

Cornell College.)
Licensee of Radio Station KRNL-FM) File No. EB-03-KC-045
Mt. Vernon, Iowa) NAL/Acct. No. 200332560026
) FRN: 0002-5905-52

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 27, 2003

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Cornell College, ("Cornell"), licensee of FM radio station KRNL-FM, Mt. Vernon, Iowa, apparently liable for forfeiture in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Section 73.1350(b)(2) of the Commission's Rules ("Rules") and willful violation of Section 73.3527(c) of the Rules.¹ Specifically, we find Cornell College apparently liable for failing to maintain transmitter control and failing to make available the station's public inspection file.

II. BACKGROUND

2. On March 18, 2003, an agent from the FCC Enforcement Bureau's Kansas City Office conducted an inspection of KRNL-FM. At the time of inspection, the agent found no one at the studio. The agent asked a school employee to contact someone responsible for the station. Over one-half hour later, Ms. Dee Ann Rexroat, the school's Director of College Communications, met the agent at the studio. According to Ms. Rexroat, the station operates twenty-four hours per day but is staffed only during the evening hours by students who are in class during the day. The station posts no person at the transmitter site. The only transmitter remote control function available was an on/off switch at the studio with no self-monitoring or automatic transmission system monitoring equipment to control the transmitter. Ms. Rexroat provided a copy of a report from the station's contract engineer dated November 13, 2002, in which the engineer advised the station of the need for transmitter remote control equipment. No public inspection file was made available upon request during the inspection of the station which occurred during regular business hours.

3. On April 2, 2003, the Kansas City Office issued to Cornell a Letter of Inquiry citing, *inter alia*, violations of the transmitter control and public file rules. In its reply dated May 1, 2003, Cornell stated that "[d]uring normal business hours, the station runs unattended." Addressing the transmitter control violation, Cornell stated it was purchasing a remote control unit that would monitor the transmitter parameters and notify station personnel of out-of-tolerance conditions. Addressing the public file violation, Cornell stated it had assembled a complete public file and located it at the college.

¹ 47 C.F.R. §§ 73.1350(b)(2) and 73.3527(c).

III. DISCUSSION

4. Section 73.1350(b)(2) of the Rules requires a broadcast station to provide to transmitter control personnel the capability to turn the transmitter off at all times or provide an alternate method of acquiring transmitter control that can deactivate the transmitter within three minutes. From at least November 13, 2002 to March 18, 2003, KRNL-FM maintained no control or monitoring of the transmitter parameters except for a remote transmitter on/off switch located at the studio. Although the station operated twenty-four hours per day, personnel were available to control the transmitter only during evening hours. The station employed no self-monitoring or automatic transmission system. Section 73.3527(c) requires every licensee or permittee of an FM noncommercial educational broadcast station to make available upon request during regular business hours the station's public file. At the inspection during regular business hours on March 18, 2003, station employees could not produce the public file.

5. Based on the evidence before us, we find that Cornell willfully² and repeatedly³ violated Section 73.1350(b)(2) of the Rules and willfully violated Section 73.3527(c) of the Rules by failing to maintain transmitter control and failing to make available the station's public file.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for violation of transmitter control and metering requirements is \$3,000, and for violation of the public file rules is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include 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."⁵ Considering the entire record and applying the factors listed above, this case warrants a \$13,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Cornell College is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for willful and repeated violation of Section 73.1350(b)(2) of the Rules and willful violation of Section 73.3527(c) of the Rules by failing to failing to maintain transmitter control and failing to make available the station's public file.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this NAL, Cornell College SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to 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" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Section 312(f)(2), which also applies to Section 503(b), provides: [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.

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503 (b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. 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.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

⁸ See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Cornell College, 810 Commons Circle, Mt. Vernon, IA. 52314

Federal Communications Commission

Robert C. McKinney
District Director, Kansas City Office
Enforcement Bureau

Attachment A