

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

In the Matter of)	
)	
Snow Hill Broadcasting, L.L.C.)	File No. EB-04-CF-138
Licensee of WQMR)	NAL/Acct. No. 200432340005
Snow Hill, Maryland)	FRN: 0007340201
)	

FORFEITURE ORDER

Adopted: August 30, 2005

Released: September 1, 2005

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Snow Hill Broadcasting, L.L.C. (“Snow Hill”), licensee of station WQMR, Snow Hill, Maryland, for willful and repeated violations of Sections 73.3526(e)(6), 73.3526(e)(8), 73.3526(e)(9), and 73.3526(e)(12) of the Commission's Rules (“Rules”).¹ The noted violations concern Snow Hill’s failure to retain in its public inspection file a political file, “The Public and Broadcasting” manual, a file of letters and e-mail from the public, and a file with quarterly issues/programs lists for the year 2003.

II. BACKGROUND

2. On March 19, 2004, agents from the Commission’s Columbia, Maryland Office (“Columbia Office”) inspected radio station WQMR in Snow Hill, Maryland, for compliance with FCC Rules. At the time of the inspection, the agents observed that the station operated in violation of several public inspection file rules. The agents noted that the public inspection file did not include a political file, the most recent copy of “The Public and Broadcasting” manual, a file with letters and e-mail from the public, and copies of the quarterly issues/programs lists for 2003.

3. On March 26, 2004, the Columbia Office issued a letter of inquiry to the owners of WQMR in order to gather additional information regarding the operation of the station and the retention of the required documentation in the public inspection file. By letter dated April 14, 2004, the managing partner of Maryland Star, L.L.C., John P. Gillen (“Gillen”), responded to the letter of inquiry.² Gillen confirmed that the public inspection file had “been incomplete for at least the past 6 months.” Further, Gillen outlined steps taken by Snow Hill to correct violations brought to its attention in the letter of inquiry.

4. On September 2, 2004, the Commission’s Columbia Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Snow Hill for a forfeiture in the amount of ten thousand dollars (\$10,000). Snow Hill filed a response to the NAL on October 5, 2004 seeking a reduction in the

¹47 C.F.R. § 73.3526(e)(6), 73.3526(e)(8), 73.3526(e)(9) and 73.3526(e)(12).

²As of May 21, 2004, Maryland Star, L.L.C. has a 100% attributable interest in Snow Hill.

forfeiture amount and requesting additional time to submit financial statements. Snow Hill does not dispute the stated deficiencies in the public file, but rather seeks a reduction on the grounds that the omission of the items from the public file was unintentional, it has taken appropriate remedial measures, the forfeiture amount is excessive given the nature of the violation, and payment of the forfeiture would impose a substantial financial hardship. Snow Hill submitted financial statements in supplements filed on November 4, 2004, March 28, 2005, and April 20, 2005.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In assessing forfeitures, Section 503(b)(2)(D) 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.⁶ As discussed below, we have considered Snow Hill’s response to the *NAL* in light of these statutory factors and have found that reduction of the proposed forfeiture amount from \$10,000 to \$4,000 is warranted.

6. We first address Snow Hill’s claim that the forfeiture amount should be reduced because the violation was unintentional. Snow Hill states in its response to the *NAL* that its officials were unaware that these items were missing, and the failure to maintain the public file was due to inadequate supervision of employees. For a violation to be willful, it must be committed consciously and deliberately, irrespective of any intent to violate the Rules.⁷ It is therefore irrelevant whether Snow Hill intended to violate the public file rules. Snow Hill, as the licensee of WQMR, is responsible for maintaining the public file and ensuring that its employees maintain the public file in accordance with Commission rules and it failed to do so. We find that Snow Hill willfully violated the public file rules and therefore a reduction of the forfeiture amount on this basis is not warranted.⁸

7. We likewise decline to reduce the forfeiture based on Snow Hill’s remedial efforts since the time of the inspection. Snow Hill states in its response to the *NAL* that the public file has been updated and complies with all applicable rules. Snow Hill also states that it has taken steps to prevent

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

⁶47 U.S.C. § 503(b)(2)(D).

⁷Section 312(f)(1) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... 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).

⁸We note that, in his response to the *NAL*, Mr. Gillen stated that the “file has been incomplete for at least 6 months.” The violation therefore is repeated and we need not even show willful. *See* Section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1) (violator liable for forfeiture if violation is willful or repeated).

such violations from reoccurring. These remedial efforts by Snow Hill do not warrant a reduction or cancellation in the forfeiture. As the Commission has stated, “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”⁹

8. Based on our review of the financial documentation, Snow Hill is not entitled to a reduction based on an inability to pay. We agree with Snow Hill, however, that the proposed forfeiture of \$10,000 is in excess of the amount assessed in the past for similar public file violations. We therefore reduce the forfeiture to \$4000 because the public file was partially complete.¹⁰

IV. ORDERING CLAUSES

9. 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,¹¹ Snow Hill Broadcasting, L.L.C., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willful and repeated violations of 73.3526(e)(6), 73.3526(e)(8), 73.3526(e)(9), and 73.3526(e)(12) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (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.¹² 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.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Snow Hill Broadcasting, L.L.C. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau

⁹See *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

¹⁰See e.g., *Twenty-One Sound Communications, Inc.*, Forfeiture Order, DA 05-2065 (rel. July 27, 2005).

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

¹²47 U.S.C. § 504(a).