

Federal Communications Commission

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

In the Matter of)	
)	
Pentecostal Temple Development Corporation)	File Number EB-07-PA-321
)	
Licensee of Station WGBN(AM))	NAL/Acct. No. 200832400009
New Kensington, Pennsylvania)	
Facility ID # 52241)	FRN 0008-65-6506

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 5, 2008

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Pentecostal Temple Development Corporation (“PTDC”), licensee of AM station WGBN, in New Kensington, Pennsylvania, apparently willfully and repeatedly violated Sections 73.1745(a), 1.903(a), and 73.3526(e)(12) of the Commission’s Rules (“Rules”)¹ by failing to operate its broadcast station in a manner which complies with the terms of the station authorization, operating a Studio Transmitter Link on an unauthorized frequency, and failing to maintain radio issues/programs lists in the station’s public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that PTDC is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. On October 1, 2007, the Philadelphia Office received information regarding possible violations at station WGBN. In response, an agent from the Commission’s Philadelphia Office conducted an inspection of station WGBN on November 6, 2007, and November 7, 2007.

3. The license for WGBN specifies that PTDC must operate the station with a two-tower directional antenna array and with an antenna input power of 1080 Watts during the daytime and 76 Watts during the nighttime. On November 6, 2007, and November 7, 2007, the agent measured the field intensities of WGBN on 1150 kHz at the station’s monitoring points to determine if the station was maintaining the directional antenna pattern within prescribed limits. On November 6, 2007 at 8:11 p.m. local time, the agent measured a field intensity of 32 mV/m at the monitoring point along the 286 degree radial. The agent found that the field intensity exceeded the licensed limit of 23.5 mV/m by 36 percent. On November 7, 2007 at 12:53 p.m. local time, the agent measured a field intensity of 73 mV/m at the monitoring point along the 286 degree radial. The agent found that the field intensity exceeded the licensed limit of 23.5 mV/m by 210 percent.

¹ 47 C.F.R. §§ 73.1745(a), 1.903(a), and 73.3526(e)(12).

² 47 U.S.C. § 503(b).

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4. On November 7, 2007 at 1:45 p.m., the agent went to the WGBN main studio, which is located at 560 7th Street, New Kensington, Pennsylvania 15068, and met with the station's Chief Operator. While at the main studio, the agent reviewed the contents of the station's public inspection file. The agent observed that PTDC maintained a separate folder for each item in its public inspection file. When the agent opened the folder labeled "Issues Lists," he found a radio issues/programs list for the period between April 12, 2003 and May 15, 2004. The agent found that the public inspection file did not contain the radio issues/programs lists for the period between August 2, 2006 and November 7, 2007. PTDC was required to maintain in the public inspection file all quarterly radio issues/program lists that it prepared since August 2, 2006, the grant date of the latest WGBN renewal application.

5. On November 7, 2007 at about 3:30 p.m., the agent and Chief Operator went to the WGBN transmitter site. There the agent observed that one of the WGBN antenna structures (ASR Number 1048261) had been dismantled and PTDC was using the remaining WGBN antenna structure (ASR Number 1048262) as the station's non-directional antenna. The Chief Operator stated that PTDC had completely dismantled one of the station's two antenna structures because it was damaged in a storm and that WGBN was currently operating at reduced power with a non-directional antenna.

6. During the inspection at the WGBN transmitter site, the agent had PTDC switch the station between daytime and nighttime modes while he observed the transmitter's metering. When the station was operating in daytime mode, the agent measured that station's antenna input power to be 264.5 Watts or 24.5 percent of the authorized power during the daytime. When the station was operating in nighttime mode, the agent measured the station's antenna input power to be 40.5 Watts or 53.2 percent of the authorized power during the nighttime. At the time of the inspection, PTDC was unable to provide the agent with any authorization from the Commission to operate station WGBN at reduced power or with a non-directional antenna.

7. When the agent returned to the WGBN main studio location, he inspected the station's Marti Studio Transmitter Link (Model STL-10). The agent used a frequency counter to measure that the Studio Transmitter Link operated on the frequency 947.8559 MHz. At the time of the inspection, PTDC was unable to provide the agent with any authorization from the Commission to operate a Studio Transmitter Link on the frequency 947.8559 MHz. PTDC did provide the agent with a copy of the license for station WPXQ800 authorizing operation of a Studio Transmitter Link at the WGBN main studio on the frequency 948.875 MHz.

8. On January 4, 2008, the Philadelphia Office issued a Letter of Inquiry to PTDC to follow up on issues resulting from the inspection of station WGBN. By a letter dated January 31, 2008, PTDC submitted a response to the Letter of Inquiry. In the response, PTDC stated that it had not been able to operate station WGBN in directional mode since June 11, 2007 due to damage the station suffered to both of its antenna structures. PTDC also stated that between June 11, 2007 and November 7, 2007, it operated station WGBN at 250 Watts in non-directional mode. PTDC also said that it did not notify the Commission in writing prior to November 7, 2007 that station WGBN was operating with a non-directional antenna or at reduced power.³ In the response, PTDC acknowledged that it was operating the station's Studio Transmitter Link on the frequency 947.8559 MHz since at least the past six months.

³ On November 8, 2007, PTDC submitted an application (File No. BSTA-20071108AFE) for special temporary authorization to operate station WGBN at reduced power due to damage to the station's transmitter suffered during a storm. On November 9, 2007, the Commission granted Special Temporary Authority ("STA"). Because PTDC did not notify the Commission in its original STA request that station WGBN was also operating with a non-directional antenna, PTDC submitted a modification of the STA on November 16, 2007. On November 16, 2007, the Commission granted the request for modification of Special Temporary Authority authorizing PTDC to operate station WGBN with an emergency non-directional antenna and reduced power not to exceed 250 Watts daytime and 17.5 Watts nighttime.

PTDC said that on November 14, 2007 it re-crystallized the Studio Transmitter Link to operate on the frequency 948.875 MHz. In the response, PTDC also acknowledged that at the time of the inspection the public inspection file did not contain the radio issues/program lists for the period between August 2, 2006 and November 7, 2007. PTDC said that it has drafted the radio issues/programs lists for all quarters since August 2, 2006 and placed them in the WGBN public inspection file.

III. DISCUSSION

9. 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 thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁵

10. Section 73.1745(a) provides that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.” Station WGBN’s license requires the station to utilize a two-tower directional array during the day and night and to operate with an antenna input power of 1080 Watts during the daytime and 76 Watts during the nighttime. The agent found that PTDC was operating at 24.5% of its authorized daytime power and 53.2% of its authorized nighttime power.. Because PTDC admitted that it operated station WGBN between June 12, 2007 and November 7, 2007 with a reduced power and in a non-directional mode from a single antenna structure without prior FCC authorization, we find that the violation was willful.⁶ The operation with the improper mode and power occurred on more than one day. We therefore find that the violation was repeated.

11. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.⁷ Section 1.947(a) of the Rules requires that all major

⁴ 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).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[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.”

⁶ We note that PTDC’s claim that it was operating at reduced power with a non-directional antenna because of damage to the WGBN antenna structures from a storm does not change our findings here. The Commission contemplated such unforeseen circumstances and adopted Section 73.1635(a) of the Rules, which permits a licensee to seek special temporary authority to operate a broadcast facility for a limited period at a specified variance from the terms of the station authorization. Section 73.1635(a)(3) of the Rules specifically states that a request for an STA necessitated by unforeseen equipment damage or failure may be made without regard to the procedural requirements of Section 73.1635 (e.g. via telegram or telephone), though any such request must be followed by a written confirmation request within 24 hours. PTDC did not file a request for an STA until after the inspection conducted by the FCC agent.

⁷ 47 C.F.R. § 1.903(a). At issue here is PTDC’s operation of its Studio to Transmitter Link, which is considered an aural broadcast auxiliary station. Section 74.6 of the Rules provides that “[a]pplicants for and licensees of. . . aural broadcast stations. . . are subject to the application and procedural rules for wireless telecommunications services contained in part 1, subpart F of this chapter.” 47 C.F.R. §74.6. Part 1, subpart F includes Section 1.903(a) of the Rules.

modifications as defined in Section 1.929 of the Rules require prior Commission approval.⁸ Section 1.929(a)(6) of the Rules defines one of the major actions as "any application or amendment requesting to add a frequency or frequency block for which the applicant is not currently authorized."⁹ On November 7, 2007, an agent from the Philadelphia Office found that PTDC was operating the WGBN Studio Transmitter Link on the unauthorized frequency 947.8559 MHz. At the time of the inspection, PTDC only held one license for its Studio Transmitter Link under the call sign WPXQ800. That license authorized PTDC to operate the WGBN Studio Transmitter Link on the frequency 948.875 MHz. PTDC admitted in its response to the Letter of Inquiry that it had been operating the Studio Transmitter Link on the unauthorized frequency for at least 6 months. The operation on an unauthorized frequency occurred on more than one day. We therefore find that the violation was repeated. Because PTDC admitted that it knowingly operated the Studio Transmitter Link on the unauthorized frequency, the violation was willful.

12. Section 73.3526(e)(12) of the Rules requires AM and FM broadcast licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.¹⁰ This list is known as the radio issues/programs list. Copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application. PTDC was required to maintain in the public inspection file all quarterly radio issues/program lists that it prepared since August 2, 2006, the grant date of the latest WGBN renewal application. However, PTDC did not maintain the radio issues/programs lists in the WGBN public inspection file for the period between August 2, 2006 and November 7, 2007. The station had not been maintaining radio issues/programs lists since August 2006; therefore, the violation was repeated. PTDC understood that it was required to maintain the radio issues/programs lists in the public inspection file because it was maintaining an issues/programs list for the period between April 12, 2003 and May 15, 2004 in the public inspection file in a folder labeled "Issues Lists." We therefore find that the violation was willful.

13. Based on the evidence before us, we find that PTDC apparently willfully and repeatedly violated Sections 73.1745(a), 1.903(a), and 73.3526(e)(12) of the Commission's Rules ("Rules") by failing to operate its broadcast station in a manner which complies with the terms of the station authorization, operating a Studio Transmitter Link on an unauthorized frequency, and failing to maintain radio issue/programs lists in the station's public inspection file.

14. 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*"), and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain directional antenna pattern within prescribed parameters is \$7,000 and the base forfeiture amount for operation on an unauthorized frequency is \$4,000.¹¹ The base forfeiture amount for violation of the public file rule is \$10,000. Because the WGBN public inspection file was mostly complete, we conclude that a reduction in the base forfeiture amount for the public file violation to \$4,000 is appropriate. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that PTDC is apparently liable for a fifteen thousand dollar (\$15,000) forfeiture.

⁸ 47 C.F.R. § 1.947(a).

⁹ 47 C.F.R. § 1.929(d)(1)(i).

¹⁰ 47 C.F.R. § 73.3526(e)(12).

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Pentecostal Temple Development Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Sections Section 73.1745(a), 1.903(a), and 73.3526(e)(12) of the Rules.¹³

16. **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 for Forfeiture, Pentecostal Temple Development **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. PTDC shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

18. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to NER-Response@fcc.gov.

19. 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 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1745(a), 1.903(a), and 73.3526(e)(12).

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20. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Pentecostal Temple Development Corporation at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
District Director
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Enforcement Bureau