

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

In the Matter of)	
)	
New Life Broadcasting, Inc.)	File Number EB-06-SJ-006
Licensee of Station WBRQ)	
Cidra, Puerto Rico)	NAL/Acct. No. 200632680002
Facility ID# 1891)	
)	FRN 0004504486
)	

FORFEITURE ORDER

Adopted: July 27, 2006

Released: August 1, 2006

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to New Life Broadcasting, Inc. (“*New Life*”), licensee of station WBRQ in Cidra, Puerto Rico, for willful violation of Section 73.3526 of the Commission’s Rules (“*Rules*”).¹ The noted violation involves *New Life*’s failure to maintain a complete public inspection file.

II. BACKGROUND

2. On February 8, 2006, agents from the Commission’s San Juan Resident Agent Office of the Enforcement Bureau (“*San Juan Office*”) conducted an inspection of station WBRQ-FM located in Caguas, Puerto Rico. The agents observed that the station’s public file did not contain any radio issues/programs lists for the period of January 1, 2004 through December 31, 2005. This was brought to the attention of the station’s general manager at the time of inspection, and the general manager was unable to produce the documents. On February 12, 2006, in a facsimile sent to the San Juan Office by *New Life*’s president, the quarterly issues/programs list for the period of October 1 through December 31, 2005 was provided. No other reports for the period in question were provided.

3. On April 25, 2006, the Resident Agent of the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$4,000 to *New Life*.² *New Life* filed a response to the *NAL* dated May 25, 2006.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and*

¹ 47 C.F.R. § 73.3526.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632680002 (Enf. Bur., San Juan Office, released April 25, 2006).

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

*Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*⁵ In examining New Life'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, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

5. Section 73.3526 of the Rules requires AM and FM broadcast stations to maintain for public inspection a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10), (e)(12), (e)(13), and (e)(14) of this section.⁷ On February 8, 2006, agents from the San Juan Office requested to inspect the station's public file. The public file was missing the quarterly radio issues/programs lists covering a period of two years, namely, January 1, 2004 through December 31, 2005.

6. In its response to the *NAL*, New Life makes several arguments challenging the proposed forfeiture. First, New Life argues that the \$4,000 forfeiture amount for failure to maintain a complete public inspection file is inconsistent with other Commission actions for similar violations. New Life cites three Commission monetary forfeiture cases, *Faith Christian Music Broadcast Ministries, Inc.* ("Faith Christian"),⁸ *Richard Hildreth, Esq.* ("Hildreth"),⁹ and *Barry D. Wood, Esq.* ("Wood"),¹⁰ in support of this argument.

7. In *Faith Christian*, the Commission's Media Bureau issued a Notice of Apparent Liability¹¹ in the amount of \$3,000 for violation of Section 73.3526 of the Rules, specifically, failure to include issues/programs lists in the station's public file. We do not find the forfeiture amount in the instant case to be inconsistent with *Faith Christian*. In the *Faith Christian* *NAL*, the Bureau explained that the base forfeiture amount for public file violations is \$10,000; that the violation was voluntarily revealed to the Commission in the context of a license renewal application; and that the licensee had already taken corrective action to correct the violation and prevent its recurrence. The Bureau stated that a \$4,000 forfeiture was appropriate for the violation in that case but reduced it to \$3,000 due to the licensee's voluntary disclosure.¹² New Life further argues that in *Faith Christian*, the licensee "did not voluntarily report its violation out of the blue" but rather "responded truthfully to a Commission question rather than engage in a misrepresentation." The circumstances in the instant case differ. New Life did not discover the violation by its own investigation, did not voluntarily disclose the violation to the Commission, and had not taken action to remedy the violation *prior* to its discovery by the Commission agent. There are no facts to indicate that New Life would have corrected or even discovered the violation absent the inspection by the Commission agent. Nothing in *Faith Christian* leads us to the conclusion that the forfeiture amount assessed to New Life is inconsistent.

8. In *Hildreth*, the Commission's Field Operations Bureau reduced a monetary forfeiture amount for violation of Section 73.3526 of the Rules to \$1,000. In *Hildreth*, however, the public file was

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 73.3526.

⁸ Forfeiture Order, NAL/Acct. No. MB-AD 20031810033, DA 05-3088 (MB 2005).

⁹ 7 FCC Rcd 6292 (FOB 1992).

¹⁰ 7 FCC Rcd 6262 (FOB 1992).

¹¹ NAL/Acct. No. MB-AD 20031810033, DA 03-3072 (MB 2003).

¹² *Id.*

missing one item, namely, the most recent ownership report. In the instant case, the public file was missing the quarterly issues/programs list for eight consecutive quarters. In *Wood*, the Commission's Field Operations Bureau initially issued a \$4,750 monetary forfeiture, which included a \$3,500 penalty for violation of Section 73.3526 of the Rules. In response to the licensee's Petition for Reconsideration, the Bureau reduced the total forfeiture to \$3,000 based on the statutory factors listed in Section 503(b) of the Act mentioned above, but "especially lack of evidence concerning past noncompliance with the FCC's rules."¹³ We do not find the \$4,000 penalty in the instant case to be out of line with the original amounts assessed in both *Hildreth* and *Wood*. However, even though the penalties assessed in *Hildreth* and *Wood* are less than the \$4,000 assessed in the instant case, New Life fails to take into account that, at the time of the *Hildreth* and *Wood* decisions, the base forfeiture amount for public file violations was \$7,500.¹⁴ In 1997, the base forfeiture amount for public file violations was increased to \$10,000.¹⁵ It should be no surprise that the penalties for similar violations have increased in fourteen years. In reviewing decisions more recent than the fourteen year old *Hildreth* and *Wood* cases cited by New Life, we find that a monetary forfeiture of \$4,000 is appropriate for failure to maintain issues/programs lists in the public file.¹⁶

9. New Life next challenges the Commission's justification for imposing any monetary forfeiture for this violation, questioning the value of the requirement for issues/programs lists. New Life makes several unsubstantiated claims regarding WBRQ's service to its community and daily response to its community's needs, and that the Commission should not sanction such an "exemplary" station "for missing a few documents in its file." New Life then reasons that, since WBRQ's service to its listeners has always been "exemplary" while at the same time, apparently admitting, WBRQ failed to maintain issues/programs lists, that this casts doubt on whether "issues/programs list really provide much of anything to anyone." New Life also questions the lists' value because "the Commission does not require that stations submit their issues/programs lists to the FCC, so it is unknown how the Commission can possibly derive useful information from those lists." New Life chides the Commission's reliance on its "predictive judgment" that the lists serve a purpose. Instead, according to New Life, the public file rules have existed long enough that the Commission should have been able to cite examples "over the past fifteen years where a member of the public has used information from such lists" and to "readily observe whether the policy actually works."

10. The public file rules are rooted in Section 307(b) of the Act¹⁷ and codified in Part 73 of the Rules. The Commission has found that reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance, and fostering community involvement with local stations, thus helping to ensure that stations are responsive to the needs and interests of their local communities.¹⁸ New Life argues that the Commission's alleged inability to identify individual members of the public that have used information

¹³ 7 FCC Rcd 6262.

¹⁴ See *Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991); *modified on recon.*, 7 FCC Rcd 5339 (1992).

¹⁵ See *Forfeiture Policy Statement*; 47 C.F.R. § 1.80.

¹⁶ See, e.g., *JMK Communications, Inc.*, 2006 WL 334665, DA 06-323 (Enf. Bur. 2006) (portion of forfeiture attributed to missing issues/programs lists reduced to \$4,000). See also "FCC Fines 28 Radio Stations for Public File Violations," news release, 2003 WL 22309168, (October 8, 2003) (publicizing Media Bureau's issuance of 28 NALs for failure to adequately comply with FCC's public file requirements in which the Bureau determined that \$4,000 fines were warranted but made downward adjustments based on licensees' voluntary disclosures of the violations).

¹⁷ 47 U.S.C. § 307.

¹⁸ *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, 15700 (1998).

from the issues/programs lists to challenge a licensee's renewal puts into serious question the viability of the requirement to maintain the lists. We disagree. The licensee in *Faith Christian* made a similar argument, that "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.'"¹⁹ The Commission's Media Bureau responded that they "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."²⁰ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item 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."²¹ Thus, the base forfeiture amount for violation of public file rules is currently set at \$10,000, one of the highest base amounts enumerated for any violation.²² 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.²³ These requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations.²⁴ "[V]iolations are not mitigated by the licensee's view that compliance with the rule is unimportant."²⁵ 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 broadcasters' service to their communities ..., [and] the FCC will not tolerate less than diligent efforts to ensure the accuracy and timeliness of that information."²⁶ Further, contrary to New Life's contention that the Commission relies only on its "predictive judgment" that the public file rules serve a purpose, the Commission performed an exhaustive review of those rules in 1998.²⁷ In that review, the Commission had the opportunity to delete the issues/programs list requirement had it deemed appropriate. It did not. In fact, in response to several commenters' proposals that the retention period for issues/programs lists be reduced, the Commission pointedly refused, explaining: "The lists contain information about licensee compliance with public interest obligations which is relevant to the evaluation of licensee performance at renewal, and must continue to be available throughout the license term and until final grant of the next renewal application."²⁸

11. While New Life does not dispute the fact that they failed to produce the issues/programs lists upon the Commission agent's request, New Life attempts to explain that the particular circumstances

¹⁹ *Faith Christian*, Forfeiture Order, DA 05-3088 at ¶ 8.

²⁰ *Id.*

²¹ 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.").

²² See *Forfeiture Policy Statement*; 47 C.F.R. § 1.80.

²³ *Forfeiture Policy Statement* at 17104-05 ¶ 39.

²⁴ 47 U.S.C. § 307(a).

²⁵ *Faith Christian*, Forfeiture Order, DA 05-3088 at ¶ 8.

²⁶ See "FCC Fines 28 Radio Stations for Public File Violations," news release, 2003 WL 22309168, (October 8, 2003)

²⁷ 13 FCC Rcd 15691.

²⁸ *Id.* at ¶ 47.

involving the missing public file items would have resulted in no harm to a member of the public requesting such items. With regards to the public file contents, New Life states that “the station maintained a duplicate public file located in the home of one of the station’s principals.” With regards to the missing items, New Life explains “[h]ad a member of the public, like the FCC inspector, asked for copies of programs and issues lists . . . , New Life’s management would have been happy to have forwarded them.”

12. New Life’s recitation of the facts differs from that of the Commission agents’. According to the agents, after reviewing the public file and finding the issues/programs lists missing, the agent specifically mentioned the omission to the station’s general manager during the inspection on February 8, 2006. The general manager was unsuccessful at producing the missing documents during the inspection. On February 12, 2006, the president of New Life sent to the San Juan Office by facsimile a copy of one quarterly issues/programs list for the time period October 1 through December 31, 2005. None of the other seven missing quarters’ lists were provided. Contrary to New Life’s contention that they “would have been happy to have forwarded” the missing items to anyone who requested them, WBRQ’s management was unable to provide any of the missing items during the inspection, as required by the rules, and, in fact, supplied only one of the missing eight quarters’ lists four days after the inspection request. Even if New Life could have provided all of the missing items, maintaining the items remote from the station’s main studio and providing those days later does not comply with the public inspection rules.

13. New Life requests reduction of the forfeiture based on their “unblemished record . . . in compliance with the Commission’s rules.” After considering New Life’s past history of compliance, we conclude that a reduction of the forfeiture amount to \$3,200 is appropriate.²⁹

14. In conclusion, New Life does not deny the fact that eight consecutive quarterly issues/programs lists were missing from WBRQ’s public file and could not be produced when requested by a Commission agent. The violation is mitigated neither by New Life’s maintaining a copy of the public file contents at a remote location inaccessible to the public, nor by producing a small portion of the missing documents four days after the request. New Life attacks the policy behind the requirement to maintain issues/programs list. However, the proper course of action to effectuate those concerns is a petition for a rule change, not to violate the rule and argue against the policy after-the-fact. Thus, based on the evidence, we find that New Life willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

15. We have examined New Life’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. We find no basis for cancellation of the forfeiture, but do find that reduction of the forfeiture amount from \$4,000 to \$3,200 based on New Life’s history of compliance is appropriate.

IV. ORDERING CLAUSES

16. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,³⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules,³¹ New Life Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for violation of Section 73.3526 of the Rules.

²⁹ See *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 703 ¶ 9 (Enf. Bur. 2003).

³⁰ 47 U.S.C. § 503(b).

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

17. 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.³² 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 Street, S.W., Room 1A625, Washington, D.C. 20554.³³

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to New Life Broadcasting, Inc. at its address of record; and an additional copy to New Life's legal counsel, Shainis & Peltzman, Chartered, Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

³² 47 U.S.C. § 504(a).

³³ See 47 C.F.R. § 1.1914.