

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

In the Matter of	)	
	)	
KITZ Radio Inc.	)	File No. EB-06-ST-118
Licensee of KITZ (AM)	)	
Silverdale, WA	)	NAL/Acct. No. 200632980004
Facility ID No. 9737	)	FRN: 0003791456

**FORFEITURE ORDER**

**Adopted: June 15, 2007****Released: June 19, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand, four hundred dollars (\$2,400) to KITZ Radio, Inc. (“KITZ Radio”), licensee of station KITZ(AM) in Silverdale, Washington, for willfully and repeatedly violating Section 73.3526 of the Commission’s Rules (“Rules”).<sup>1</sup> On August 23, 2006, the Enforcement Bureau’s Seattle Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$4,000 to KITZ Radio for failing to maintain a complete public inspection file for KITZ(AM).<sup>2</sup> In this *Order*, we consider KITZ Radio’s arguments that the facts as described in the *NAL* are incorrect; that it did not have a current license to operate the station to show to the Seattle agent, and that the amount of the forfeiture should be reduced consistent with similar cases and because of its history of compliance with the Commission’s Rules, as well as its good faith efforts to comply with the Rules.

**II. BACKGROUND**

2. In the *NAL*, the Seattle Office stated that on May 24, 2006, an agent of the Enforcement Bureau’s Seattle Office conducted an inspection of the public inspection file for KITZ(AM) at Mile Hill Dr., Suite 201A, Port Orchard, Washington. While examining the public inspection file, the agent observed that the KITZ(AM) public inspection file was not complete. Specifically, there were no copies of the current FCC authorization to operate the station and no radio issues/programs lists for calendar years 2005 or 2006.<sup>3</sup> During the inspection the Seattle agent interviewed the station’s general manager concerning the missing items. The general manager indicated that he did not know why these items were missing.

3. Because the license period for radio stations in the State of Washington ended on February 1, 2006,<sup>4</sup> KITZ Radio was required to file a renewal application for KITZ(AM) with the

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<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632980004 (Enf. Bur., Western Region, Seattle Office, released August 23, 2006).

<sup>3</sup> The file contained complete issues/programs lists for the license term up to and including calendar year 2004, and undated lists of public service announcements.

<sup>4</sup> 47 C.F.R. § 73.1020(a) and (a)(15)(i).

Commission no later than October 1, 2005, as required by Section 73.3539(a) of the Rules.<sup>5</sup> A search of Commission's records by the Seattle agent revealed KITZ Radio did file a timely renewal application,<sup>6</sup> however, as of the date of the *NAL*, the renewal application remained pending.<sup>7</sup>

4. On August 23, 2006, the Seattle Office issued a *NAL* in the amount of \$4,000 to KITZ Radio, finding that KITZ Radio apparently willfully and repeatedly failed to maintain a complete public inspection file for KITZ(AM). KITZ Radio filed a response ("*Response*") on September 8, 2006, arguing that the facts as described in the *NAL* are incorrect; that it did not have a current license to operate the station to show to the Seattle agent; and that the amount of the forfeiture should be reduced consistent with similar cases, and because of KITZ Radio's history of compliance with the Commission's Rules, as well as its good faith efforts to comply with the Rules.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>8</sup> Section 1.80 of the Rules,<sup>9</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").<sup>10</sup> In examining KITZ Radio'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.<sup>11</sup>

6. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM station licensee shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(12) through (e)(14) of this section as well as paragraph (e)(16) of this section.<sup>12</sup> Further, as required by Section 73.3526(b), the location of the public file shall be maintained at the station's main studio location.<sup>13</sup>

7. Section 73.3526(e)(1) of the Rules requires licensees to place in their public inspection file a copy of the current FCC authorization to operate the station. These materials shall be retained until replaced by a new authorization.<sup>14</sup> During the examination of the file on May 24, 2006, no copy of the KITZ(AM) station authorization was found.

8. Section 73.3526(e)(12) of the Rules requires AM and FM broadcast licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station's

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<sup>5</sup> 47 C.F.R. § 73.3539(a).

<sup>6</sup> See File No. BR – 20050930AJG, filed September 30, 2005 ("*Broadcast Renewal Application*").

<sup>7</sup> We note that the KITZ(AM) Broadcast Renewal Application remains pending as of the date of this *Order*.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>13</sup> 47 C.F.R. § 73.3526(b).

<sup>14</sup> 47 C.F.R. § 73.3526(e)(1).

most significant treatment of community issues during the preceding three month period.<sup>15</sup> This list is known as the radio issues/programs list. Copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application. During the examination of the file on May 24, 2006, KITZ(AM)'s public inspection file contained no radio issues/programs lists for calendar year 2005 or 2006.

9. KITZ Radio first argues that the facts detailed in the *NAL* are incorrect because the Seattle agent first inspected the KITZ(AM) public inspection file on May 19, 2006. On that day, KITZ Radio acknowledges that the administrative assistant who was present at the main studio was unable to locate the most recent set of the issues/programs lists and arranged for the Seattle agent to return to complete his inspection. KITZ Radio argues that when the agent returned on May 24, 2006, the KITZ(AM) general manager showed the agent all the "required complete issues/programs lists." KITZ Radio concludes that the station's only "lapse was the temporary absence of the lists for the most recent five quarters during the agent's first visit to the stations, a lapse which was promptly rectified."

10. We acknowledge that the Seattle agent did visit the KITZ(AM) main studio on May 19, 2006, and that this fact should have been detailed in the *NAL*. However, the Seattle Office did not mistakenly base its findings on the Seattle agent's May 19, 2006, inspection. Although the complete file should have been available for "public inspection at any time during regular business hours,"<sup>16</sup> the Seattle agent agreed to return to conduct a full inspection given the inability of the KITZ(AM) staff to produce the complete public inspection file. The public inspection file which the Seattle agent was presented with on May 24, 2006, is the public inspection file described in the *NAL*. The files identified and presented to the agent for inspection as the issues/programs lists contained undated public service announcements and appropriate issues/programs list for 2004 and prior years of the license term. But there were no similar issues/programs lists compiled for 2005 or 2006 in the public inspection file.<sup>17</sup> Weighing this evidence against the general manager's affidavit, we find that while KITZ(AM) apparently produced some information in the issues/programs list file, *i.e.*, updated PSA that may have fallen within the time frame of the five quarters prior to the Seattle agent's inspection, this information did not fulfill the requirements of Section 73.3526(e)(12), on either May 19, 2006 or May 24, 2006.<sup>18</sup> We note, as the Seattle Office did in the *NAL*, that where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>19</sup> However, it appears that KITZ Radio did make a good faith albeit incomplete effort to comply with Section 73.3526(e)(12) by maintaining some of the items required for the issues/programs lists. Consequently, we reduce the forfeiture amount to \$3,200.

11. KITZ Radio also argues that it was unable to produce its current authorization because the general manager assumed that the agent "meant licenses that reflected a period of validity that include the current (May 24, 2006) date." A timely renewal application was filed for KITZ(AM), but the general manager "assumed that there were no station licenses, as the prior ones had expired and the renewed ones

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<sup>15</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>16</sup> 47 C.F.R. § 73.3526(b).

<sup>17</sup> *NAL* at para. 2 n. 3.

<sup>18</sup> KITZ Radio also notes that its certification regarding the completeness of the KITZ(AM) public inspection file in the KITZ(AM) renewal application should no longer be in dispute. We note that the review of that application is not before this bureau.

<sup>19</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)). As subsequent inspection conducted by a Seattle agent after the issuance of the *NAL* revealed that the complete issues/programs list had been placed in the public inspection file.

had not yet been issued.” We are not persuaded by KITZ Radio’s argument. Section 1.62(a)(1) of the Rules states “[w]here there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license with respect to any activity of a continuing nature . . ., such license shall continue in effect without further action by the commission until such time as the Commission shall make a determination with respect to the renewal application.”<sup>20</sup> Until action is taken on the KITZ(AM) pending renewal application, KITZ(AM)’s recently expired license is its most current authorization to operate the station. KITZ Radio acknowledges that while it has a copy of the recently expired KITZ(AM) license, it did not produce it to the Seattle agent for inspection.

12. KITZ Radio also argues that the forfeiture amount should be reduced consistent with the Media Bureau’s decision in *Trustees of Davidson College*,<sup>21</sup> in which a \$9,000 forfeiture concerning three years of missing issues/programs lists was reduced to \$1,000. The *Davidson College* case is not dispositive in this case. We first note that the *Davidson College* case involved a violation of Section 73.3527 of the Rules, and the violation was self-reported by the licensee. Additionally, the Media Bureau concluded that the missing issues/programs lists were missing for eight months, rather than for three years. In the present case, the violations were discovered by a Seattle agent during an inspection of the licensee’s public inspection file. In similar situations, we have proposed and imposed forfeitures of at least \$4,000 to the licensee.<sup>22</sup>

13. Finally, KITZ Radio argues that it has an overall history of compliance with the Commission’s Rules. We have reviewed our records and we concur. Consequently, we further reduce KITZ Radio’s forfeiture amount to \$2,400.

14. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$2,400 is warranted.

#### IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, KITZ Radio, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,400 for willfully and repeatedly violating Section 73.3526 of the Rules.<sup>23</sup>

16. 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.<sup>24</sup> 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

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<sup>20</sup> 47 C.F.R. § 1.60(a)(1).

<sup>21</sup> 20 FCC Rcd 17190 (MB 2005).

<sup>22</sup> See, e.g., *Wilson Broadcasting, Inc.*, DA 07-1780, 2007 WL 1185895 (rel. April 23, 2007); *New Life Broadcasting, Inc.*, 21 FCC Rcd 8641 (EB 2006).

<sup>23</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.3526.

<sup>24</sup> 47 U.S.C. § 504(a).

number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>25</sup>

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to KITZ Radio, Inc., at its address of record, to its counsel of record, Peter Gutman, Esquire, Womble, Carlyle, Sandridge & Rice, PLLC.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>25</sup> See 47 C.F.R. § 1.1914.