

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

In the Matter of	)	
	)	
Frank Neely	)	File No. EB-03-NF-014
Licensee, Station WLTC(AM)	)	NAL/Acct. No. 200332640007
Gastonia, North Carolina	)	FRN 0008-4986-68
Rock Hill, North Carolina	)	
	)	

**FORFEITURE ORDER**

**Adopted: August 19, 2004**

**Released: August 23, 2004**

By the Chief, Enforcement Bureau:

1. In this *Forfeiture Order* ("Order") we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Frank Neely, licensee of AM broadcast station WLTC, Gastonia, North Carolina, for repeated violation of Section 73.1745(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violation involved Mr. Neely's operation of a broadcast station at unauthorized power levels.

2. In a July 16, 2003 *Notice of Apparent Liability for Forfeiture* ("NAL"), the Commission's Norfolk, Virginia Resident Agent Office ("Norfolk Office") issued a monetary forfeiture in the amount of \$4,000 to Mr. Neely for overpowered operations on April 22, 23, and 24, 2003.<sup>2</sup> In his August 18, 2003 response, Mr. Neely, through his attorney, requests cancellation of the proposed forfeiture. Mr. Neely does not dispute that WLTC operated with excessive power on the dates specified in the *NAL*. He states, however, that he has set up procedures to prevent the reoccurrence of the violation, and to also ensure material compliance with Commission Rules. Further, Mr. Neely claims to have a history of overall compliance with the Commission's Rules, and also claims to be financially unable to pay the forfeiture.

3. No mitigation is warranted on the basis of Mr. Neely's correction of the violations. 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."<sup>3</sup> Turning to Mr. Neely's claim of a history of compliance, we note that a *NAL* was issued to Mr. Neely on June 28, 2004 for public file violations that occurred at station WLTC from April 1998 through early 2003.<sup>4</sup> Mr. Neely's claim that his station has a history of overall compliance with the Commission's rules is belied by his own certification that station WLTC did not meet the Commission's public inspection file requirements. We, therefore, deny his request for a reduction or cancellation for history of overall compliance. Finally, Mr. Neely provides federal income tax returns for WLTC's parent corporation, Rejoice, Inc., for 2000, 2001, and 2002 in support of his

<sup>1</sup> 47 C.F.R. §§ 73.1745(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332640007 (Enf. Bur., Norfolk Office, released July 16, 2003).

<sup>3</sup> See also *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21875 (2002); *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002).

<sup>4</sup> See *Letter to David Tillotson, Esq. from Chief, Audio Services Division in re Station WLTC(AM)*, 19 FCC Rcd 11230 (Med. Bur. 2004).

inability to pay contention. We have reviewed the financial information submitted by Mr. Neely and find that this information does not provide a basis for cancellation. Indeed, the forfeiture is a very small percentage of Rejoice, Inc.'s gross revenues.<sup>5</sup>

4. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act<sup>6</sup>, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>7</sup> Frank Neely **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for his repeated violation of Section 73.1745(a) of the Rules.

5. 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.<sup>8</sup> 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.<sup>9</sup>

6. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Frank Neely, 1286 Holland Road, Rock Hill, South Carolina 29732, and his counsel David Tillotson, Esq., 4606 Charleston Terrace, N.W., Washington, D.C. 20007.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>5</sup> See *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547, 2548 (2004), citing *PJB Communications*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 10023, 10025 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In this case, the forfeiture represents a smaller percentage of gross revenues than those issued in the *Local Long Distance, Inc.*, *Hoosier Broadcasting Corp.*, and *PJB Communications of Virginia, Inc.* cases.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>8</sup> 47 U.S.C. § 504(a).

<sup>9</sup> See 47 C.F.R. § 1.1914.