

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

In the Matter of	)	
	)	
Hoosier Broadcasting Corporation	)	File No. 98CG277
Lebanon, Indiana	)	NAL Acct. No. 815CG0002

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 14, 2000**

**Released: March 15, 2000**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, we deny a Petition for Reconsideration filed on March 25, 1999, by Hoosier Broadcasting Corporation (“Hoosier”), licensee of FM Station WIRE, Lebanon, Indiana (formerly WWRE). Hoosier seeks reconsideration of a *Forfeiture Order*,<sup>1</sup> in which the former Compliance and Information Bureau (“Bureau”) found it liable for a monetary forfeiture in the amount of \$4,000 for willful violation of Section 73.1350(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violation involves operation at an antenna height that exceeded the station’s authorization. For the reasons discussed below, we affirm the \$4,000 monetary forfeiture.

**II. BACKGROUND**

2. On May 5, 1998, agents from the FCC’s Chicago, Illinois Field Office (“Field Office”), acting in response to an interference complaint from FM Station WEDM, Indianapolis, Indiana, inspected WIRE’s control point and transmitting site in Lebanon. The agents found that Hoosier had violated Section 73.1350(a) of the Rules by operating with an antenna at a greater height (53 meters) than was authorized by the station’s construction permit authorization (25 meters).

3. On May 27, 1998, the Field Office issued a *Notice of Apparent Liability* to Hoosier in the amount of \$11,000 for causing interference to WEDM and for operation with the unauthorized antenna height.<sup>3</sup> Subsequently, on February 23, 1999, the Bureau issued a *Forfeiture Order*, in which it cancelled the portion of the forfeiture (\$7,000) relating to interference with WEDM because the record did not support a finding that WIRE caused interference to the station, but affirmed the unauthorized height violation (\$4,000). In dismissing Hoosier’s call for reduction of the \$4,000 forfeiture, the Bureau pointed out that \$5,000 is the base amount for exceeding of authorized antenna height, and concluded that further reduction was not warranted.

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<sup>1</sup> *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (Compl. & Inf. Bur. 1999).

<sup>2</sup> 47 C.F.R. § 73.1350(a).

<sup>3</sup> *Notice of Apparent Liability*, NAL/Acct. No. 815CG0002 (Released May 27, 1998).

4. Hoosier presents two arguments supporting its request that we rescind the remaining \$4,000 forfeiture: (1) vandals might have been responsible for the equipment problems that led Hoosier to change WIRE's antenna height; and (2) the forfeiture amount creates a financial burden for Hoosier.

### III. DISCUSSION

5. In its Petition for Reconsideration, Hoosier details its claims of vandalism, but does not allege that vandals moved WIRE's antenna from its authorized height of 25 meters to the unauthorized height of 53 meters. Indeed, Hoosier concedes that it was responsible for operating its antenna at a height greater than authorized. According to Hoosier, it believed that "it was acceptable to install the temporary antenna as a stop gap measure until a new antenna could be delivered." Thus, Hoosier continues, the Bureau's reference in the *Forfeiture Order* to whether Hoosier "perhaps knowingly" violated Section 73.1350(a) is not supportable.

6. Section 312(f)(1) of the Communications Act of 1934, as amended ("Act"), which also applies to Section 503(b) of the Act, states that the "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."<sup>4</sup> Clearly, Hoosier's violation of Section 73.1350(a) of the Rules was willful. The Bureau made that direct finding and Hoosier presents no proof to conclude otherwise. The Bureau's comment that Hoosier "perhaps knowingly" violated Section 73.1350(a) was, and is, immaterial to its underlying finding that Hoosier willfully violated Section 73.1350(a) when it moved WIRE's antenna height from 25 meters to 53 meters without first seeking and obtaining Commission authorization. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

7. To support its claim that the amount of the forfeiture will create a financial burden, Hoosier provides an uncertified "Statement of Financial Position" as of December 31, 1998. However, pursuant to instructions provided in the *Notice of Apparent Liability* and reiterated in the *Forfeiture Order* with respect to proof for such claims, "[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."<sup>5</sup> *See Barry A. Stevenson*, 12 FCC Rcd 1976, 1977 (Compl. & Inf. Bur. 1997); *Morradio Inc.*, 14 FCC Rcd at 5201, 5203-04 (Compl. & Inf. Bur. 1999). Hoosier's submission is not supported in this manner and, therefore, provides no reliable basis for Hoosier's claim of inability to pay. In any event, the material that Hoosier did submit indicates gross revenues of approximately \$52,000 for 1998.<sup>6</sup> A \$4,000 forfeiture under these circumstances is not excessive.

8. The forfeiture standards in *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* sets \$5,000 as the base forfeiture amount for a willful violation of Section 73.1350(a).<sup>7</sup> The Field Office and the Bureau reviewed the record, which included Hoosier's operating history and claims of vandalism, and concluded

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<sup>4</sup> 47 U.S.C. §§ 312(f)(1) and 503(b).

<sup>5</sup> 14 FCC Rcd at 3358 n.4 and *Notice of Apparent Liability* at n.2.

<sup>6</sup> *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) ("In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.").

<sup>7</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407 (Dec. 28, 1999); *see* 47 C.F.R. § 1.80(b).

that a \$4,000 forfeiture was indicated instead of the \$5,000 base forfeiture amount. We affirm that conclusion.

#### IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 1.106 of the Rules,<sup>8</sup> Hoosier Broadcasting Corporation's Petition for Reconsideration of the *Forfeiture Order* **IS DENIED**.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80(f) of the Rules,<sup>9</sup> Hoosier Broadcasting Corporation, shall, within 30 days of the release of this Memorandum Opinion and Order, pay the amount of four thousand dollars (\$4,000) for willful violation of Section 73.1350(a) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules,<sup>10</sup> within 30 days of the release of this Memorandum Opinion and 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>11</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 815CG0002 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

12. **IT IS FURTHER ORDERED** that, a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return Receipt Requested to J. Richard Carr, Esq., 5528 Trent Street, Chevy Chase, Maryland 20815, and Martin Hensley, Hoosier Broadcasting Corporation, 6264 La Pas Trail, Indianapolis, Indiana 46268.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>8</sup> 47 C.F.R. § 1.106.

<sup>9</sup> 47 C.F.R. § 1.80(f).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.