

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

)

)

)

In the Matter of)

)

Bronco Broadcasting Co., Inc.,)

St. Charles, Missouri) NAL/Acct. No. 815KC0001

)

)

)

FORFEITURE ORDER

Released: May 8, 1998

By the Compliance and Information Bureau:

1. Before the Bureau is a Notice of Apparent Liability ("NAL"), issued on December 3, 1997, to Bronco Broadcasting Co., Inc. (Bronco) and the response thereto, filed by their attorney, Michael Glaser, on February 4, 1998, requesting that the Bureau dismiss the NAL. The NAL proposed imposition of a forfeiture in the amount of \$14,000, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §503 (b), against Bronco, licensee of radio station KIRL in St. Charles, Missouri, for willful and repeated violations of 47 C.F.R. § 73.62(b)(3) and the terms of the KIRL station authorization, namely failure to maintain the night time directional pattern within the prescribed field intensity limits at the monitoring points specified in the KIRL station authorization. For the reasons noted below, we reduce the forfeiture amount to \$7,000.

2. We note that the response before us was filed untimely. Respondent had initially requested, and was granted, a generous extension of the due date from January 2 to January 26, 1998. However, a second request for an additional extension was orally denied. The response to the NAL, however, was not filed until February 4, 1998, more than a week past the January 26th due date. In this case, we will consider the licensee's response, however, the Bureau will consider this Order to be notice to the public that late responses to NALs will no longer be accepted or considered by the Bureau.

BACKGROUND

3. On July 9, 1985, Bronco Broadcasting Co., Inc., as licensee of radio station KIRL, St. Charles, Missouri, was issued a Notice of Violation by the Commission's Kansas City Field Office for violation of 47 C.F.R. §§ 73.49 and 73.61(a), after a June 5, 1985 inspection of KIRL by FCC Engineer G. Michael Moffitt found violations involving AM tower fencing and excessive field intensity.

4. On April 9, 1992, Bronco Broadcasting Co., Inc., as licensee of radio station KIRL, St. Charles, Missouri, was issued a Notice of Violation by the Commission's Kansas City Field Office for violation of 47 C.F.R. §§ 73.49 and 73.3526(a)(9), after an April 1, 1992 inspection of KIRL by FCC

Engineer Ronald Ramage found violations pertaining to AM tower fencing and the stations public inspection file.

5. On November 6, 1996, broadcast radio station KIRL, St. Charles, Missouri was inspected by FCC Agents Ronald Ramage and John Roneker of the Compliance and Information Bureau's (CIB) Kansas City Field Office. This inspection found violations pertaining to station logs, metering and AM directional parameters (47 C.F.R. §§ 73.1225, 73.1226, 73.1410 and 73.62). No field intensity metering was available to inspect the field intensity at designated monitoring points, so these were not checked during this inspection. A Notice of Violation was issued to Bronco for these violations on November 12, 1996. In response to this Notice, the licensee submitted a reply which included copies of the station logs for the period September 1 - November 6, 1996, which were unavailable at the time of the November 6, 1996 inspection. These logs documented out-of-tolerance AM directional parameters during this entire period.

6. On December 20, 1996, the CIB's Kansas City Field Office issued Bronco a letter notifying the licensee that it must maintain certain technical records showing that it resolved the out-of-tolerance nighttime directional operation. The Notice, issued in accordance with 47 C.F.R. § 73.1835, specified that the licensee was required to follow a specified program consisting of regularly logging of field strength readings and correcting the station's power output as needed. This log was to be submitted to the Kansas City Field Office monthly, along with a status report and technical records which documented the repairs being made to bring KIRL's nighttime directional operation back into compliance with the KIRL station authorization. Once all of the repairs were completed, the Notice required the licensee to conduct proof of performance measurements on the nighttime operation in accordance with 47 C.F.R. §§ 73.61 and 73.154.

7. On January 16, 1997, the Kansas City Field Office issued Bronco's attorney a letter notifying Bronco of their failure to respond to the Notice of Violation, dated December 11, 1997, and to notify Bronco of their failure to provide the requested monthly status reports and technical records as specified in the Notice dated December 20, 1997. In response to this letter, Bronco's attorney submitted a reply on March 6, 1997, in which he stated that "Bronco apologizes to the Commission for the delay in submitting its status report with the technical records, as required by your December 20, 1996 Notification, and wishes to assure the Commission that it will carefully observe the Commission's Notification requirements with respect to the status report and the special technical records until Station KIRL's night-time operation is in full compliance with its station authorization." Despite this assurance, Bronco has failed to provide any status reports on its repairs, if any, made to the station since the March 6, 1997, letter, up to and including the date of this action. Bronco did submit monthly measurement data, except for the period of January 20 - March 1, 1997 when KIRL was not operating at night.

8. On January 30, 1997, the Commission's Mass Media Bureau issued Bronco Special Temporary Authority (STA) to operate with parameters at variance. This STA clearly stated that the station was to maintain monitoring points within authorized limits.

9. As a result of the Commission's Notification of December 20, 1997, Bronco's Engineer, James Mitchell, conducted weekly measurements of the KIRL nighttime directional pattern. This measurement data was submitted through Bronco's attorney to the Kansas City Field Office. The data Mr. Mitchell submitted showed that Bronco had repeatedly operated with an out-of-tolerance nighttime

directional pattern as measured on thirty two separate dates during the period December 20, 1996 through November 3, 1997, in violation of 47 C.F.R. § 73.62(b) and the terms of the KIRL station authorization. Specifically, the dates of each violation were: December 20, 23, 27 and 30, 1996, January 4, 11 and 20, 1997, March 1 and 20, 1997, April 14 and 23, 1997, May 19 and 27, 1997, June 2, 17, 24 and 30, 1997, July 7, 14 and 21, 1997, August 4, 11 and 18, 1997, September 2, 8, 15 and 29, 1997, October 6, 13, 20 and 27, 1997 and November 3, 1997, which is the last date on which data was submitted. On each of these occasions, the measured field intensity at one or more points exceeded the maximum field intensity authorized by the KIRL station license. During the period of December 20, 1996 through November 3, 1997, a total of 43 separate data sheets were submitted documenting the measurements taken by Mr. Mitchell.

DISCUSSION

10. In response to the NAL, the respondent makes several claims. First, respondent claims that the violation was not willful, but was merely technical. Respondent defines his term, "technical violation" as relating to constant weather and flooding problems and unintentional errors by the station's engineer. Second, respondent maintains that the \$14,000 forfeiture amount is excessive in relation to the size and resources of Bronco. Third, respondent claims a "long history of compliance" on behalf of Bronco, notwithstanding the recent flooding problems experienced at this nighttime antenna site. Fourth, respondent contends that construction activity by the site's owner in his attempts to alleviate the flooding problems have exacerbated nighttime antenna's sensitivity to weather changes. Fifth, that respondent states that it has "spent considerable time and energy attempting to correct problems with the night time site," including, obtaining an STA from the Commission, voluntary shut downs of the nighttime operation, inspection and adjustment by a communication engineering consultant, investigation into a new ground system, and the submission of monthly reports as required by the December 20, 1996, Notice of Violation (NOV). Sixth, respondent also asserts that the age and health of the station engineer have caused him to make mistakes and omissions in the operation of the station. Finally, respondent argues that past violations by Bronco should not be considered for various reasons.

11. We have carefully evaluated the information submitted in connection with Bronco's response and conclude that, based on the discussion below, Bronco is liable for a forfeiture for willful and repeated violations of Section 73.62(b)(3) of the Commission's rules, 47 C.F.R. § 73.62(b)(3). As an initial matter, we note that, notwithstanding respondent's misunderstanding regarding the term, the violation was indeed willful.¹ Furthermore, in reply to both respondent's contentions that external forces have exacerbated the weather sensitivity of the equipment, and that the station engineer was unable to understand the weekly measurement data, we remind respondent that responsibility for compliance with the terms of KIRL's license rests solely and exclusively with the licensee. Additionally, regarding the station engineer's ability to understand the weekly measurements, the form used had the maximum allowable readings clearly marked, was available to Bronco's attorney for review before its submission, and, any such review would

¹Section 312 (f)(1), which applies to Section 503(b), provides: [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 or by a treaty ratified by the United States. See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

have identified the out-of-tolerance conditions. Moreover, we note that the written monthly reports required of Bronco, in accordance with Section 73.1835 of the rules, 47 C.F.R. §73.1835, were to address the specific and ongoing problem that KIRL was experiencing with the nighttime directional operation of the station. The reports were required only until such time as the problem was corrected. To date, the problem has not been corrected, and the licensee has failed to provide written monthly status reports. Attempts by Bronco's attorney to provide verbal status reports were unacceptable and the licensee was instructed to submit its reports in writing, as required. In addition,

Bronco, as licensee of KIRL, was also required to conduct a proof of performance on the directional operation prior to commencing full time operation. This proof of performance was never conducted, and Bronco continues to ignore the requirement. Claims by the respondent, that a communication engineering consultant had advised that no repairs were necessary, are not supported by any documents from the consultant, and, regardless, assessments made by a paid consultant in no way mitigate or relieve the responsibility of the licensee.

12. Based on the violations, the Bureau issued the forfeiture penalty pursuant to Section 503 of the Act, 47 U.S.C. § 503, and Section 1.80 of the rules, 47 C.F.R. §1.80. In assessing the forfeiture amount, the Bureau followed the forfeiture standards established in Section 503 of the Act and the Commission's Policy Statement, Standards for Assessing Forfeitures, (Policy Statement), 12 FCC Rcd 17087 (1997). Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require. 47 U.S.C. §503(b)(2)(D),

13. Respondent only presents information concerning two mitigating factors pertaining to the forfeiture amount. First, respondent claims that Bronco has a long history of compliance. However, respondent's own records contradict this assertion by listing the licensee's past history of rule violations. The contention that the 1985 violation bears no relation to current operating practices and that a station log violation is minor and, therefore, should not be considered are insupportable. Both violations were correctly considered as part of Bronco's history as the licensee of radio station KIRL. Overall, Bronco's history demonstrates a lack of compliance. In regards to respondent's rationale for mitigation of the amount, inability to pay, respondent failed to fully document this claim, supplying only balance sheets from 1997. The NAL clearly states in footnote number two that "[c]laims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three year period." Respondent only provided financial documents for a period covering one year. Therefore, the documentary evidence needed to support an inability to pay claim is incomplete. However, it appears from the information before us that this is a small business. Based on all factors, including the size of the business, we reduce the forfeiture amount to \$7,000.

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to 47 U.S.C. §503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, Bronco Broadcasting Co., Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$7,000 for willful and repeated violations of Section 73.62(b)(3) of the Commission's rules, 47 C.F.R. § 73.62(b)(3).

15. **IT IS FURTHER ORDERED**, pursuant to Section 1.80(f) of the Commission's Rules, 47 C.F.R. §1.80(f), that Bronco Broadcasting Co., Inc. shall, within thirty (30) days of the release of this

Forfeiture Order, pay the full amount of the forfeiture. Forfeitures shall be paid by check, money order or credit card, with the appropriate documentation, made payable to the Federal Communications Commission.² The remittance should be marked NAL/Acct. No. 815KC0001, and mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

Petitions for Reconsideration pursuant to Section 1.106, 47 C.F.R. §1.106 of the Rules, or Applications for Review pursuant to Section 1.115, 47 C.F.R. §1.115, should be sent to:

Federal Communications Commission
Chief, Compliance Division
Compliance and Information Bureau
1919 M Street, N.W.
Washington, D.C. 20554
ATTN: Mail Stop 1500E3-MSL

16. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return receipt requested, to Bronco Broadcasting Co., Inc., 3713 Hwy 94 N., St. Charles, Missouri, 63301 and that a copy of this notice shall also be sent to Bronco's attorney.

FEDERAL COMMUNICATIONS COMMISSION

Pamera D. Hairston
Chief, Compliance Division
Compliance and Information Bureau

² Requests for payment under installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules. Contact Chief, Billings and Collections, at (202) 418-1995 for more information on payments by credit card.