

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

In the Matter of)	
)	
Community Broadcasting, Inc.)	File Number EB-03-KC-021
)	
Licensee of Radio Station KCRL-FM in)	NAL/Acct. No. 200332560019
Sunrise Beach, Missouri)	
)	
Overland Park, Kansas)	FRN 0005-0141-62
)	

FORFEITURE ORDER

Adopted: November 9, 2004

Released: November 15, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we impose a forfeiture of two thousand dollars (\$2,000) on Community Broadcasting, Inc. (“Community”) licensee of Radio Station KCRL-FM (“Station KCRL”), in Sunrise Beach, Missouri, for willful and repeated violation of Section 73.3526(a)(2) of the Commission’s Rules (“Rules”).¹ The violations involve Community’s failure to maintain all required items in the public inspection file (“public file”).

2. On March 11, 2003, the District Director of the Commission’s Kansas City, Missouri Field Office (“Kansas City Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of twenty five hundred dollars (\$2,500) to Community for the noted violations.² Community filed a response to the *NAL* on April 10, 2003.

II. BACKGROUND

3. On January 29, 2003, an agent of the FCC’s Kansas City Office inspected the public file for radio station KCRL-FM, Sunrise Beach, Missouri. The agent twice inspected each item, page by page, in station KCRL’s public file and found it did not contain either a contour map or the current ownership report in violation of Sections 73.3526(e)(4) and 73.3526(e)(5).³ The agent contacted Mr. Eben Fowler, KCRL’s Director of Broadcasting Operations and was informed that the current ownership report was on Mr. Fowler’s desk in Overland Park, Kansas. No explanation was given for the missing contour report. Mr. Fowler promised to quickly rectify the problems.

4. Community’s response requested dismissal of the proposed forfeiture on multiple

¹ 47 C.F.R. § 3526(a)(2).

² Community Broadcasting, Inc., NAL/Acct. No. 200332560019 (Enf. Bur. Kansas City Office rel. March 11, 2003).

³ 47 C.F.R. §§ 73.3526(e)(4), 73.3526(e)(5).

grounds: the contour map always was in the public file, but, the agent missed it in his search;⁴ the current ownership report (2001) was in the public file and its early filing of the February 1, 2003 ownership report did not make the early filed report the report of record,⁵ thus, no violation of § 73.3526(e)(5) occurred; no inspection of KCRL's public file should have occurred because the Commission had been notified of the date of its scheduled mock inspection by the Missouri Broadcasters Association ("MBA"); a subsequent mock inspection by the MBA confirmed that the public file was in order; the contour map was attached to the construction application for the station at Exhibit 5 and need not have been in a separate folder; and Community has no history of violation of the Commission's Rules. In further support of a reduction or cancellation of its forfeiture, Community cited a series of Enforcement Bureau cases.⁶

III. DISCUSSION

5. The District Director assessed the proposed forfeiture amount in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁷ Section 1.80 of the Rules,⁸ and *The Commission's Forfeiture Policy Statement and Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Policy Statement").⁹ In examining Community'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, and any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰

6. Section 73.3526(a)(2) of the Rules requires every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services to maintain a public inspection file ("public file"), containing in its public file the material described in Sections 73.3526(e)(1) through (e)(10).¹¹ The purpose of the public file is to provide the public with timely information at regular intervals throughout the license period.¹²

7. Specifically Section 73.3526(e)(4) of the Rules¹³ requires that copies of any service

⁴ Affidavits by Community employees familiar with KCRL, Richard P. Bott, II (Vice President) Eric Douglas (broadband engineer) believe that the contour map was in the public file attached to an application at the time of inspection. Douglas believes that the ownership report dated January 16, 2001 and not the report dated January 8, 2003 is the operative ownership report as of January 29, 2003, the date of the inspection.

⁵ Community chose the Commission's February 1 reporting date for Nebraska stations as the reporting date for its multiple stations, including KCRL. Accordingly, Community contends that its January 8, 2003 ownership report did not become the operative ownership report until Feb. 1, 2003 and need not have been filed until such date. Thus, Community contends that the operative ownership report was in the file on January 29, 2003.

⁶ *South Central Communications Corp.*, 18 FCC Rcd 700 (EB. 2003); *BanJo Communications Group, Inc.*, 17 FCC Rcd 26101 (EB. 2002); *Radio One Licenses, Inc.* 17 FCC Rcd 18242 (EB. 2002); and *Alpine Broadcasting, Ltd.*, 17 FCC Rcd 20408 (EB. 2002), all of which resulted in forfeiture reduction for a history of no prior violations of the Rules.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

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

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ The additional requirements in Section 73.3526(a)(2) are not relevant.

¹² *Joseph C. Chautin, Esq., Letter*, DA 04-1818 (Media Bur. rel. June 28, 2004).

¹³ 47 C.F.R. § 73.3526(e)(4).

contour map reflecting accurate station information be kept in the station's public inspection file.¹⁴ The agent's January 29, 2003 inspection failed to reveal any contour map in Community's public file. Nothing in Community's response or its accompanying affidavits causes us to overturn the agent's observations.

8. Subsequent reviews of Community's public file by Mr. Douglas and the MBA on February 12, 2003 and February 26, 2003, respectively, cannot establish that the contour map which was not found by the FCC agent on January 29, 2003 was actually in the file on that date. All the information supplied by Community regarding the missing contour map relates to later dates and substantiates only that the map was subsequently in the file. We note that the agent searched the file twice on January 29, 2003, and did not find the contour map.

9. Section 73.3526(e)(5) of the Rules specifically requires retention of the most recent ownership report "... until a new, complete ownership report is filed with the FCC, at which time a copy of the new report ... shall be placed in the file." Community admits that its January 8, 2003 ownership report was not in the public file on January 29, 2003. Community contends that the January 2001 ownership report remains the new ownership report until February 1, 2003, (the date by which the new ownership report must be filed), notwithstanding its January 8, 2003 filing with the Commission of a new ownership report. We disagree. Community misconstrues the Rule as the Rule requires the *new* report, (i.e. the January 8, 2003 ownership report), to be placed in the public file and nothing in the Rules contemplates or permits a delay in placing the report in the public file if the ownership report is filed early with the Commission.

10. Nor can Community's scheduled inspection by MBA under the Alternative Broadcast Inspection Program Agreement ("agreement") between the FCC and the MBA suffice to prevent the Commission from performing its statutory duties.¹⁵ Community concedes this in its response and the operative agreement confirms it. The agreement halts inspections by the FCC only upon *certification and FCC notification of the certification by the MBA*.¹⁶ Neither event occurred in this instance. The MBA inspection was requested prior to September 4, 2002, but was not conducted until February 26, 2003, which was after the January 29, 2003 inspection by the Commission. Accordingly, we determine that Community willfully¹⁷ and repeatedly¹⁸ violated Section 73.3526(a)(2) based on the agent's review of the

¹⁴ *Id.*

¹⁵ *Alternative Broadcast Inspection Program, A Cooperative Program of the Missouri Broadcasters Association and the Kansas City Office of the Federal Communications Commission* executed on 10/25/99 by Robert C. McKinney on behalf of the FCC and 11/2/99 by the MBA. The agreement sets forth specific preconditions for applicability: "The MBA will notify the FCC's Kansas City office and the subject station of the station's compliance by forwarding a certification of station compliance to both locations. Upon receipt of this certification, the FCC will promise not to perform a random, routine inspection for a period of three (3) years from the date of certification. The FCC will only inspect a station during this period on the basis of an external requirement, such as a complaint or targeted compliance program. The FCC also agrees to abort any attempted inspection upon showing that 1) a station inspection was conducted within the last sixty (60) days, or 2) an inspection was conducted within the last sixty (60) days and deficiencies have yet to be corrected." We note that the agreement was superseded by a new Alternative Broadcast Inspection Program dated August 15, 2003.

¹⁶ *Id.*

¹⁷ 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 or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) (finding the term "willful" simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Rules.).

¹⁸ The term "repeated" means the commission or omission of an act more than once. 47 U.S.C. § 312(f)(2).

file and the absence of any contour map within the file at the time of his inspection and Community's admission that the new ownership report was not in the public file. Commission precedent supports imposition of a forfeiture for these public file violations.¹⁹ After considering all the circumstances, we believe that Community's lack of prior violations warrants a reduction of the forfeiture to two thousand dollars. Accordingly, we reduce the forfeiture from twenty five hundred dollars to two thousand dollars.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁰ Community Broadcasting, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for its willful and repeated violation of Section 73.3526(a)(2) of the Rules at station KCRL-FM.

12. 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.²¹ 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. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8TH Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. 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. 20554.²²

13. 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.

¹⁹ See *KLDT-TV 55, Inc.*, 10 FCC Rcd 3198 (1995) (forfeiture assessed for failure to include three categories of documents in the public file); *Greenwood Acres Baptist Church*, DA 04-1580 (Enf. Bur. rel. June 2, 2004); See also, *Dorann Bunkin, Esq.*, DA-04-1812 (Media Bur. rel. June 28, 2004); *Joseph C. Chautin, Esq., supra: Infinity Radio Operations, Inc.*, DA 04-2517 (Enf. Bur. rel. August 12, 2004) (*James S Kerr, Esq.*, 19 FCC Rcd 6319 (Media Bur. 2004).

²⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested to Community Broadcasting, Inc., 3405 Shady Bend Drive, Independence, Missouri 64052, attn: Mr. Richard P. Bott and its Counsel, Harry C. Martin, Esq., Fletcher, Heald & Hildreth PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau