

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

In the Matter of)	
)	NAL/Acct. No. MB-201841410001
ROY E. HENDERSON)	FRN: 0006187835
)	Facility ID No. 57414
Licensee of Station WBNZ(FM))	File Nos. BRH-20120530ABD, and BLSTA-
Frankfort, Michigan)	20150206AAO

FORFEITURE ORDER

Adopted: July 26, 2018

Released: July 26, 2018

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to Roy E. Henderson (Henderson or Licensee), licensee of Station WBNZ(FM), Frankfort, Michigan (Station), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act)¹ and Section 73.1745(a)² of the FCC's Rules (Rules) by operating the Station at variance from its license without Commission authorization; for failing to timely file for special temporary authorization (STA) to operate with its nonconforming technical facilities in violation of Section 73.1635(a)(1)³ of the Rules; and willfully failing to disclose material information regarding the unauthorized operations in violation of Section 1.17⁴ of the Rules.⁵

II. BACKGROUND

2. On May 30, 2018, the Media Bureau (Bureau) issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* in the amount of eighteen thousand dollars (\$18,000) to Licensee for these violations.⁶ As noted in the *NAL*, on May 30, 2012, Henderson filed the referenced application for renewal of the Station's license (Renewal Application). Thereafter, on February 6, 2015, Licensee filed the referenced application for STA (Silent STA Application) requesting permission to remain silent as of January 21, 2015, while Licensee addressed a plumbing issue at the Station's facilities.⁷ In response to a Bureau inquiry,⁸ Licensee reported that the Station returned to air

¹ 47 U.S.C. § 301.

² 47 CFR § 73.1745(a).

³ 47 CFR § 73.1635(a)(1).

⁴ 47 CFR § 1.17.

⁵ 47 CFR § 73.3539; 47 U.S.C. § 301.

⁶ *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 18-562, (MB May 30, 2018).

⁷ See Silent STA Application, Exhibit 1.

⁸ *Letter to Roy E. Henderson from Peter H. Doyle, Chief, Audio Division, Media Bureau*, Ref. 1800B3-VM (May 25, 2016).

on February 19, 2015, but “[d]ue to a clerical error it appears that Henderson did not notify the FCC of the WBNZ on air status. An ‘on-air’ notice has now been filed electronically to reflect that proper date.”⁹ Additionally, on September 12, 2016, Henderson filed a request for STA to operate the Station with reduced power stating that “due to transmitter and power issues, WBNZ is currently operating at the reduced power of 1.4 kW.”¹⁰

3. In the *NAL*, the Bureau found that on April 29, 2015, Station commenced unauthorized operations with non-conforming facilities and did not notify the Commission of this until filing the September 12, 2016, Engineering STA Application. The Bureau further found that Licensee did not disclose in the Engineering STA Application the material fact that the Station had operated with an unauthorized power reduction for nearly 17 months prior to filing the Engineering STA Application. Licensee did not file a response to the *NAL*.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹¹ Section 1.80 of the Rules,¹² and the Commission’s *Forfeiture Policy Statement*.¹³ In assessing forfeitures, Section 503(b)(2)(E) of the Act 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

5. We conclude that Licensee willfully¹⁵ and repeatedly¹⁶ violated Section 301 of the Act and Sections 73.1745(a), 73.1765(a)(1) and 1.17 of the Rules. We will therefore issue a forfeiture in the amount of \$18,000 as proposed in the *NAL*.¹⁷

IV. ORDERING CLAUSES

6. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of

⁹ WBNZ(FM) Response at 1, dated July 22, 2016, and received July 25, 2016, (July 2016 Response). *See also* “Resumption of Operations” filed July 20, 2016.

¹⁰ BSTA-20160912AAZ, Exhibit 4, (Engineering STA Application). The staff granted the Engineering STA Application on February 26, 2018. *See* E-mail to Licensee’s counsel from Dale Bickel, Senior Electronics Engineer, Audio Division, Media Bureau (Feb. 26, 2018, 12:26 p.m.).

¹¹ 47 U.S.C. § 503(b).

¹² 47 CFR § 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), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, para. 5 (1991) (*Southern California*).

¹⁶ Section 312(f)(2) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Rcd at 4388, para. 5 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁷ *See, supra* note 6.

1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁸ that Roy E. Henderson SHALL FORFEIT to the United States the sum of eighteen thousand dollars (\$18,000) for willfully and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended, and Sections 73.1745(a); 73.1765(a)(1), and 1.7 of the Commission's Rules.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture 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.¹⁹

8. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the NAL/Acct. No. and FRN No. referenced herein. Regardless of the form of payment, a completed FCC Form 159 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). Licensee will also send electronic notification on the date said payment is made to Karen Workman at Karen.Workman@fcc.gov and to Kim Varner at Kim.Varner@fcc.gov. 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 the completed Form 159) must 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.
- 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.

9. Requests for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²⁰

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, and by First Class Mail to, Roy E. Henderson, c/o WLDR-FM,

¹⁸ 47 U.S.C. § 503(b); 47 CFR §§ 0.283, 1.80.

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 CFR § 1.1914.

13999 S. West Bayshore Drive, Traverse City, MI 49684, and to his counsel, John C. Trent, Esq., Putbrese, Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, VA 22664.

FEDERAL COMMUNICATIONS COMMISSION



Albert Shuldiner
Chief, Audio Division
Media Bureau