

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

In the Matter of)	
)	NAL/Acct. No. MB- AD20031810033
FAITH CHRISTIAN MUSIC BROADCAST)	FRN: 0007552649
MINISTRIES, INC.)	
)	
Licensee of AM Station WYRV, Cedar Bluff,)	File No. BR-20030522AGU
Virginia)	Facility ID No. 9709
)	
)	

FORFEITURE ORDER

Adopted: November 29, 2005

Released: December 1, 2005

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of five hundred dollars (\$500), to Faith Christian Music Broadcast Ministries, Inc. ("Faith"), licensee of Station WYRV, Cedar Bluff, Virginia, for willful and repeated violations of Section 73.3526 of the Commission's Rules ("Rules").¹ The noted violation involves Faith's failure to maintain station WYRV's public inspection file.

2. On October 8, 2003, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL")² in the amount of three thousand dollars (\$3,000) to Faith. Faith filed an opposition to the NAL on November 12, 2003.³

II. BACKGROUND

3. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times. Faith indicated "No" to that certification, attaching an Exhibit explaining that requisite issues/programs lists were not placed in the public file on a quarterly basis. In its Exhibit, Faith also acknowledges that these lists have not been re-created, but steps have been taken to ensure that there would be no recurrence of the problem.

¹ 47 C.F.R. § 73.3526.

² *Faith Christian Music Broadcast Ministries*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. MB-AD 20031810033, 18 FCC Rcd 20151 (MB 2003).

³ Opposition to Notice of Apparent Liability for Forfeiture, filed by Faith Christian Music Broadcast Ministries, Inc., on November 12, 2003 ("Opposition").

4. On October 8, 2003, the Bureau issued a NAL for violation of Section 73.3526 of the Rules. On November 12, 2003, Faith filed an opposition to the NAL. In its opposition, Faith seeks cancellation of the proposed forfeiture. Faith asserts that the forfeiture amount is excessive. Faith also asserts that failure to place the issues/programs lists in a public file should be treated as a mere "failure to maintain required records" for which the Commission's guidelines specify a \$1000 forfeiture. In addition, Faith argues that it is entitled to a further downward adjustment of the forfeiture amount -- to zero -- based on its record of overall compliance. Finally, Faith submits financial records illustrating its inability to pay any forfeiture amount.⁴

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Faith's opposition, 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

6. Section 73.3526(a) of the Rules requires commercial broadcast stations to maintain a public inspection file containing "radio issues/programs lists." It is undisputed that no issues/programs lists were placed in the public file on a quarterly basis during Faith's tenure as licensee of WYRV. Although Faith contends that there was a "misunderstanding by station management," we find that Faith's violation of Section 73.3526(a) was willful⁸ and repeated.⁹

7. Faith's management's apparent misunderstanding of the public file rule does not mitigate its violations. Licensees are responsible for knowing and observing the rules affecting their activities.¹⁰ "[T]he Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse

⁴ See Opposition.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), 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).

⁹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319, 10328 at n. 56 (2003).

¹⁰ See, e.g., *In the Matter of Rego, Inc.*, 16 FCC Rcd 16795, 1697 (EB 2001).

licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."¹¹

8. Faith also asserts that even though its issues/programs lists were missing from the public file, there was no harm done to the public because “the public has no interest whatsoever in the content of radio station issues and programs lists.”¹² We strongly disagree. Issues/programs lists provide both the Commission and the listening public with important information regarding the extent to which a station has met the needs and interests of its community during the prior license term, and therefore, whether license renewal is warranted.¹³ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (e.g., an issues/programs list) from the public inspection file is a serious violation because it “diminishes the public’s ability to determine and comment on whether the station is serving the community.”¹⁴ Absence of this information necessarily affects the ability of interested parties to participate in the license renewal process and the ability of licensees to demonstrate that their stations have operated in the public interest during the prior license term.¹⁵ The Commission’s public file rule safeguards the public’s ability to assess the station’s service and to meaningfully participate at the station’s renewal process. The rule also is designed to facilitate the airing of programming responsive to community needs.¹⁶ As such, these requirements are integral components of a licensee’s obligation to serve the public interest and meet its community service obligations.¹⁷ The violations are not mitigated by the licensee’s view that compliance with the rule is unimportant.

9. Moreover, notwithstanding Faith’s argument that the issues/programs lists are of no importance,¹⁸ the Commission has levied forfeitures for similar omissions from the public file.¹⁹ In addition, the Media Bureau has made enforcement of the public file rule a priority. For instance, the Media Bureau has issued the following statement: “Our decision to fine . . . stations reflects the seriousness of the violations. . . . The public file provides citizens with important information about

¹¹ See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

¹² Opposition at 5.

¹³ See *Normandy Broadcasting Corp. and Lawrence N. Brandt*, 8 FCC Rcd 1, 14 (1992), citing, *Formulation of Policies and Rules to Broadcast Renewal Applicants*, 4 FCC Rcd 6363, 6365 (1989).

¹⁴ See *Forfeiture Policy Statement* at 17104-05 ¶ 39. See also *Broadcast Localism*, 19 FCC Rcd 12425, 12441 (2004) (emphasizing “the fundamental importance of the issues and programs lists and other contents of the public file in terms of documenting how broadcast stations serve their communities.”).

¹⁵ See *Review of the Commission’s Rules Regarding the Main Studio Rule and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, ¶ 47 (1998).

¹⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁷ See 47 U.S.C. § 307(a).

¹⁸ Faith claims that the issues/programs lists are nothing more than “eye wash” created to make it “appear” that licensees were obligated to provide public service programming even though they were not required to broadcast any “specific” amounts or types such programming. See Opposition at 3.

¹⁹ See, e.g., *Richard Hildreth, Esq.*, 7 FCC Rcd 6292 (MMB 1992) (forfeiture of \$1000 levied for omission of one ownership report); *Barry D. Wood, Esq.* 7 FCC Rcd 6262 (FOB 1992) (a penalty of \$3,500 levied for violating Section 73.3526(a)).

broadcasters' service to their communities . . . , [and] the FCC will not tolerate less than diligent efforts to ensure the accuracy and timeliness of that information."²⁰

10. While Faith admits that it failed to maintain its issues/programs lists, Faith contends that the Commission's assessed forfeiture amount is excessive. Faith argues that the \$3000 forfeiture assessed for its failure to place issues/programs lists in the public file is 75 per cent more than the specified forfeiture for "much more serious" offenses such as exceeding power limits, constructing at an unauthorized frequency and transmitting unauthorized emissions.²¹ We disagree. In adopting the forfeiture guidelines and implementing rules, the Commission stated that it "will initially assess . . . violations [of the Act and the Commission's Rules] at the statutory amount," but, as appropriate, will adjust the base amount upward or downward based on the factors set out in Section 503 of the Act and particular facts presented in each case.²² Faith's contentions notwithstanding, the Commission has rejected arguments that characterize violations of certain Rules, such as the public information file rule, as minor and deserving of reduced forfeitures.²³

11. Finally, Faith argues that it is not financially able to pay a fine which it claims is six per cent of its annual gross receipts. 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.²⁴

12. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.²⁵ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.²⁶ In support of its request for cancellation, Faith submits 2001 and 2002 federal tax returns plus a profit and loss statement from January 1, 2003, through October 22, 2003, reflecting gross revenues in 2001 of \$66,576 and in 2002 of \$48,307. Faith also claims a cumulative loss of more than \$3500 since it acquired WYRV in May 2001.²⁷ Faith states in its opposition that its 2003 gross revenues are on track to be slightly higher than in 2002. In fact, Faith's recently submitted tax returns, per the Bureau's request, reveal gross revenues of \$39,759 for 2003 and \$26,292 for 2004. Accordingly, after reviewing the financial documentation, as well as

²⁰ See "FCC Fines 28 Radio Stations for Public File Violations," news release, (Oct. 8, 2003).

²¹ Opposition at 5.

²² See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 26.

²³ *Id.* at 17104-05 ¶ 39.

²⁴ See *Discussion Radio, Inc.*, FCC 04-94 (rel. Apr. 16, 2004) at ¶ 28.

²⁵ See, e.g., *RJM Communications, Inc.*, DA 04-247 (rel. Jan. 30, 2004); *Hunt Broadcasting Group*, 18 FCC Rcd 26295, 26296 (2003); *Maria L. Salazar*, FCC 04-51 (rel. Mar. 16, 2004); *Radio X Broadcasting Corp.*, 18 FCC Rcd 23201, 23203 (2003) (the parent company's ability to pay is relevant in evaluating the subsidiary company's ability to pay the forfeiture); *Booth-Newsome Broadcasting, Inc.*, 15 FCC Rcd 23445, 23446 (2000); and *KASA Radio Hogar, Inc.*, 16 FCC Rcd 11934, 11935 (2001) (the Commission will look to the current financial condition of the licensee, not an individual station, to determine its ability to pay a forfeiture).

²⁶ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

²⁷ Opposition at 2 and Attachments.

considering the fact that the licensee operates only one rural broadcast station and has a history of overall compliance with the Communications Act and the Commission's rules, we conclude that reduction of the \$3,000 forfeiture to \$500, approximately one per cent of WYRV's current gross revenues, is warranted in this case.²⁸

13. We have examined Faith's response to the NAL pursuant to the statutory factors above as well as in conjunction with the Forfeiture Policy Statement. As a result of our review, we conclude that Faith willfully and repeatedly violated Section 73.3526 of the Rules and find that although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$500 based on "inability to pay" is appropriate.

IV. ORDERING CLAUSES

14. For the reasons set forth above, and pursuant to Section 503 (b) of the Communications Act of 1934, as amended,²⁹ and Sections 0.283 and 1.80 of the Commission's Rules,³⁰ Faith Christian Music Broadcast Ministries, Inc., IS LIABLE FOR A MONETARY FORFEITURE in the amount of five hundred dollars (\$500) for willfully and repeatedly violating Section 73.3526 of the Rules.

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within thirty days of the release of this Order, Faith Christian Music Broadcast Ministries, Inc., SHALL PAY to the United States the full amount of the proposed forfeiture.

16. Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the FCC Registration Number ("FRN") (0007552649) and the NAL/Acct. No. (MB-AD 20031810033) referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. 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.

17. Requests for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.³¹

²⁸ See *id.* at 2089 (an \$8,000 forfeiture, or 2.02 per cent of the gross revenues of \$395,469, was found to be a relatively small amount of money for the licensee to pay); see also *Independent Communications, Inc.*, FCC 00-284 (rel. Aug. 25, 2000) (a proposed forfeiture equal to one percent of the corporate licensee's gross revenues was not excessive and elimination or reduction of the forfeiture was not warranted even though the company operated at a loss); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (EB 2002) (the forfeiture imposed is less than one percent of Commonwealth's gross revenues).

²⁹ 47 U.S.C. S 503(b).

³⁰ 47 C.F.R. §§ 0.283, 1.80

³¹ See 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Faith's counsel, David Tillotson, Esq., 4606 Charleston Terrace, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg,
Chief, Media Bureau