



Federal Communications Commission
Washington, D.C. 20554

MAY 02 2014

EB-IHD-MG/KR
CN#14-313M

The Honorable Mark Pocan
Member, U.S. House of Representatives
10 East Doty Street, Room 405
Madison, Wisconsin 53703



Dear Congressman Pocan:

Thank you for your recent letter on behalf of your constituent, Dr. Frank Emspak, Executive Producer, Workers Independent News (WIN). You asked that we comment on his letter concerning a recent Commission decision assessing a forfeiture against station WLS(AM), Chicago, Illinois, based on its failure to comply with the sponsorship identification laws. Dr. Emspak claims that the Commission's decision improperly finds that material that WIN paid to broadcast on WLS(AM) is not news, and thus impugned WIN's journalistic integrity. Dr. Emspak further argues that the Commission has no authority to define what constitutes news, and by doing so in this case has engaged in prohibited censorship. In view of this, Dr. Emspak requests that the Commission retract or modify its decision.

By way of background, we note that the Commission's sponsorship identification laws require broadcasters to air announcements that identify when they are being paid to broadcast material and who is paying them. In its forfeiture order, a copy of which is attached, the Commission found that WIN paid WLS(AM) to air program material, but that the station failed to make required sponsorship identification announcements to inform listeners that WIN's messages were, in fact, sponsored.

The Commission sanctioned the licensee of WLS(AM) based on that broadcaster's failure to comply with the sponsorship identification laws, which apply regardless of the content of the subject programming. WLS(AM) did not dispute that it failed to provide sponsorship announcements for certain program material that WIN paid the station to air. Moreover, WIN was neither a party to the forfeiture proceeding nor was that organization itself sanctioned by our ruling. Furthermore, because WLS(AM) has since paid the forfeiture, the Commission's ruling is now final and beyond appeal. Thus, we have no basis, under the law, to retract or modify that decision.

Notwithstanding the foregoing, we are sensitive to WIN's concerns. The Commission's sponsorship identification rules are premised on the simple principle that listeners are entitled to know who seeks to persuade them. Under current rules, this consideration is particularly important where the sponsored message is formatted as news or informational programming and airs on a station following a news/talk programming format. As the Commission indicates in the order, in such cases listeners are apt to be confused as to who seeks to persuade them—the station or a third party.

Thus, in the order in question, the Commission was obliged to distinguish between programming reflecting the editorial judgment of the licensee of the station and paid programming reflecting another party's editorial judgment. With respect to WIN's programming,

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the emphasis of this distinction was on its status as paid programming, not its status as news. Moreover, this distinction did not include any determination about WIN's journalistic integrity. Nor did drawing the limited distinction constitute "censorship." Rather, the distinction was made only to identify the editorial source of the programming as a non-licensee third party. As such, the order stands for the proposition that if a licensee receives consideration for the broadcast of *any* message, it must disclose that fact to the listening audience. The order does not restrict WLS(AM), or any other station, from carrying such content in the future so long as proper sponsorship disclosures are made at the time of broadcast.

Thank you for your interest in this matter. Please do not hesitate to contact the FCC's Office of Legislative Affairs at (202) 418-1900 if you require additional information or assistance.

Sincerely,



Karen E. Onyeije
Chief of Staff

Enforcement Bureau

Enclosure

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

In the Matter of)	
)	
Radio License Holding XI, LLC)	File No: EB-09-IH-0574
)	NAL/Acct. No.: 201232080012
Licensee of Station WLS(AM),)	FRN: 0014650006
Chicago, Illinois)	Facility ID No.: 73227

FORFEITURE ORDER

Adopted: February 7, 2014

Released: February 10, 2014

By the Commission:

I. INTRODUCTION

1. In this Forfeiture Order, issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act),¹ we find that Radio License Holding XI, LLC (Radio License or Licensee), licensee of Station WLS(AM), Chicago, Illinois (Station), willfully and repeatedly violated Section 317(a)(1) of the Act² and Section 73.1212(a) of the Commission's rules³ by failing to air required sponsorship identification announcements. Based on a review of the facts and circumstances, we find Radio License liable for a forfeiture in the amount of forty-four thousand dollars (\$44,000).

II. BACKGROUND

2. The Commission received a complaint alleging that, on March 19, 2009, at 2:29 p.m., the Station aired program matter on behalf of an organization called Workers Independent News (WIN) without adequately disclosing the fact that it was an advertisement, rather than a news story.⁴ The Enforcement Bureau issued a letter of inquiry (LOI) to the Licensee concerning the allegations raised in the Complaint.⁵ The Licensee responded to the LOI on February 18, 2011.⁶

3. In its LOI Response, Radio License states that, during the period between March 18 and May 30, 2009, it aired program matter on behalf of WIN in return for consideration or the promise of consideration provided by WIN.⁷ Radio License explains that the program matter consisted of a total of

¹ See 47 U.S.C. § 503(b).

² 47 U.S.C. § 317(a)(1).

³ 47 C.F.R. § 73.1212(a).

⁴ See Complaint, FCC Form 2000E Complaint No. 09-C00104365-1 at 1-2 (Mar. 19, 2009) (on file in EB-09-IH-0574) (Complaint).

⁵ See Letter from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Radio License Holding XI, LLC (Jan. 19, 2011) (on file in EB-09-IH-0574) (LOI).

⁶ See Letter from Dennis P. Corbett, Nancy A. Ory, and F. Scott Pippin, Counsel to Radio License Holding XI, LLC, Lerman Senter PLLC, to Paul Noone, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 18, 2011) (on file in EB-09-IH-0574) (LOI Response).

⁷ See *id.* at 2-3.

45 90-second spots, 27 15-second promotional announcements, two two-hour programs, and one one-hour program.⁸ Radio License further explains that all of this program matter complied with the Commission's sponsorship identification requirements⁹ except for 11 of the 45 90-second spots.¹⁰ Radio License states that all of these 11 spots referenced "Workers Independent News" and identified the narrator, but did not specifically state that the program matter was sponsored, paid for, or furnished by WIN.¹¹ Despite this omission, in the LOI Response, Radio License contended that the announcements satisfied the Commission's sponsorship identification requirements.¹²

4. Radio License provided recordings and transcripts for the announcements at issue.¹³ The 11 announcements at issue were informational program material, each related to a state legislative issue impacting the local economy of Chicago. The transcript of one of these announcements, in its entirety, is as follows:

Workers Independent News, I'm Doug Cunningham. As Federal Economic Stimulus dollars flow to Chicago, State Representative Joe Lyons says it's more critical than ever that the State put together a capital bill to take maximum advantage of the stimulus to put Chicago back to work.

(Joe Lyons quote) "Unfortunately for the past 2 or 3 years, with the situation we've had in this state, the time wasn't right to put a capital bill together. One of the major issues that we will have to do before we adjourn the general assembly is get a capital bill to tap into some of that [f]ederal [m]oney that can make putting (mumbled word – at :39 of the clip) people to work and getting good jobs to people here in Illinois all the easier."

Lyons says securing funding for the capital bill will allow projects to be bonded out, improving not only employment and the economy, but Chicago's infrastructure as well.

(Joe Lyons quote) "Ask anybody in Chicago about the crumbling street situation. Ask anybody who's been waiting for a school addition or new windows or some project that's being done for education, ask anybody who's been for any kind of a capital project across the state, we have not had that umph that we need to kick-start this whole thing and there's going to be federal matching funds on the transportation end of it to get this done for CTA or RTA.["]

The capital bill could make Olympics infrastructure preparation easier, should Chicago land the 2016 Olympic Games. As Illinois Director of Veteran's Affairs, Dan Grant, says as construction projects ramp up, existing [s]tate programs to help veterans can be used in combination with them to multiply job opportunities for veterans.

(Dan Grant quote) "For example, a tax credit for employers who hire veterans, we have veterans employment preference for [s]tate jobs."

⁸ See *id.*

⁹ See 47 C.F.R. § 73.1212.

¹⁰ See LOI Response at 3.

¹¹ See *id.*

¹² See *id.* We note that Radio License does not maintain this position in its March 5, 2012, response to the NAL in this proceeding. See *infra* para. 10 & note 58.

¹³ See *id.* at Exs. A & B.

Doug Cunningham, Workers Independent News.¹⁴

5. On February 3, 2012, the Commission released a *Notice of Apparent Liability for Forfeiture (NAL)*.¹⁵ In the *NAL*, the Commission found that Radio License had failed to air required sponsorship identification announcements, in apparent willful violation of the sponsorship identification laws and Commission's rules, 47 U.S.C. § 317(a)(1) and 47 C.F.R. § 73.1212.¹⁶ Specifically, the Commission found that Radio License aired 11 promotional announcements during the period between March 18 and May 30, 2009, in return for consideration or the promise of consideration provided by WIN, without airing required sponsorship identification announcements.¹⁷ Accordingly, the Commission proposed a forfeiture of forty-four thousand dollars (\$44,000) against Radio License.¹⁸

6. On March 5, 2012, Radio License responded to the *NAL*, requesting that the forfeiture amount be reduced to four thousand dollars (\$4,000).¹⁹ Radio License asserts that the Commission failed to follow the statutory forfeiture criteria set forth in Section 503(b)(2)(E) of the Act or the forfeiture criteria set forth in Section 1.80(b) of the Commission's rules, but instead "mechanically applied" the base sponsorship identification rule violation forfeiture to each of the 11 announcements at issue here.²⁰ Radio License argues that in previous cases, the Commission has refrained from imposing a forfeiture that might have otherwise been justified if it simply multiplied the base forfeiture amount by the number of instances in which a violation occurred.²¹ Radio License submits that in this instance, the Commission should reduce the forfeiture due to Radio License's inadvertent employee error, which it states caused the conduct,²² and Radio License's actions after the conduct, which it maintains constitute corrective measures.²³

III. DISCUSSION

7. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁴ 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.²⁵ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act²⁶ and the

¹⁴ See *id.* at Ex. A, Spot # C463, and Ex. B (audio recording), Track 6.

¹⁵ See *Radio License Holding XI, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 930 (2012) (*NAL*).

¹⁶ See *id.* at 930–35, paras. 1–11.

¹⁷ See *id.* at 930–31, para. 3, 932–35, paras. 6–11.

¹⁸ See *id.* at 935, para. 11.

¹⁹ See Letter from Andrew S. Kersting, Counsel to Radio License Holding XI, LLC, Dickstein Shapiro LLP, to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 5, 2012) (on file in EB-09-IH-0574) (*NAL* Response). Counsel subsequently reported an address change. Letter from Lewis J. Paper and Andrew S. Kersting, Counsel to Radio License Holding XI, LLC, Pillsbury Winthrop Shaw Pittman LLP, to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 11, 2012) (on file in EB-09-IH-0574).

²⁰ *NAL* Response at 2.

²¹ See *id.* at 3–4.

²² See *id.* at 3.

²³ See *id.* at 2–3.

²⁴ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2); see also 47 U.S.C. § 503(b)(1)(D).

²⁵ 47 U.S.C. § 312(f)(1).

²⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

Commission has so interpreted the term in the Section 503(b) context.²⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁸ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²⁹ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³⁰ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission rule.³¹

A. Radio License Violated the Sponsorship Identification Laws.

8. Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission’s rules require stations to broadcast an announcement if content is aired in exchange for valuable consideration “directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting” at the time the material is aired.³² Specifically, Section 317(a)(1) provides:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That “service or other valuable consideration” shall not include any service or property furnished without charge or at nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.³³

Section 73.1212(a) of the Commission’s rules, which implements Section 317(a)(1) of the Act, further provides:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

- (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and
- (2) By whom or on whose behalf such consideration was supplied: *Provided, however*, That “service or other valuable consideration” shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.³⁴

²⁷ See, e.g., *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*S. Cal. Broad.*), *recon. denied*, 7 FCC Rcd 3454 (1992).

²⁸ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated violation of the cable signal leakage rules).

²⁹ *S. Cal. Broad.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

³⁰ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³¹ See, e.g., *SBC Commc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

³² 47 U.S.C. § 317(a)(1); see 47 C.F.R. § 73.1212(a).

³³ 47 U.S.C. § 317(a)(1).

³⁴ 47 C.F.R. § 73.1212(a).

9. The Commission has explained that the sponsorship identification rules are “grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them. . . .”³⁵ The disclosures required by the sponsorship identification rules provide listeners and viewers with information concerning the source of material in order to prevent misleading or deceiving those listeners and viewers.³⁶

10. In its NAL Response, Radio License does not deny that it violated the Commission’s rules, and we find by a preponderance of the evidence that Radio License willfully and repeatedly engaged in the violations described in the *NAL*. More specifically, we find that Radio License willfully and repeatedly violated Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission’s rules by failing to air required sponsorship identification announcements on 11 separate occasions identified in the *NAL*. Thus, we do not revisit the *NAL*’s conclusion that Radio License violated the sponsorship identification laws.³⁷

B. Balancing Factors, We Find No Basis to Reduce the Forfeiture.

11. We now turn to the proposed forfeiture amount, which we assessed in accordance with Section 503(b) of the Act,³⁸ Section 1.80 of the Commission’s rules,³⁹ and the Commission’s forfeiture guidelines set forth in its *Forfeiture Policy Statement*.⁴⁰ In assessing forfeitures, Section 503(b) 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 other matters as justice may require.⁴¹ In addition, with respect to broadcast licensees, Section 503(b)(2)(A) of the Act authorizes monetary forfeitures of up to \$37,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$375,000 for any single act or failure to act.⁴² We have examined Radio License’s NAL Response

³⁵ See, e.g., *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593–94 (2005).

³⁶ See *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686, 18694, para. 15 (2007), *aff’d with reduced forfeiture*, Forfeiture Order, 24 FCC Rcd 14830, 14834, para. 12 (2009) (forfeiture reduced, based on licensee’s history of compliance) (forfeiture paid).

³⁷ *NAL*, 27 FCC Rcd at 935, para. 11.

³⁸ See 47 U.S.C. § 503(b).

³⁹ See 47 C.F.R. § 1.80.

⁴⁰ See *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁴¹ See 47 U.S.C. § 503(b)(2)(E); see also 47 C.F.R. § 1.80(b)(8).

⁴² See 47 U.S.C. § 503(b)(2)(A); 47 C.F.R. § 1.80(b). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment “shall apply only to violations which occur after the date the increase takes effect,” we apply the forfeiture penalties in effect at the time the violation took place. 28 U.S.C. § 2461 note (6). Here, because the violations at issue occurred before September 13, 2013, the applicable maximum penalties are based on the Commission’s previous inflation adjustment that became effective on September 2, 2008. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

pursuant to the aforementioned statutory factors, the Commission's rules, and the *Forfeiture Policy Statement*, and, for the reasons discussed below, we find no basis to reduce the forfeiture.

1. Previous Cases Do Not Require a Reduction to \$4,000.

12. First, we find that precedent does not require that we treat Radio License's conduct as one discrete violation warranting a base forfeiture of four thousand dollars (\$4,000). Radio License argues that in previous cases, the Commission refrained from imposing forfeitures that might have otherwise been justified if it simply multiplied the base forfeiture amount by the number of instances in which a violation occurred.⁴³ Thus, Radio License reasons, the Commission must follow the same approach here.⁴⁴ We acknowledge that certain past cases, including some of those cited by the Licensee, imposed forfeiture amounts equal to the base forfeiture for a single violation specified by the Commission's rules, notwithstanding multiple instances of violation.⁴⁵ In more recent cases involving the sponsorship identification rules, however, the Commission has imposed significantly higher forfeiture amounts and has calculated the forfeiture by multiplying the base forfeiture by the number of violations.⁴⁶ We note that the cases relied on by Radio License are not only older, but are Bureau-level decisions while *Sonshine Family Television, Inc.* is a Commission level decision. We are following here the approach we used in *Sonshine*, and we intend that the Commission and the Bureau will generally take this approach to calculating forfeiture amounts for sponsorship identification violations in the future. The forfeiture amounts proposed or assessed for violations of the sponsorship identification rules in any case reflect consideration of the unique facts of each case in accordance with the aggravating and mitigating factors set forth in Section 503 of the Act and Section 1.80 of the Commission's rules. Thus, the base forfeiture amount in this case considers the eleven broadcasts as eleven violations, not a single violation. As further described below, we determined the forfeiture amount in this case after consideration of all of the relevant factors in light of the unique facts of this case. Likewise, future cases, though starting from consideration of each separate broadcast as a separate violation, may reach a different overall conclusion depending on the application of the relevant factors to the unique facts of those cases.

⁴³ See NAL Response at 3–4 (citing, e.g., *AMFM Radio Licenses, L.L.C.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 19700, 19703, para. 11 (Enf. Bur. 2000); *Dallas Media Investors Corp.*, Notice of Apparent Liability for Forfeiture, 8 FCC Rcd 3597–98 (Mass Med. Bur. 1993) (proposing a twelve thousand, five hundred dollar (\$12,500) forfeiture, double the then applicable base forfeiture, for a licensee's apparent violation of sponsorship identification laws on 12 separate occasions); *Mercury Broad. Co., Inc.*, Forfeiture Order, 25 FCC Rcd 4564, 4565–66, paras. 4–9 (Med. Bur. 2010) (assessing a sixteen thousand dollar (\$16,000) forfeiture for a licensee's violation of the children's programming rule on six separate occasions); *WLFL Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8182 (Med. Bur. 2008) (proposing a sixteen thousand, five hundred dollar (\$16,500) forfeiture for a licensee's violation of the children's television commercial limits on 11 separate occasions)).

⁴⁴ See *id.*

⁴⁵ See *id.* at 3 (citing, e.g., *AMFM Radio Licenses, L.L.C.*, 15 FCC Rcd at 19703, para. 11 (proposing a four thousand dollar (\$4,000) forfeiture for a licensee's apparent violation of sponsorship identification laws by broadcasting material without the required sponsorship identification over 100 times within a six week period)).

⁴⁶ See, e.g., *Sonshine Family Television, Inc.*, 22 FCC Rcd at 18695, para. 18 (in pertinent part, proposing forty thousand dollar (\$40,000) forfeiture against Sonshine which, in exchange for consideration, broadcast five episodes of the program "The Right Side with Armstrong Williams" on a total of 10 separate occasions, and proposing a thirty-six thousand dollar (\$36,000) forfeiture against Sinclair Broadcast Group, Inc. for broadcast of "2004 Election Countdown" on nine stations without the required sponsorship announcements); *Comcast Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17474, 17479, para. 12 (Enf. Bur. 2007) (in pertinent part, proposing sixteen thousand dollar (\$16,000) forfeiture against cable operator for four origination cablecasts that included "video news release" material without required sponsorship announcements) (forfeiture paid). In addition, we deem the Licensee's references to cases involving the Commission's children's programming rules to be inapposite to this case, which exclusively involves its admitted multiple violations of the sponsorship identification rules.

2. The Commission Appropriately Applied Criteria to Determine Forfeiture.

13. Radio License characterizes our application of relevant statutory criteria to be “mechanical,”⁴⁷ and therefore deficient under the criteria set forth in the Act and the Commission’s rules. This characterization, however, is incorrect. Section 503(b)(2)(E) of the Act and Section 1.80(b)(8) of the Commission’s rules set forth the factors to be considered when determining the amount of forfeiture penalties.⁴⁸ Specifically, these provisions require 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 such other matters as justice may require.”⁴⁹ In this case, the Commission considered the number of repetitions in determining the extent of the violations.⁵⁰ In addition, the Commission considered the nature, circumstances, and gravity of the violations in noting that the announcements in question were formatted and presented as news.⁵¹ Therefore, the Commission appropriately applied the above-referenced criteria in this case.

3. No Factors Support Reducing the Forfeiture.

14. Radio License asserts that the cause of the violations—inadvertent employee error—and Radio License’s actions following the violations support a forfeiture amount decrease.⁵² We disagree. The Commission has long held that a downward adjustment is not justified where violators claim their actions or omissions were due to inadvertent employee errors.⁵³ We find no reason to depart from this precedent here. Consequently, there is no basis to conclude that Radio License has demonstrated that it is entitled to mitigation of the forfeiture amount based on a lack of culpability.

15. Radio License also asserts that its efforts to comply with the Commission’s rules following the violations merit a reduction of the forfeiture amount.⁵⁴ Specifically, the Licensee provides evidence that it discovered the failure to include a sponsorship identification in each of the 11 broadcasts and took prompt action on its own to correct the problem before receiving our LOI.⁵⁵ In appropriate instances, the Commission may reduce a forfeiture if a licensee has voluntarily disclosed its conduct or taken corrective measures to remedy its conduct before an investigation.⁵⁶ As noted above, however,

⁴⁷ NAL Response at 2.

⁴⁸ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

⁴⁹ 47 U.S.C. § 503(b)(2)(E); *see* 47 C.F.R. § 1.80(b)(8).

⁵⁰ *See NAL*, 27 FCC Rcd at 935, para. 11.

⁵¹ *See id.* at 933–34, para. 8.

⁵² *See NAL Response* at 2–3.

⁵³ *See, e.g., S. Cal. Broad.*, 6 FCC Rcd at 4387, para. 3 (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Commc 'ns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358, para. 4 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”); *Corr Wireless Commc 'ns LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 5419, 5421, para. 7 (Enf. Bur. 2009) (declining to reduce a proposed forfeiture when licensee claimed unauthorized operation of two stations was caused inadvertently by a technician’s error).

⁵⁴ *See NAL Response* at 2–3.

⁵⁵ *See id.*

⁵⁶ *See Note to Section 1.80(b)(8) of the Commission’s rules*, 47 C.F.R. § 1.80(b)(8) (listing “Good faith or voluntary disclosure” as a basis for adjusting forfeitures downward); *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965, para. 4 (2003) (reducing forfeiture assessed for Emergency Alert System rule violations due to licensee’s corrective measures prior to an inspection), *recons. denied*, Memorandum Opinion and Order, 18 FCC Rcd 25481 (2003); *but see Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (*Sutro*) (rejecting tower owner’s request for further reduction of forfeiture amount due to

(continued....)

Section 503(b)(2)(E) of the Act and Section 1.80(b)(8) of the Commission's rules require consideration of a number of factors when determining the amount of a forfeiture.⁵⁷ In this case, Radio License states that it resumed compliance with the sponsorship identification rules in subsequent broadcasts of sponsored material, although it did not voluntarily disclose the violations to the Commission. Moreover, Radio License does not indicate that it had taken particular measures or specific additional steps intended to ensure future compliance with the sponsorship identification rule.⁵⁸ Nor does it indicate that it took steps that were within its power to ameliorate the effects of its prior violations (e.g., broadcast announcements notifying listeners that the 11 90-second advertisements previously aired were not, in fact, news stories, but rather had been paid for by Workers Independent News).⁵⁹ We conclude that a downward adjustment for timely remedial action is not warranted in these circumstances. As a result of Radio License's repeated violations of the sponsorship identification rule, on 11 separate occasions, the Station's listeners were exposed to material that appeared to be objective news stories deprived of the knowledge that the material was, in fact, prepared to convey the particular point of view of the organization that paid or promised to pay the Licensee consideration to air it. As the Commission has noted, audience members "are entitled to know when the program ends and the advertisement begins."⁶⁰

16. Moreover, Radio License does not argue that its history of compliance or inability to pay warrant a downward adjustment of the proposed forfeiture. Based on the specific facts and totality of the circumstances in this case, including the nature, extent, and gravity of the violations, and in the absence of any creditable mitigating factors, we find that the record as a whole does not support a downward adjustment of the proposed forfeiture.⁶¹

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act, as amended,⁶² and Section 1.80(f)(4) of the Commission's rules,⁶³ Radio License Holding XI, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of forty-four thousand dollars

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good faith efforts based on tower owner's periodic unsuccessful attempts to register its tower where those efforts were characterized by lengthy delays in filings, evincing a lack of diligence).

⁵⁷ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

⁵⁸ In a Declaration provided as Exhibit A to the NAL Response, the Station's General Manager represents that, on March 24, 2009, the Station's General Sales Manager "became aware that the WIN spots did not contain the required sponsor identification" and, that day, sent an email to station personnel alerting them to the problem and the need that it be corrected "first thing on WED." Radio Licensee fails to explain why this unidentified Station official would have sent such an e-mail if, as its LOI Response contends, the Licensee believed that the 11 programs at issue "satisfy sponsorship identification requirements." LOI Response at 3. Radio License also filed with its LOI Response a declaration of the Station's General Manager, in which he stated that he had reviewed the filing and attested to its accuracy. We note this inconsistency in Radio License's responses, and find that it is exacerbated by the fact that the Station's General Manager at the time of the NAL Response was Director of Sales of the Station in 2009, when the events at issue occurred. Radio License also fails to provide a copy of the March 24 e-mail or identify its purported author.

⁵⁹ In this respect, this case is distinguishable from *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964 (2003).

⁶⁰ See *Sonshine Family Television, Inc.*, 22 FCC Rcd at 18688, para. 5.

⁶¹ See *Sutro*, 19 FCC Rcd at 15277, para. 10; *Shubat Transp. Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3782, 3785, para. 12 (Enf. Bur. 2011) (finding that although former licensee's disclosures and remedial efforts appeared to precede the Commission's investigation or initiation of enforcement action, reduction of the forfeiture was not appropriate under the circumstances).

⁶² See 47 U.S.C. § 503(b).

⁶³ See 47 C.F.R. § 1.80(f)(4).

(\$44,000) for its willful and repeated violation of Section 317(a)(1) of the Communications Act, as amended,⁶⁴ and Section 73.1212(a) of the Commission's rules.⁶⁵

18. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within 15 days of the release of this Forfeiture Order.⁶⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act, as amended.⁶⁷ Radio License Holding XI, LLC shall send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Anjali Singh at Anjali.Singh@fcc.gov, Melanie Godschall at Melanie.Godschall@fcc.gov, and Melissa Marshall at Melissa.Marshall@fcc.gov on the date said payment is made.

19. The payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁶⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- 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.

20. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁶⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

21. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail, Return Receipt Requested, to Radio License Holding XI, LLC, 3280

⁶⁴ See 47 U.S.C. § 317(a)(1).

⁶⁵ See 47 C.F.R. § 73.1212(a).

⁶⁶ 47 C.F.R. § 1.80.

⁶⁷ 47 U.S.C. § 504(a).

⁶⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁶⁹ See 47 C.F.R. § 1.1914.

Peachtree Road, NW, Suite 2300, Atlanta, Georgia 30305, and to its counsel of record, Lewis J. Paper, Esq. and Andrew S. Kersting, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary