

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

In the Matter of)	
)	
Lebanon Educational Broadcasting Foundation,)	File No. EB-03-KC-022
Licensee of Noncommercial Station KTTK(FM))	NAL/Acct. No. 200332560022
Lebanon, Missouri)	FRN 0002-5292-38

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 2006**Released: February 16, 2006**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("Order"), we grant in part and deny in part a Petition for Reconsideration filed by Lebanon Educational Broadcasting Foundation ("Lebanon"), Licensee of Noncommercial Station KTTK(FM), Lebanon, Missouri. Lebanon seeks reconsideration of a *Forfeiture Order*¹ in which the Assistant Chief, Enforcement Bureau ("Bureau") found it liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000) for willful violation of the public inspection file requirements of Section 73.3527(c)(1) of the Commission's Rules ("Rules").² The noted violation involves Lebanon's failure to make available for inspection all required items in the station's public inspection file during regular business hours. For the reasons discussed below, we find that a further reduction of the forfeiture amount from \$4,000 to three thousand two hundred dollars (\$3,200) is warranted.

II. BACKGROUND

2. On January 30, 2003, a field agent ("agent") from the Commission's Kansas City, Missouri Field Office ("Field Office") inspected Station KTTK's facilities and observed that certain required materials were missing from the station's public inspection file and thus not available during the station's regular business hours in violation of Section 73.3527(c)(1) of the Rules – namely, the station's contour map,³ "Public and Broadcasting" manual ("manual")⁴ and certain issues/programs lists.⁵ On April 18, 2003, the Field Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL"),⁶ proposing a \$4,000 forfeiture against Lebanon for its apparent willful violation of Section 73.3527(c)(1) of the Rules. The proposed forfeiture amount was *downwardly* adjusted from the \$10,000 base forfeiture amount set forth

¹ *Lebanon Educational Broadcasting Foundation*, 19 FCC Rcd 21696 (Enf. Bur. 2004) ("Forfeiture Order").

² 47 C.F.R. § 73.3527(c)(1) (noncommercial broadcast stations must make available at any time during regular business hours public access to the public inspection file).

³ 47 C.F.R. § 3527(e)(3).

⁴ 47 C.F.R. § 3527(e)(7).

⁵ 47 C.F.R. § 3527(e)(8).

⁶ *Notice of Apparent Liability*, NAL/Acct. No. 200332560022 (Enf. Bur., Kansas City Office, released April 18, 2003) ("NAL").

in Section 1.80(b)(4) of the Rules because the “public inspection file contained a portion of the required items.”⁷

3. In a May 9, 2003, response to the *NAL* (“Response”), Lebanon sought cancellation of the proposed forfeiture. Lebanon claimed that the contour map and manual were in the public inspection file but not shown to the agent, because the station employee who was present throughout the inspection was unfamiliar with the contents of the public inspection file. Lebanon also admitted that the issues/programs lists for the last two quarters of 2001 and all four quarters of 2002 were missing from the station’s public inspection file, explaining that the employee tasked with the responsibility of maintaining that file had failed to do so. Lebanon asserted that the public inspection file had been updated to include the lists. In support of its Response, Lebanon submitted copies of its contour map, manual and updated issues/programs lists.

4. On October 29, 2004, the Bureau released a *Forfeiture Order*, finding that no further reduction of the proposed forfeiture was warranted and imposing a monetary forfeiture in the amount of \$4,000. The Bureau determined that because Lebanon admitted that the contour map and manual were not made available for inspection during the station’s regular business hours, no further cancellation or reduction of the proposed forfeiture was warranted. The Bureau also explained that Lebanon could not escape liability for the incomplete issues/programs lists due to the lapse of an employee that was tasked with the responsibility of updating those lists.⁸ The Bureau noted that as the licensee of the station, Lebanon was “expected” to correct violations by updating its missing issues/programs lists, and that corrective actions implemented after a Commission inspection and/or action do not mitigate past violations.⁹

5. On November 29, 2004, Lebanon filed a Petition for Reconsideration of the *Forfeiture Order*. Lebanon reasserts that two of the documents – the station’s contour map and manual – were in the public inspection file at the time of the inspection. Lebanon also newly asserts that its candid acknowledgement of the missing issues/programs lists, status as a noncommercial educational radio station and previously unblemished enforcement record with the Commission should combine to result in a forfeiture amount of no more than one thousand two hundred dollars (\$1,200).

⁷ *Id.* at ¶ 5.

⁸ *Forfeiture Order*, 19 FCC Rcd at 21697 citing *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002) (denying the antenna structure owner’s claim that the forfeiture should be cancelled because the failure to comply with the lighting requirements resulted from the failure of its lessee/contractor to monitor the lights, or notify it regarding light outages, and finding the violation to be willful); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 290-291 ¶ 6 (1977); *Wagenwood Broadcasting Co.*, 25 FCC 2d 361, 361-62 ¶ 2 (1972); *Charter Communications VI, LLC*, 17 FCC Rcd 16516, 16518-19 ¶¶ 8-9 (Enf. Bur. 2002) (denying cable operator’s claim that the forfeiture should be reduced because the violations were due to its employees’ lapses and misunderstandings, and finding the violation to be willful); *American Paging, Inc.*, 12 FCC Rcd 10417, 10419-20 ¶ 11 (WTB 1997).

⁹ *Forfeiture Order*, 19 FCC Rcd at 21697 citing *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994); see also *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992) (noting that it would be inappropriate to base “mitigation of cancellation of a forfeiture upon corrective action taken subsequent to misconduct upon which liability is based,” because it “would tend to encourage remedial rather than preventative action”).

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act, Section 1.80 of the Rules, and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹⁰ In examining Lebanon's Petition for Reconsideration, 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 any other such matters as justice may require.¹¹

A. Violation of Section 73.3527(c)(1)

1. Background

7. Section 73.3527(a)(2) of the Rules¹² requires every permittee or licensee of an AM, FM, or TV station in the noncommercial educational broadcast services to maintain a public inspection file containing certain prescribed documents. Section 73.3527(c)(1) of the Rules requires every permittee or licensee to make the public inspection file available for public inspection at any time during business hours. 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.¹³

2. Discussion

8. In its Petition for Reconsideration, Lebanon seeks a downward adjustment of the forfeiture amount. First, Lebanon again argues that the forfeiture should be reduced because the station's manual and contour map were, in fact, in the public inspection file at the time of the inspection. We disagree, and deny reconsideration on this basis,¹⁴ noting that the argument was previously fully discussed and satisfactorily rejected in the *Forfeiture Order*.¹⁵

¹⁰ *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).

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 C.F.R. § 73.3527(a)(2).

¹³ *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) ("Main Studio Rule and Public Inspection Files") *recon. granted in part*; 14 F.C.C.R. 11,113, 14 FCC Rcd. 11,113 (1999); *see also Union Broadcasting, Inc.*, 19 FCC Rcd 18588, 185890 (Enf. Bur. 2004).

¹⁴ *WWIZ, Inc.*, 37 FCC 685 (1965), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C.Cir.1965), *cert. denied*, 383 U.S. 967 (1966) ("A petition which simply reiterates arguments previously considered and rejected will be denied."); *Infinity Radio License, Inc.*, 19 FCC Rcd 16959, 16960 (2004) *citing Bennett Gilbert Gaines*, 8 FCC Rcd 3986 (Rev. Bd. 1993) ("A petition that simply repeats arguments previously considered and rejected will be denied.")

¹⁵ In the *Forfeiture Order*, the Bureau explained: "Lebanon claimed that the material was in its public file, but admitted that such material was not shown to the FCC agent and thus was not made available for public inspection. Because Lebanon admitted that the material was not made available for inspection during the station's regular business hours, we conclude that no cancellation or reduction of the proposed forfeiture is warranted in this regard." *Forfeiture*

9. Second, Lebanon attempts to decrease its responsibilities under Section 73.3527(c) of the Rules by carving out an exception to the requirements of that Rule. Lebanon asserts that it fulfilled its obligations in accordance with the subject Rule merely by making the public inspection file available during regular business hours:

The Public Inspection File rule applicable does not include an explicit obligation . . . for the licensee's representative to assist a person inspecting the file in locating a particular document. In this case, given that the Field Agent did not himself look for any documents in the Public Inspection File, the inability of a station staff member to locate particular documents in the file does not, in and of itself, constitute a violation of the rules.¹⁶

In sum, Lebanon argues that the one who seeks to inspect the public inspection file has the responsibility to locate the documents within that file.

10. We disagree. The Rule requires station staff to have hands-on knowledge of the contents of the public inspection file. Where a licensee maintains its main studio and public inspection file outside of its community of license, Section 73.3527(c)(2)(i) of the Rules requires staff to respond to telephone requests for public inspection file materials by copying and delivering the most recent documents (except for the political file).¹⁷ In addition, Section 73.3527(c)(2)(ii) requires staff to mail the most recent version of the manual to any member of the public that requests a copy.¹⁸ Moreover, Section 73.3527(c)(2)(iii) of the Rules requires staff to "[b]e prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and number of pages included in the report."¹⁹ It follows, then, that Section 73.3527(c) of the Rules requires staff to have this same hands-on knowledge of the public inspection file when members of the public visit the station for the purpose of examining those files.²⁰ The licensee cannot shift the burden of identifying the materials in the public inspection file to the public.²¹

11. Third, Lebanon asserts that the instant forfeiture amount should be reduced because it "candidly acknowledged that certain of the quarterly lists were missing from the file." Forfeitures are neither *downwardly* adjusted nor cancelled where, as here, violators make disclosures in response to Commission inquiries/investigations or actions.²² As with corrective actions, "nothing less than full and

Order, 19 FCC Rcd at 21697.

¹⁶ Petition for Reconsideration at 3.

¹⁷ 47 C.F.R. § 73.3527(c)(2)(i). The political file is described in 47 C.F.R. 73.3527(e)(5).

¹⁸ 47 C.F.R. § 73.3527(c)(2)(ii).

¹⁹ 47 C.F.R. § 73.3527(c)(2)(iii).

²⁰ See, e.g., *Paulino Bernal Evangelism, Inc.*, 19 FCC Rcd. 19922, 19923 (Asst. Chief, Enf. Bur. 2004), *recon. pending* (violation of Section 73.3527(c)(1) of the Rules found where licensee claimed that the public inspection file existed, but that the station manager forgot where it was located).

²¹ We note further that Lebanon provided a copy of "The Public and Broadcasting" manual which contains, among other things, information on how members of the public may obtain copies of material contained in the public inspection file by telephone, including the sentence, "[s]tations can assist callers in this process and answer questions you may have about the actual contents of the public file."

²² See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 ¶ 5 (1991) *recon. denied*, 7 FCC Rcd 3454, 3455 ¶ 7 (1992) ("*Southern California Broadcasting*") (finding that a broadcast licensee's "frank" response to a letter of

complete cooperation”²³ and “candor”²⁴ is expected during the course of Commission investigations and proceedings.

12. Fourth, Lebanon also avers that the forfeiture amount at issue should be reduced because of the noncommercial educational status of the broadcast radio station. Section 73.3527(c)(1) of the Rules requires noncommercial licensees to make available for inspection all required items in the station’s public inspection file during regular business hours. 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.²⁵ In the instant case, the Enforcement Bureau determined in the *Forfeiture Order* – and we affirm in the instant *Memorandum Opinion and Order* – that Lebanon willfully failed to provide access to portions of its public inspection file in violation of Section 73.3527(c)(1) of the Rules by failing to include in that file at the time of inspection, the issues/programs list for six consecutive quarters,²⁶ contour map and manual.

13. Finally, Lebanon, referencing *Isothermal Community College*,²⁷ newly asserts that the instant forfeiture amount should be reduced because of Lebanon’s history of overall compliance, suggesting that it be no more than \$1,200. We agree that a reduction of the forfeiture amount is warranted, based upon our review of the record and finding that Lebanon has a history of overall compliance with the Rules. Accordingly, we further reduce the forfeiture amount from \$4,000 to \$3,200 pursuant to Section 1.80(b)(4) of the Rules²⁸ and past precedent.²⁹

inquiry did not warrant a downward adjustment).; *MAPA Broadcasting, L.L.C.*, 17 FCC Rcd 10519, 10521 ¶¶ 8, 11 (Enf. Bur. 2002) (finding that a broadcast licensee’s good faith inquiries and disclosures regarding EAS violations discovered by Commission inspection were not “voluntary” and thus did not warrant any reduction in the forfeiture).

²³ *Northwest Utilities*, 17 FCC Rcd 4115, 4117 ¶¶ 12-13 (Enf. Bur. 2002) (reducing the forfeiture based on a finding that an applicant voluntarily disclosed its felony convictions by filing timely amendments, which “cured its otherwise flawed applications, thereby . . . enabling the Commission to properly make the public interest determinations required by Section 309 of the Act, but denying further reduction based on its cooperation with the investigation).

²⁴ See *Southern California Broadcasting*, 6 FCC Rcd at 4388 ¶ 5 (1992) (Commission “expect[s] nothing less than complete candor under Section 73.1015 of our Rules” – no downward adjustment assessed).

²⁵ See *Main Studio Rule and Local Public Inspection Files*, 13 FCC Rcd at 15700 (all licensees have a duty to comply with public inspection file rules).

²⁶ Specifically, the Enforcement Bureau found that the public inspection file lacked the following portions of the issues/programs list: the last two quarters of 2001 and all four quarters of the year 2002. *Forfeiture Order*, 19 FCC Rcd at 21697-98.

²⁷ *Isothermal Community College*, 16 FCC Rcd 21360 (Investigations & Hearings Division, Enf. Bur., 2001) (“*Isothermal*”).

²⁸ 47 C.F.R. § 1.80(b)(4) (“Section II. Adjustment Criteria for Section 503 Forfeitures, Downward Adjustment Criteria”).

²⁹ See *KGB, Inc.*, 13 FCC Rcd 16396, 16398 ¶ 8 (1998) (reducing the proposed forfeiture from \$11,500 to \$9,200 for airing indecent material due to the broadcast licensee’s “history of overall compliance prior to these broadcasts, and its apparent lack of violations in the period since these broadcasts”); *Max Media of Montana, L.L.C.*, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003) (further reducing the proposed forfeiture from \$11,000 to \$8,800 for antenna structure lighting and registration violations due to the licensee’s history of overall compliance); *South Central Communications Corp.*, 18 FCC Rcd 700, 702 ¶ 9 (Enf. Bur. 2003) (reducing the proposed forfeiture from \$10,000 to \$8,000 for antenna structure lighting violations due to the licensee’s history of overall compliance).

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 405 of the Act³⁰ and Section 1.106 of the Rules,³¹ Lebanon's Petition for Reconsideration of the October 29, 2004, *Forfeiture Order* **IS GRANTED IN PART AND DENIED IN PART** to the extent indicated herein.

15. 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 payment of the full amount of the NAL 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

16. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return *receipt* requested, to Lebanon and its representative, Matthew H. McCormick, Esq., Reddy, Begley & McCormick, LLP, 1156 15th Street, NW, Suite 610 Washington DC , 20005 – 1770.

FEDERAL COMMUNICATIONS COMMISSION



Kris Anne Monteith
Chief, Enforcement Bureau

³⁰ 47 U.S.C. § 405.

³¹ 47 C.F.R. § 1.106.

³² 47 U.S.C. § 504(a).

³³ See 47 C.F.R. § 1.1914.