

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

In the Matter of)	
)	
Wilson Broadcasting, Inc.)	FRN: 0004333019
)	
Licensee of WJJN-FM)	File Number: EB-07-AT-015
Columbia, Alabama)	NAL/Acct. No.: 200732480006
Facility ID # 30280)	
)	
)	
Licensee of WAGF (AM))	File Number: EB-07-AT-013
Dothan, Alabama)	NAL/Acct. No.: 200732480004
Facility ID # 30278)	
)	
)	
Licensee of WAGF-FM)	File Number: EB-07-AT-014
Dothan, Alabama)	NAL/Acct. No.: 200732480005
Facility ID # 30279)	
)	

FORFEITURE ORDER

Adopted: April 19, 2007

Released: April 23, 2007

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 twelve thousand dollars (\$12,000) to Wilson Broadcasting, Inc. (“Wilson”), licensee of station WJJN-FM, in Columbia, Alabama and stations WAGF (AM) and WAGF-FM in Dothan, Alabama (“Three Stations”), for willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”).¹ The noted violations involve Wilson’s failure to maintain complete public inspection files.

II. BACKGROUND

2. The Three Stations are co-located in one main studio. On January 23, 2007, an agent from the Commission’s Atlanta Office of the Enforcement Bureau (“Atlanta Office”) requested to inspect the Three Stations’ public inspection files during normal business hours. The stations’ owner produced a single file for all three stations. That file contained a file for Issues/Programs lists that contained one document labeled Issues/Programs and dated March 2003. The Three Stations’ owner admitted that he had not compiled the Issues/Programs lists since March 2003, and no material for any of the lists was readily available at the co-located main studio.

¹ 47 C.F.R. § 73.3526.

3. On February 13, 2007, the Atlanta Office issued three *Notices of Apparent Liability for Forfeiture* to Wilson, each in the amount of four thousand dollars (\$4,000), for the apparent willful and repeated violation of Section 73.3526 of the Rules.² Wilson submitted a response to the *NALs* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

4. The proposed forfeiture amounts in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended,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*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Wilson'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.⁵

5. Section 73.3526(a)(2) of the Rules requires each broadcast station to maintain for public inspection, a file containing materials listed in that section.⁶ Section 73.3526(a)(2) also states that: "[a] separate file shall be maintained for each station for which an authorization is outstanding..."⁷ Section 73.3526(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.⁸ Section 73.3526(e)(12) of the Rules requires licensees to place in the public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.⁹ This list is known as the radio Issues/Programs list. On January 22, 2007, in response to a request during normal business hours to inspect the public inspection files, the Three Stations failed to make available any copies of radio Issues/Programs lists after March 2003. The owner of the Three Stations admitted that he failed to maintain any Issues/Programs lists after March 2003.

6. In its response to the *NAL*, Wilson asserts that the agent requested "issues lists" and that, in the owner's nervousness over the inspection, he did not know that she wanted to see Issues/Programs lists. The owner claims that if she had asked for Issues/Programs lists, he would have produced them, as he had been compiling them regularly. Moreover, while he states he admitted that the "issues lists" were not in the public file, the station owner disputes that he knowingly admitted to failing to maintain Issues/Programs lists.

² *Notices of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732480004, 200732480005, and 200732480006 (Enf. Bur., Atlanta Office, February 13, 2007) ("*NALs*"). We consolidated the *NALs* into one *Forfeiture Order*, because Wilson submitted one response to the *NALs*.

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 73.3526(a)(2).

⁷ *Id.*

⁸ 47 C.F.R. § 73.3526(c)(1).

⁹ 47 C.F.R. § 73.3526(e)(12).

7. According to the agent's contemporaneous notes of the inspection, the agent requested to inspect the Three Stations' "Issues/Programs lists" and referred to the Broadcast Self-Inspection Checklist,¹⁰ for more information. However, assuming *arguendo* that the agent did ask for the "issues lists," we do not find Wilson's assertions plausible. In response to the agent's request, the stations' owner produced a file that contained one document entitled "Issues/Programs" and dated March 2003. This document was in the same format as the Issues/Programs lists that the stations' owner stated he compiled after March 2003 and that were attached in the response to the *NALs*. During the inspection, the agent asked if there were any other Issues/Programs lists besides what was contained in the file, and the owner replied in the negative. Because the owner was able to locate one Issues/Programs list, he knew, or should have known, what the agent was seeking, even if she had requested to inspect "issues lists." Moreover, because the Issues/Programs list in the public inspection file looked the same as the more recent lists submitted in response to the *NALs*, it is unlikely that the station owner would have forgotten to say something or produce them to the agent *during* the inspection. Given this and the fact that Wilson failed to produce any evidence that the submitted Issues/Programs lists were compiled prior to the inspection, we conclude we cannot rely upon Wilson's assertions that it maintained Issues/Programs lists after March 2003.¹¹

8. Based on the evidence before us, we find that Wilson willfully¹² and repeatedly¹³ violated Section 73.3526 of the Rules by failing to maintain complete public inspection files.

9. Wilson also requests a reduction of the cumulative forfeiture, because it asserts it was fined three times for essentially one violation. We disagree. Wilson is required to maintain separate files for each of the Three Stations. However, because the single file for all Three Stations contained information specific to each station, *e.g.*, copies of each license, the Atlanta Office declined to propose forfeitures for the failure to maintain three separate files. Each station, however, is required to compile its own list that describes the programming broadcasted by it that deals with local issues. Accordingly, the Atlanta Office issued three separate *NALs* for failing to maintain and make available any Issues/Programs lists after March 2003.

10. Finally, Wilson requests a reduction in the amount of the forfeiture, citing several cases in which violators received forfeitures less than \$4,000 for missing Issues/Programs lists. The latest Notice of Apparent Liability for these cases, however, was released on August 26, 2005.¹⁴ Recent cases have

¹⁰ The Broadcast Self-Inspection Checklist has a check box for "issues-programs listings." The station owner was familiar with this checklist, as he had previously participated in the Alternate Broadcast Inspection Program.

¹¹ Moreover, it is undisputed that on January 23, 2007, Wilson failed to make available any Issues/Programs lists after March 2003. This failure in itself constitutes a violation of Section 73.3526 of the Rules, subject to forfeiture. *See, e.g., Fannin County Broadcasting*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732480007 (Enf. Bur. Atlanta Office, February 8, 2007).

¹² 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).

¹³ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹⁴ *See Gerald Parks*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532360003 (Enf. Bur. Detroit Office, August 26, 2005).

consistently assessed forfeitures of \$4,000 for missing two or more quarters of Issues/Programs lists.¹⁵ Accordingly, we decline to reduce the forfeitures.

11. We have examined Wilson's response to the *NALs* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Wilson willfully and repeatedly violated Section 73.3526 of the Rules and that no reduction of the proposed \$12,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Wilson Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Section 73.3526 of the Rules.¹⁶

13. 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.¹⁷ 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. 20554.¹⁸

¹⁵ See, e.g., *Fannin County Broadcasting*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732480007 (Enf. Bur. Atlanta Office, February 8, 2007), *Community Broadcast Group*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732500003 (Enf. Bur. Dallas Office, January 30, 2007), *Cumulus Licensing, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732700006 (Enf. Bur. Tampa Office, January 3, 2007), *Multicultural Radio Broadcasting Licensee*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732940003 (Enf. Bur. San Diego Office, December 28, 2006), *Access.1 NY License Company, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 20073238000 (Enf. Bur. New York Office, July 12, 2006).

¹⁶ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.3526.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Wilson Broadcasting, Inc. at its address of record and to its counsel, Dan J. Alpert, 2120 North 21st Road, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

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