

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

In re Application of Boone Biblical Ministries, Inc. For Renewal of License for Stations KFFF(AM), Boone, Iowa and KFFF-FM, Boone, Iowa
NAL/Acct. No. MB200641410022
FRN: 0002591824
File No. BR-20041001AHF
Facility I.D. No. 6416
File No. BR-20041001AHK
Facility I.D. No 6417

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 31, 2007

Released: February 12, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned applications of Boone Biblical Ministries, Inc. (the "Licensee") for renewal of its license for Station KFFF(AM), Boone, Iowa, formerly, KFGQ(AM) and Station KFFF-FM, Boone, Iowa, formerly, KFGO-FM (collectively, the "Stations"). In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules") by the Chief, Media Bureau, by authority delegated under Section 0.283 of the Rules, we find that the Licensee apparently willfully and repeatedly violated Sections 73.3526 and 73.3527 of the Rules, by failing to retain required documentation in the KFFF(AM) and KFFF-FM public inspection files. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000), and we grant the captioned KFFF(AM) and KFFF-FM renewal applications.

II. BACKGROUND

2. Sections 73.3526 and 73.3527 of the Rules require broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license

1 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

2 See 47 C.F.R. § 0.283.

3 See 47 C.F.R. §§ 73.3526, 73.3527.

period.⁴ Among the materials required for inclusion in the file are the Stations' quarterly issues/programs lists, which must be retained until final Commission action on the Stations' next license renewal applications.

3. Section III, Item 3, of the KFFF(AM) and KFFF-FM license renewal application forms, FCC Form 303-S, requests that the Licensee certify that the documentation required by Sections 73.3526 or 73.3527 has been placed in the Station's public inspection files at the appropriate times. The Licensee indicated "No" to that certification in each application and attached an exhibit explaining that as of October 1, 2004, the public files for neither KFFF(AM) nor KFFF-FM contained the issues/programs lists required by 73.3526 and 73.3527. In response to a staff inquiry letter dated March 25, 2005,⁵ Licensee filed an amendment to each application on April 25, 2005, stating that it had located misplaced files that contained most of the required information and had obtained the remainder of the information from programming sources.⁶ Licensee also provided Commission staff with copies of the recreated and previously misplaced public inspection file materials. Licensee states that, as of April 15, 2005, all such information for the past license term has been placed in the Stations' public files. On February 15, 2006, the Commission issued a second *Public Notice* of each application's acceptance, providing members of the public and other interested parties a new, more meaningful 90-day period to review each Station's performance, given their public inspection files then contained all relevant materials.

III. DISCUSSION

4. *Proposed Forfeiture.* As the Licensee has acknowledged, at the time of filing of the KFFF(AM) and KFFF-FM license renewal applications and during the preceding license term, the Stations' public inspection files did not contain any of the items required to be retained in the file by Sections 73.3526 and 73.3527 of the Rules. In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁷

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁸ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

⁴ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

⁵ *Letter to Peter Gutmann, Esquire*, Reference 1800B3-JWR (Chief, Audio Division, Media Bureau, Mar. 25, 2005).

⁶ In response to an August 10, 2005, verbal inquiry made by Commission staff, Licensee filed an additional amendment for each Station on August 16, 2005, indicating that it was able to locate the issues-programs lists for the following quarters which had been created but were misplaced: all four quarters of 1997, all four quarters of 1998, and the first three quarters of 1999. Lists for the remaining quarters were recreated from information retrieved from each Station's programming sources.

⁷ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Letter, 7 FCC Rcd 6361 (FOB 1992).

⁸ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

⁹ 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ Section 312(f)(2) of the Act provides that “[t]he 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.”¹²

6. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of the public file rules.¹³ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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 such other matters as justice may require.”¹⁴

7. In this case, although the Licensee admitted to the violations, it did so only in the context of the question contained in its captioned license renewal applications that compelled such disclosure. Moreover, the violations were extensive, occurring over the entire eight-year license term. Considering the record as a whole, we believe that a \$10,000 forfeiture for each Station is appropriate for the violations in this case. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$20,000 for its apparent willful and repeated violation of Sections 73.3526 and 73.3527.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁵ That Section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁶ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁷

9. We find that the Licensee’s apparent violations of Sections 73.3526 and 73.3527 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁸ Further, we find

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 312(f)(2).

¹³ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁴ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

¹⁵ 47 U.S.C. § 309(k).

¹⁶ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ For example, we do not find here that the Licensee’s station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we

that Stations KFFF(AM) and KFFF-FM served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal applications below.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Boone Biblical Ministries, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for its apparent willful and repeated violation of Sections 73.3526 and 73.3527 of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Boone Biblical Ministries, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed 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, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹

16. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal applications of Boone Biblical Ministries, Inc. for Stations KFFF(AM), Boone, Iowa (File No. BR-20041001AHF) and KFFF-FM, Boone, Iowa (File No. BR-20041001AHK) ARE GRANTED.

find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

¹⁹ See 47 C.F.R. § 1.1914.

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Boone Biblical Ministries, Inc., 924 West 2nd Street, Boone, Iowa 50036, and to the Licensee's counsel, Gregg P. Skall, Esquire, Womble, Carlyle, Sandridge & Rice LLP, 401 I Street, N.W., 7th Floor, Washington, DC 20005-2225.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau