

**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)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: August 16, 2007

Released: August 20, 2007

By the Associate Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by Wilson Broadcasting, Inc. (“Wilson”), licensee of station WJJN-FM, in Columbia, Alabama and stations WAGF (AM) and WAGF-FM in Dothan, Alabama (“Three Stations”), of the *Forfeiture Order* issued April 23, 2007.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$12,000 on Wilson for the willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”).² The noted violations involved Wilson’s failure to maintain complete public inspection files for the Three Stations.

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 directed the agent to a single file cabinet with three drawers, one for each station.³ The top drawer of the file cabinet contained

¹ *Wilson Broadcasting, Inc.*, Forfeiture Order, 22 FCC Rcd 7438 (Enf. Bur. South Central Region, 2007) (“*Forfeiture Order*”).

² 47 C.F.R. § 17.51(a).

³ The *Forfeiture Order* incorrectly stated that the station produced one public inspection file for the Three Stations in

one file folder for the Three Stations' 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.

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.⁴ Wilson submitted a single response to the *NALs* requesting a reduction or cancellation of the proposed forfeiture. On April 23, 2007, the Enforcement Bureau ("Bureau") released the *Forfeiture Order*, in which the Bureau addressed the three *NALs*. The Bureau received Wilson's petition for reconsideration on May 23, 2007, requesting reduction or cancellation of the forfeiture.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the 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*.⁷ In examining Wilson's petition, 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.⁸

5. In its petition for reconsideration, Wilson again alleges that its forfeiture should be cancelled or reduced because the Three Stations' issues/programs lists were prepared, but not placed in the public inspection files. Wilson again states that, due to the owner's nervousness, he did not know the agent wanted to see the stations' issues/programs lists because she referred to "issues lists." According to the agent, the agent requested to inspect the Three Stations' public inspection files and mentioned the Broadcast Self-Inspection Checklist to Wilson's owner, for more information.⁹ Wilson's owner produced the public inspection files that contained a folder with one issues/programs list dated March 2003. The agent asked for additional "Issues/Programs lists," and that the owner admitted that the more recent lists had not been compiled. The owner did not produce any evidence during the inspection that the lists had been maintained. According to Wilson's owner, however, the agent asked to inspect the public inspection files and then said something to the effect of do you admit that "issues lists" – as opposed to "issues/programs lists" – after March 2003 are not in the file, to which he replied, yes. Wilson's owner asserts if he had known what the agent wanted,¹⁰ or "had he ever been asked," he would have confirmed

response to the agent's request.

⁴ *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*.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 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.

¹⁰ In response to the agent's requests, Wilson's owner was able to produce a file that contained old issues/programs

that the issues/programs lists were being maintained and might have been able to produce them. In support of his sworn statement, Wilson's owner attached to its response to the *NALs* copies of issues/programs lists compiled after March 2003.

6. Despite Wilson's statement that recent issues/programs lists were maintained elsewhere at the station during the inspection, we find no reason to reduce or cancel the forfeiture. Wilson's owner was aware of what a public inspection file is and admits that, during the inspection, he produced public inspection files, which included a folder containing an old issues/programs list. Wilson's owner also admits that current issues/programs lists were not maintained *in* the public inspection files and that he did not make available complete public inspection files on January 23, 2007. The possibility that Wilson's owner did not understand the agent's question after producing and viewing the issues/programs list folder is irrelevant, because the agent was not required to provide the owner an additional opportunity to supplement the public inspection files during the inspection. Moreover, the Bureau has previously assessed \$4,000 forfeitures for willfully failing to make available all required issues/programs lists.¹¹ Accordingly, the District Director of the Atlanta Office could have issued three notices of apparent liability to Wilson each proposing a \$4,000 forfeiture for willfully failing to make available a complete public inspection file. Therefore, as in the *Forfeiture Order*, we uphold the forfeiture, because on January 23, 2007, the required issues/programs lists were not located in the public inspection files and complete public inspection files were not provided to the agent.

7. Wilson also requests a reduction of the forfeiture due to the circumstances or gravity of the violation. Although it acknowledges that each station was required to maintain its own issues/programs list, it claims the three lists would have been identical because the stations broadcast the same public affairs programming and it should not be penalized three times for failing to maintain two extra copies of the same paper. It also again claims that the lists had been compiled, contrary to the statements contained in the *NAL*, and that no member of the public asked to inspect the public inspection files. 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.

8. We find no basis upon which to reduce Wilson's forfeiture. Section 73.3526 of the Rules is clear that each station must maintain a separate public inspection file. Although Wilson's stations may have broadcast the same local issues programming, the stations are not required to do so and are required to maintain separate issues/programs lists; *i.e.* the Three Stations cannot share a single copy of issues/programs lists. Indeed, Issues/Programs lists identify programming, which addresses the needs of the communities of license, which in this case are not the same; station WJJN does not share the same community of license as stations WAGF. Therefore, we do not agree that Wilson is being penalized three times for the same violation or that its forfeiture should be reduced. Similarly, we do not agree that its forfeiture should be reduced because no other member of the public requested to inspect the public inspection files. The rules require public inspection files to be available upon request, and Wilson was unable to comply fully with the rules. The harm, inability to provide full information to the public, exists whether or not a member of the public, who is not an agent, requests to inspect the public inspection file.

9. Finally, we do not agree that failing to make available a complete public inspection file is a less serious violation than failing to maintain and make available a complete public inspection file. In both cases, the required information would be unavailable to the requesting member of the public. Moreover, we do not agree that we should reduce the forfeiture, based on the cases cited by Wilson in which the licensee received forfeitures less than \$4,000 for missing issues/programs lists. The latest Notice

lists, which were in the same format as the more recent issues/programs lists that the owner claims to have compiled.

¹¹ See, e.g., *Fannin County Broadcasting*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732480007 (Enf. Bur. Atlanta Office, February 8, 2007).

of Apparent Liability for these cases was released on August 26, 2005.¹² Recent cases have consistently assessed forfeitures of \$4,000 for missing two or more quarters of Issues/Programs lists.¹³ Accordingly, we decline to reduce the forfeitures, as they are consistent with current forfeiture amounts.

10. Therefore, we find no basis upon which to cancel or reduce the forfeiture imposed in the *Forfeiture Order*.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁴ and Section 1.106 of the Commission's Rules,¹⁵ Wilson Broadcasting, Inc.'s petition for reconsideration of the April 23, 2007 *Forfeiture Order* **IS** hereby **DENIED**.

12. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ 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.

13. Payment of the \$12,000 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

¹² See *Gerald Parks*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200532360003 (Enf. Bur. Detroit Office, August 26, 2005). In *Twenty-One Sound Communications*, the Bureau reduced the forfeiture associated with the public file violation from \$10,000 to \$3,000 in the Forfeiture Order, however, that order was released July 27, 2005. *Twenty-One Sound*, Forfeiture Order, 20 FCC Rcd 12496 (Enf. Bur. South Central Region 2005).

¹³ 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).

¹⁴ 47 U.S.C. § 405.

¹⁵ 47 C.F.R. § 1.106.

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.51(a).

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by 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

George R. Dillon
Associate Chief, Enforcement Bureau