

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

In the Matter of)	
)	
Hensley Broadcasting, Inc.)	File Number EB-07-PA-027
)	
Licensee of Station WWII)	NAL/Acct. No. 200832400004
Shiremanstown, Pennsylvania)	
Facility ID #26973)	FRN 0003252848

FORFEITURE ORDER

Adopted: January 12, 2009

Released: January 14, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Hensley Broadcasting, Inc. (“Hensley”), licensee of AM radio station WWII, Shiremanstown, Pennsylvania, for willfully and repeatedly violating Section 73.3526(e)(12) of the Commission's Rules (“Rules”)¹ by failing to maintain issues/programs lists in the station’s public inspection file.

2. On January 22, 2008, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$4,000 to Hensley for failing to maintain an issues/programs list in the station’s public inspection file for any quarter during 2006.² In this *Order*, we consider Hensley’s arguments that the forfeiture amount should be cancelled because subsequent to the violations found during the station inspections on September 16, 2005, and January 25, 2007, but prior to the issuance of the *NAL*, the Commission approved, and Hensley consummated on June 15, 2007, a transfer of control from Carl C. Kuehn and the Estate of M. Dean Lebo to Joseph L. Green.³

II. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy*”

¹47 C.F.R. § 73.3526(e)(12).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832400004 (Enf. Bur., Philadelphia Office, rel. January 22, 2008). In the *NAL*, the Philadelphia Office also admonished Hensley for failing to maintain Emergency Alert System (“EAS”) logs in violation of Section 11.61(b) of the Rules. 47 C.F.R. § 11.61(b).

³ The Commission granted the transfer of control application, File No. BTC-20070301ABB, on May 8, 2007, and the parties consummated the transfer on June 15, 2007.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

Statement”).⁶ In examining Hensley’s response, 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.⁷

4. Hensley does not dispute the findings in the *NAL* and does not deny that, at all times relevant to this matter, Hensley has been the licensee of WWII. Rather, Hensley claims that cancellation of the proposed forfeiture is warranted because 100% of Hensley’s stock was transferred on June 15, 2007, prior to the issuance of the *NAL*. We disagree. Commission precedent is clear that “liability for violations of Commission rules inures to the licensee regardless of an intervening transfer of control.”⁸ We therefore conclude that Hensley is responsible for the public file violations set out in the *NAL*.⁹

5. We have examined Hensley’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that the \$4,000 forfeiture proposed in the *NAL* is warranted.

IV. ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Hensley Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$4,000 for willfully and repeatedly violating Section 73.3526(e)(12) of the Rules.¹⁰

7. 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.¹¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See *WLDI, Inc.*, 17 FCC Rcd 14750, 14752 (EB 2002), citing *Winslow Communications, Inc.*, 45 FCC2d 662 (1974) (rejecting licensee’s argument that it should not be liable for violation when violation occurred prior to transfer of control of licensee’s stock); see also *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4958, 4959 (2001) (finding that fact ownership of the company changed hands does not affect the company’s liability)(subsequent citations omitted). The case cited by Hensley in its response, *Georgia Eagle Broadcasting, Inc.*, DA 07-3540 (rel. August 10, 2007), is inapposite because that case involved the assignment of a station from one licensee to another licensee and not the transfer of stock, as is the case here. As the Bureau noted in *WLDI, Inc.*, negotiating an assignment of license as opposed to a transfer of control can insulate a new owner from liability for the prior owner’s violations. See *WLDI, Inc.*, 17 FCC Rcd at n. 13 (subsequent citations omitted).

⁹ We also note that Hensley claims that its position that current station owners are not responsible for violations of prior station owners is supported by the instructions in the license renewal application (FCC Form 303-S), which states that all of the certifications in the license renewal application cover the license renewal term except that “if the station license was assigned or transferred during the subject license [term] [sic] pursuant to a “long form” application on FCC Form 314 or 315, the renewal applicant’s certifications should cover only the period during which the renewal applicant held the station’s license.” The issues of where liability lies for violations that occurred prior to a transfer of control and whether a new owner can certify to actions that took place prior to the transfer of control are entirely different issues. With regard to liability, the licensee remains the same after a transfer of control and therefore liability, as a legal matter, remains with the licensee. In the context of a license renewal application, a transferee cannot, as a legal or practical matter, certify that the licensee complied with the Commission’s rules during a period of time prior to the transferee obtaining ownership.

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.3526(e)(12).

¹¹ 47 U.S.C. § 504(a).

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 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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Hensley Broadcasting, Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Hensley Broadcasting, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau