

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

In the Matter of)	
)	Facility ID No. 64431
T.C.W. Broadcasting, Inc.)	NAL/Acct. No. MB20041810072
)	File No. BR-20040326AAH
Licensee of Stations WTCW(AM))	
Whitesburg, Kentucky)	Facility ID No. 64430
and)	NAL/Acct. No. MB200418173
WXXQ(FM))	File No. BR-20040326AAG
Whitesburg, Kentucky)	
)	FRN: 0001789635

FORFEITURE ORDER

Adopted: June 24, 2008

Released: June 25, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000), to T.C.W. Broadcasting, Inc. (“Licensee”), licensee of Stations WTCW(AM), Whitesburg, Kentucky, and WXXQ(FM), Whitesburg, Kentucky (collectively, the “Stations”), for its willful and repeated violation of Section 73.3536 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for each Station.

II. BACKGROUND

2. On August 5, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture (“NAL”), each in the amount of three thousand dollars (\$3,000) to Licensee for these violations, for a total of \$6,000.² Licensee filed a Request for Reduction or Cancellation of Proposed Forfeiture (“Request”) on September 2, 2004.

3. On March 26, 2004, Licensee filed an application to renew the licenses of the Stations. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527 of the Rules, as applicable, has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, filing an Exhibit explaining that the issues/programs lists for first through fourth quarters of 2003, and the ownership report for 2003, were not in the Stations’ public files. On August 5, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$6,000 for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that, by its admission, all

¹ 47 C.F.R. § 73.3539.

² *Letters to John Garziglia, Esq. from Peter Doyle*, reference 1800B3-SS (MB August 5, 2004).

issues/programs lists for 2003, as well as the 2003 ownership report, were missing from the Stations' public inspection files.³ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because that the public interest was not harmed during the subject license term. In support of this claim, Licensee asserts that: (1) no members of the public visited the Stations to view their public files during the period of April 10, 2003, to January 10, 2004; (2) both Stations broadcast issue-responsive programming during the subject license term; (3) the Stations' 2003 issues/programs lists and ownership reports were on the Stations' premises, but were simply not in the public file; (4) the Stations are now in compliance with Section 73.3526 of the Rules and have instituted a program that will ensure future compliance; and (5) under the Kentucky Broadcaster's Association Alternative Broadcast Inspection Program, the Stations were found to be in full compliance with the Rules as of August 20, 2002. Licensee further asserts that it is essentially being fined twice for the same violation, since the Stations simulcast some of the same programming. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeitures.

III. DISCUSSION

5. The forfeiture amounts proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.⁷

6. Licensee does not dispute that it failed to maintain a complete public file for the Stations, but states that the public was not harmed as a result of these violations. It is, however, a well established and long-standing principle that the absence of public harm is not considered a mitigating factor in a Rule violation.⁸ Moreover, we reject Licensee's argument that it was fined twice for the same Rule violation. Consistent with our *Forfeiture Policy Statement*, we considered the violations at each Station separately and assessed the respective forfeiture amounts accordingly.⁹

7. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁰ and

³ The Commission granted the above-referenced license renewal applications on August 5, 2004.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *See, e.g., Southern New Mexico Radio Foundation*, Forfeiture Order, 2008 WL 2129710 (EB 2008). While we commend Licensee for passing the Kentucky Broadcaster's Association Alternative Broadcast Inspection Program, this voluntary audit program only provides a snapshot of Licensee's compliance with the Rules and does not cover the whole license term, as the renewal form does (in accordance with Section 309(k) of the Act). *See* 47 U.S.C. § 309(k). Accordingly, we decline to reduce the forfeiture amount on this basis.

⁹ *See, e.g., Ricardo Samitier Miami, Florida*, Notice of Apparent Liability, 7 FCC Rcd 6002, 6002 (FOB 1992) (finding the unauthorized operation of two unlicensed broadcast stations to constitute two separate violations).

¹⁰ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-

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repeatedly¹¹ violated Section 73.3526 of the Rules at each Station and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹² that T.C.W. Broadcasting, Inc., SHALL FORFEIT to the United States the sum of \$6,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Stations.

9. 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹³

10. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Terry E. Forcht, T.C.W. Broadcasting, Inc., 200 South Kentucky Ave., Corbin, Kentucky 40701, and to its counsel, John Garziglia, Esq., Womble Carlyle Sandridge & Rice, PLLC, 1401 Eye St., Suite 700, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4387-88.

¹¹ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹³ *See* 47 C.F.R. § 1.1914.