZLO-FM and KOBB-FM at locations other than those authorized by the Commission. On June 24, 2003, RBC responded to the LOI by sending copies of STA's granted to RBC that allowed a temporary antenna for KZLO-FM and KOBB-FM to be installed on the existing tower of KBOZ(AM). The STA applications were submitted on May 8, 2003 and were granted by the Commission's Media Bureau on May 22, 2003.⁹ In its STA applications, RBC requested operating power of 15 kilowatts ERP for KOBB-FM and 18 kilowatts ERP for KZLO-FM. The STA's granted on May 22, 2003, however, authorized operating power of seven kilowatts ERP for KOBB-FM and eight kilowatts ERP for KZLO-FM. The STA Grant Letters also specifically stated that operation at the requested power would extend the 60 dBu contour of the stations beyond the stations' licensed contours; therefore, the STA's authorized operation at the temporary location on the KBOZ tower with reduced power.¹⁰

4. On October 21, 2003, Seattle agents inspected the KZLO-FM, KOBB-FM, and KBOZ transmitter sites. The inspection included transmitter measurements, measurements at the AM monitoring points and a review of station logs. The Chief Operator at the stations stated that KOBB-FM and KZLO-FM had been shut down sometime in the middle of March because RBC had lost its transmitter site lease. The logs indicated that the stations were moved and collocated with KBOZ(AM)

⁴ File No. BLH-19830411AA, granted December 12, 1983.

⁵ File No. BLH-19930420KC, granted October 11, 1994.

⁶ The new coordinates, according to the CPs, are 45°40'24" north latitude and 110°52'04" west longitude, for both KOBB-FM and KZLO-FM. *See* BPH-20020708AAR and BPH-20020708AAQ.

⁷ *See* 47 C.F.R. § 73.1635 (A special temporary authority (STA) is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to that particular class of station.)

⁸ RBC is also the licensee of KBOZ(AM), Bozeman, Montana

⁹ The coordinates approved for both stations pursuant to the STA's are 45°36'58" north latitude and 111°05'16" west longitude. File No. BSTA-20030509ACO, granted May 22, 2003, expired August 22, 2003; File No. BSTA-20030509ACN, granted May 22, 2003, expired August 22, 2003. Subsequent extensions of the STA's have been granted. RBC lost its lease at its originally licensed tower location and needed to relocate to a temporary site. *See* May 22, 2003 Letter to Dennis F. Begley, Esquire, (In re: KZLO-FM, Bozeman, Montana); May 22, 2003 Letter to Dennis F. Begley, Esquire, (In re: KOBB-FM, Bozeman, Montana) ("STA Grant Letters").

¹⁰ *See* STA Grant Letters.

and had been operating at the KBOZ(AM) location since the end of March. Review of the station logs for both KOBB-FM and KZLO-FM revealed that from March 20, 2003 through October 20, 2003, the stations had consistently been operating at power levels approximately five kilowatts above the operating power allowed by the STA's of seven kilowatts ERP for KOBB-FM and eight kilowatts ERP for KZLO-FM.¹¹ When the agents notified the Chief Operator that both KOBB-FM and KZLO-FM were operating at power levels in excess of that allowed by the STA's, he took immediate steps to lower the power of both transmitters to within the authorized limit.¹²

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty.¹³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the Act more than once or for more than one day.¹⁴

6. Section 73.1350(a) of the Rules states that each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules and in accordance with the terms of the station license.¹⁵ RBC operated KOBB-FM and KZLO-FM from a location other than the location specified on the stations' licenses during the time period from between March 20, 2003, and May 21, 2003. RBC's requests for STA's on May 8, 2003, which were granted on May 22, 2003, indicates RBC was aware of the need to acquire Special Temporary Authority before operating from the new location. Therefore it appears that RBC's violation of Section 73.1350(a) was willful. It further appears that the violation occurred on more than one day, thus, it was repeated.

¹¹ The reviewed data is summarized as follows:

Station	3/20/03	3/24/03	7/31/03	8/20/03	10/20/03
KOBB-FM	12.1 kW	12.1 kW	13.5 kW	13.5 kW	13.1 kW
KZLO-FM	13.2 kW	13.2 kW	13.2 kW	13.7 kW	12.7 kW

¹² The Chief Operator indicated that he thought the authorized power was the same as requested in the original applications for STA.

¹³ 47 U.S.C. § 503(b).

¹⁴ 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 or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he 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."

¹⁵ 47 C.F.R. § 73.1350(a).

7. Based on the evidence before us, we find that RBC willfully and repeatedly violated Section 73.1350(a) of the Commission's Rules by failing to operate its stations at the locations set forth in the terms of the stations' authorizations.

8. Section 73.1560(b) states that the transmitter output of an FM station must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90% or more than 105% of the authorized power.¹⁶ The STA's granted to RBC on May 22, 2003, authorized operating power of seven kilowatts ERP for KOBB-FM and eight kilowatts ERP for KZLO-FM. These STA's specifically denied RBC's request for operating power of 15 kilowatts ERP for KOBB-FM and 18 kilowatts ERP for KZLO-FM. Despite the explicit requirements in the STA's of reduced operating power, RBC, during the period May 22, 2003 to October 21, 2003, operated KOBB-FM at a transmitter power in excess of 12 kilowatts ERP, 170% of authorized power, and operated KZLO-FM at a transmitter power in excess of 12.7 kilowatts ERP, 158% of authorized power. RBC was aware of the reduced operating power limits in the STA's, particularly after its request for higher operating power for both stations was denied. Therefore, it appears that its operation of KOBB-FM and KZLO-FM at more than 105% of the stations' authorized power was willful. The operation at more than the 105% operating power appears to have occurred for more than one day, therefore, it was repeated.

9. Based on the evidence before us, we find that RBC repeatedly violated Section 73.1560(b) by exceeding the STA authorized power limits for stations KOBB-FM and KZLO-FM.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"),¹⁷ and Section 1.80 of the Rules,¹⁸ the base forfeiture amount for operation at an unauthorized location is \$4000. Also, according to Section 1.80, the base forfeiture amount for exceeding power limits is \$4000. 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 Act,¹⁹ which include the nature, circumstances, extent, and gravity of the violation(s), 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. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude an \$8000 forfeiture is warranted for KOBB-FM and an \$8000 forfeiture is warranted for KZLO-FM. In total, we find that a \$16,000 forfeiture is warranted for RBC, licensee of KOBB-FM and KZLO-FM.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act²⁰ and Sections 0.111, 0.311 and 1.80 of the Rules, Reier Broadcasting Company Inc. is hereby NOTIFIED of its

¹⁶ 47 C.F.R. § 73.1560(b).

¹⁷ *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).

¹⁸ 47 C.F.R. § 1.80.

¹⁹ 47 U.S.C. § 503(b)(2)(D).

²⁰ 47 U.S.C. § 503(b).

APPARENT LIABILITY FOR A FORFEITURE in the amount of sixteen thousand dollars (\$16,000) for violating Sections 73.1350(a) and 73.1560(b) of the Rules.²¹

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Reier Broadcasting Company Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

14. The response, if any, must be mailed to the Federal Communications Commission, Western Region, Seattle Office, 11410 NE 122nd Way, Room 312, Kirkland, WA, 98034-6927, and must include the NAL/Acct. No. referenced in the caption.

15. 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.

16. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²²

17. 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 Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20554. 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.

²¹ 47 C.F.R. §§ 0.111, 0.311, 1.80, 73.1350(a) and 73.1560(b).

²² 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED THAT a copy of this Notice of Apparent Liability shall be sent by Certified Mail Return Receipt Requested and regular mail to Reier Broadcasting Company Inc., P.O. Box 20, Bozeman, MT 59718.

FEDERAL COMMUNICATIONS COMMISSION

Dennis J. Anderson
District Director
Seattle Office, Western Region
Enforcement Bureau

Attachment A – FCC List of Small Entities, October 2002