

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

In the Matter of)	
)	Facility ID No. 31872
ROA Licenses, LLC)	NAL/Acct. No. MB20041810095
)	FRN: 0006583447
Licensee of Station WJZZ-FM)	File No. BRH-20031201ARQ
Roswell, Georgia)	

FORFEITURE ORDER

Adopted: July 28, 2008

Released: July 29, 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 seven thousand two hundred dollars (\$7,200), to ROA Licenses, LLC (“Licensee”), licensee of Station WJZZ-FM, Roswell, Georgia (“Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On October 20, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to Licensee for this violation.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on December 3, 2004.

3. On December 1, 2003, Licensee filed an application to renew the license of the Station. 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, attaching an exhibit explaining that the following issues/programs lists were not in the Station’s public files: all four quarters in 1999 and 2001; the first and second quarters in 2002, and the first and second quarters in 2003. On October 21, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that, by its admission, twelve issues/programs lists were missing from the Station’s public inspection file.³ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee asserts that a forfeiture reduction is warranted because, subsequent to receiving the NAL, it discovered that several of the issues/programs lists listed above were, in fact, available at the Station (but not in the Station’s public file). Licensee further argues that a forfeiture reduction is warranted because it took immediate corrective action upon learning that it was not in compliance with the Commission’s public file Rules and implemented new measures to ensure future

¹ 47 C.F.R. § 73.3539.

² *Letter to Sonya M. Hall-Harris, Esq. from Peter Doyle*, reference 1800B3-MH (MB Oct. 21, 2004).

³ The Commission granted the above-referenced license renewal application on October 21, 2004.

compliance. Finally, Licensee asserts that a forfeiture reduction is warranted because of its history of compliance with the Commission's Rules.

III. DISCUSSION

5. The forfeiture amount 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 first argues that it should be relieved of liability for its failure to have maintained copies of the issues/programs lists for the second through fourth quarter of 1999 and the first through fourth quarter of 2001 because, subsequent to the issuance of the NAL, Licensee discovered that these documents were located elsewhere at the Station during the subject license term. Licensee claims that the Station's call sign changed twice during the subject license term and that Station personnel mistakenly maintained documents created under the Station's prior call signs in separate files that were kept adjacent to the public file. Licensee states that after discovering this error, the issues/programs lists were moved back into the Station's public file. Licensee argues that the forfeiture amount should be reduced in proportion to the number of issues/programs lists that were located at the Station but listed as missing in its renewal application.

7. This argument lacks merit. Section 73.3526 of the Rules clearly states that issues/programs lists are to be kept *in* a station's public file.⁸ The intent behind this Rule is to facilitate public access to such documents.⁹ To require an individual member of the public to examine the public file and to then identify for station personnel what is missing from it clearly is inconsistent with the intent of the Rule.¹⁰ Accordingly, the fact that the missing issues/programs lists were kept elsewhere at the Station is not a mitigating factor.

8. We further reject Licensee's argument that its implementation of new measures at the Station to ensure future compliance is a basis for reduction or cancellation of the forfeiture. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹¹

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 47 C.F.R. § 73.3526(e)(12). See also *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 1768, 1776-77 (2004) (rejecting licensee's argument that its public file was complete, despite the fact that several documents missing from the file were located elsewhere at the station); *Wilson Broadcasting, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 15963, 15965 (EB 2007) (same).

⁹ *Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd at 1776.

¹⁰ *Id.* at 1776-77.

¹¹ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that 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) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

9. 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 willfully¹² and repeatedly¹³ violated Section 73.3526 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.¹⁴

IV. ORDERING CLAUSES

10. 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,¹⁵ that ROA Licenses, LLC, SHALL FORFEIT to the United States the sum of \$7,200 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture 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.¹⁶ 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).¹⁷

¹² 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. 97-765, 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.

¹³ 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).

¹⁴ *See, e.g., Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). *See also* 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

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

¹⁶ 47 U.S.C. § 504(a).

¹⁷ *See* 47 C.F.R. § 1.1914.

12. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to: Sonya M. Hall-Harris, Esq. and Linda Vilardo, Esq., ROA Licenses, LLC, 5900 Princess Garden Parkway, Lanham, MD 2076, and to its counsel, Eve Klindera Reed, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau