

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

ORIGINAL
9-17-08
SC

In the Matter of)	
)	
LASALLE COUNTY BROADCASTING CORPORATION)	
)	
Licensee of Stations WLPO(AM), La Salle, Illinois)	Facility ID No. 36645
)	NAL/Acct. No. MB20041810098
)	FRN 0002861573
and)	File No. BR-200401729ARP
)	
WAJK(FM))	Facility ID No. 36181
LaSalle, Illinois)	NAL/Acct. No. MB20041810099
)	FRN 0002861573
)	File No. BRH-20040729ART

FORFEITURE ORDER

Adopted: August 27, 2008

Released: August 28, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to LaSalle County Broadcasting Corporation (“Licensee”), licensee of Stations WLPO(AM) and WAJK(FM), LaSalle, Illinois (collectively, the “Stations”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for each Station.

II. BACKGROUND

2. On December 22, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture (“NAL”), each in the amount of nine thousand dollars (\$9,000) to Licensee for these violations, for a total of \$18,000.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on January 21, 2005.

3. On July 29, 2004, Licensee filed applications to renew the licenses of the Stations. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee

¹ 47 C.F.R. § 73.3526

² *Letters to Harry C. Martin from Peter Doyle*, reference 1800B3-KV (MB Dec. 22, 2004) (the “December 22nd Letters”).

certify that the documentation required by Section 73.3526 or 73.3527 of the Rules, as applicable, has been placed in the station's public inspection file at the appropriate times. Licensee indicated "No" to that certification, attaching an Exhibit explaining that it discovered in June 2004 that 28 Quarterly Programs and Issues lists were missing from the public files. Specifically, the licensee determined that the following lists were missing: in 1996, quarters three and four; in the years 1997-2002, all quarters; and in 2003, quarters one and two. LaSalle's Vice President, Joyce McCullough, states that she saw some of the missing reports, but does not know what happened to them. McCullough speculates that the missing reports were discarded during staff turnover. LaSalle has since recreated the missing Programs and Issues lists and placed these lists into the Stations' public file with a memorandum indicating that they were added late. The licensee has instituted new reporting procedures to ensure that future lists are timely placed in the Stations' public file. On December 22, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for each of the Stations, for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that, by its admission, twenty eight issues/programs lists were missing from each Station's public inspection file over a seven year period. In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that the forfeitures assessed against it are in excess of those imposed on other licensees for violations similar to or more serious in nature, in contravention of *Melody Music, Inc. v. FCC*.³ Licensee asserts that the alleged inconsistency in the forfeiture amounts may be attributed, although not exclusively, to the Bureau making a distinction between commercial and non-commercial service, which is "unsupportable." Licensee also maintains that it has reconstructed its public files so that they are now complete, and that in light of Licensee's "previously spotless" record of compliance with the rule, and its remedial efforts to prevent any future violations, the forfeitures should be reduced.

III. DISCUSSION

5. The forfeiture amounts proposed in this case were 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*.⁶ In assessing forfeitures, Section 503(b)(2)(E) 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 such other matters as justice may require.⁷

6. Licensee argues that we should reduce the forfeiture because the forfeiture amounts are inconsistent with that issued to licensees in similar situations. We disagree. It is undisputed that Licensee's public files were incomplete for seven years, missing twenty-eight issues/programs lists. The \$9,000 forfeiture issued to each station is consistent with prior forfeitures for similar violations.⁸

³ 345 F.2d 730 (D.C. Cir. 1965).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. 1.80.

⁶ *The 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), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, -- FCC Rcd --, DA 08-1655, Released July 15, 2008 (MB 2008) citing footnote 14, *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) (\$10,000 forfeiture issued for eleven missing issues/programs

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Furthermore, contrary to Licensee's assertion, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.⁹ Moreover, we reject Licensee's argument that its implementation of new measures at the Stations to ensure future compliance is a basis for reduction. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁰

7. We also reject Licensee's argument regarding its "previously spotless" record of compliance with the rules. Licensee disclosed in the license renewal applications for the Stations that it had retained no issues-programs lists in the Stations' public inspection files for seven years of the eight-year license terms. It disclosed an identical violation in the license renewal application of Station WKOT(FM), Marseilles, Illinois.¹¹ Thus, the Licensee failed to comply with Section 73.3526 of the Rules for nearly all of the license term at three separate stations. We therefore cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.¹²

8. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹³ and repeatedly¹⁴ violated Section 73.3526 of the Rules at each Station. We find that there is no basis for reduction of the proposed monetary forfeiture.

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lists); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 (MB 2006) (same).

⁹ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, -- FCC Rcd --, Released June 6, 2008 (MB 2008) (Staff rejects Licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation*, Memorandum, Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station").

¹⁰ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹¹ See Application No. BRH-20040729ARR, Section III, Item 3 and Exhibit 11. The staff issued a \$9,000 NAL to the Licensee on December 22, 2004 for this violation of Section 73.3526 of the Rules. *Letter to Harry C. Martin from Peter Doyle*, reference 1800B3-KV (MB Dec. 22, 2004). We are this same date issuing a *Forfeiture Order* affirming the forfeiture amount for the violation at WKOT(FM).

¹² *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination).

¹³ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

¹⁴ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁵ that LaSalle County Broadcasting Corporation SHALL FORFEIT to the United States the sum of \$18,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Stations.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture 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.¹⁶ 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1-A625, Washington, DC 20554.¹⁷

11. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to LaSalle County Broadcasting Corporation, P.O. Box 215, LaSalle, Illinois 61301 and to its counsel, Harry C. Martin, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17TH Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.