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

In the Matter of	)	
	)	Facility ID No. 22027
FRANK NEELY	)	NAL/Acct. No. MB20041810024
	)	FRN: 0008498685
Licensee of Station WGIV(AM)	)	File No. BR-20030730AHA
(formerly Station WLTC(AM))	)	
Gastonia, North Carolina		

FORFEITURE ORDER

Adopted: August 5, 2008 **Released: August 6, 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 nine thousand dollars ($9,000) to Frank Neely ("Neely"), licensee of Station WGIV(AM), Gastonia, North Carolina (the "Station"), for his willful and repeated violation of Section 73.3526 of the Commission's Rules (the "Rules").[1] The noted violation involves Neely's failure to maintain station WGIV(AM)'s public inspection file.

II. BACKGROUND

2. On June 21, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture ("*NAL*") in the amount of nine thousand dollars ($9,000) to Neely.[2] Neely filed a response requesting cancellation of the forfeiture (the "Response") on July 18, 2004.

3. As noted in the *NAL*, 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, as applicable, has been placed in the station's public inspection file at the appropriate times. Neely indicated "No" to that certification, filing an amendment to his Exhibit explaining that the issues/program lists from April 1998 through the first quarter of 2003 - the period of Neely's tenure as licensee[1] — were missing. Neely states that all issues/programs lists have been placed in the public file from the second quarter of 2003 to the present and that steps have been taken to assure that in the future all quarterly lists are timely prepared and placed in the public file.

---

[1] 47 C.F.R. § 73.3526.

[2] *Letter to David Tillotson Esq. from Peter Doyle, Chief, Audio Division*, reference 1800B3 (June 21, 2004).

4. In his Response, Neely maintains that the proposed forfeiture should be cancelled on the ground of his inability to pay. Specifically, Neely states that, along with WGIV(AM), he operates stations WGCD(AM) and WAAW(AM) through the entity Rejoice Radio, Inc. ("RRI"), and that the stations operated at a loss during the three year period 2001 through 2003. Neely also asserts that the forfeiture is excessive in that the amount is not in proportion to the seriousness of the violation, and that the forfeiture amount contravenes *Melody Music,*[3] in that Neely is not being treated the same as those in similar cases. Neely's counsel also asserts that he conducted an informal survey among his clients which established that the public has no interest in the content of station issues/programs lists, which undermines the Commission's "assumption" that the lists serve the "critical function or getting important information to the public," thus rendering the forfeiture excessive.

III. DISCUSSION

5. Section 73.3526 of the Rules requires that certain items be retained in the public file, including quarterly issues/programs lists. We determine that Neely willfully and repeatedly violated Section 73.3526 of the Rules based on his admission that the issues/program lists, from April 1998 through the first quarter of 2003, were missing.

6. Initially, we disagree with Neely's assertions, attempting to undermine the importance of the issues/programs lists. The "issues/programs" lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.[4] The Commission's public information file rule also safeguards the public's ability to assess the station's service and to meaningfully participate at the station's renewal process, and ensure the station's accessibility to and nexus with its community, to serve and respond to community programming needs.[5] As such, the public information requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations.[6] In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the public's ability to determine and comment on whether the station is serving the community."[7] Therefore, the violation is not mitigated by the licensee's perception that no harm was committed by the omission of the list. Furthermore, the proper proceeding to address Neely's arguments regarding the significance of the issues/programs lists is a rulemaking proceeding, not the results of an informal survey submitted in the context of his Response.

---

[3] 345 F. 2d 730 (D.C. Cir. 1965).

[4] *See Normandy Broadcasting Corp. and Lawrence N. Brandt*, Initial Decision, 8 FCC Rcd 1, 14 ALJ 1992), citing *Formulation of Policies and Rules to Broadcast Renewal Applicants, Third Further Notice of Inquiry and Notice of Proposed Rule Making*, 4 FCC Rcd 6363, 6365 (1989).

[5] See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

[6] *See* 47 U.S.C. § 307(a).

[7] *See Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

7. As noted in the *NAL*, the proposed forfeiture amount in this case was determined in accordance with Section 503(b) of the Act,[8] Section 1.80 of the Rules,[9] and the Commission's *Forfeiture Policy Statement.*[10] In considering Neely's Request, Section 503(b) of the Act requires that the Bureau 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.[11]

8. Neely argues that the forfeiture amount is inconsistent with that issued to licensees in similar situations. We disagree. It is undisputed that Neely's public file was incomplete for four years, the entire portion of the renewal term for which Neely was licensee of the Station,[12] and involved 16 missing sixteen issues/programs lists. The $9,000 forfeiture proposed is consistent with prior forfeitures for similar violations.[13]

9. Neely also asserts that payment of the proposed $9,000 forfeiture would result in a financial hardship. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflected the party'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.[14]

10. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.[15] In support of his request for cancellation of the forfeiture, Neely states that his stations operated at a loss

---

[8] 47 U.S.C. § 503(b)

[9] 47 C.F.R. § 1.80.09

[10] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (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.

[11] 47 U.S.C. § 503(b)(2)(D).

[12] Neely acquired WGIV(AM) on April 1, 1998. *See* Application No. BAL 19980209EK, granted on March 26, 1998.

[13] *See Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd ____, DA 08-1655 (MB Jul. 15, 2008) citing *Faith Baptist Church, Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) ($10,000 forfeiture issued for eleven missing issues/programs lists); *Geneva Broadcasting, Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 (MB 2006) (same).

[14] *See Discussion Radio, Inc*., 19 FCC Rcd 7433, 7441 (2004).

[15] *Id*.

during the three year period 2001 through 2003, and submits unsigned copies of RRI's[16] 2001, 2002 and 2003 federal income tax returns, specifying gross revenues of $273,374, $353,724, and $416,646, respectively.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits adequate documentation to support its claim. Neely failed to submit acceptable documentation, providing only unsigned tax returns for 2001, 2002 and 2003, therefore, we have no basis on which to analyze his claim.[17] Accordingly, no reduction or cancellation is warranted on the basis of an inability to pay.[18]

12. We have examined Neely's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Neely willfully[19] and repeatedly[20] violated Section 73.3526 of the Commission's Rules. We find that there is no basis for cancellation of the proposed monetary forfeiture.[21]

IV. ORDERING CLAUSES

13. 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,[22] that Frank Neely SHALL FORFEIT to the United States the sum of $9,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

14. 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*

[16] The name on the tax returns is "Rejoice, Inc. "

[17] *Cf. Portland Taxicab Company*, Forfeiture Order, 19 FCC Rcd 22511 (2004).

[18] In analyzing economic-hardship claims, the Commission generally looks to companies' gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures. The Commission has stated that if companies' gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify inability to pay. *See Greenwood Acres Baptist Church,* Forfeiture Order, 19 FCC Rcd 9838 (EB 2004). Based on the sufficiency of Neely's gross revenues, he would not have demonstrated that he was unable to pay the forfeiture. *See, e.g., PJB Communications of Virginia, Inc.,* Memorandum Opinion and Order , 7 FCC Rcd 2088, 2089 (1992)(forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation,* Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

[19] 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied,* 7 FCC Rcd 3453 (1992) ("*Southern California"*).

[20] 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).

[21] *See PJB Communications of Virginia, Inc., et al. supra*.

[22] 47 C.F.R. §§ 0.283, 1.80.

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.[23] 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 St, SW, Room 1-A625, Washington, DC 20554.[24]

[23] 47 U.S.C. § 504(a).

[24] *See* 47 C.F.R. § 1.1914.

15. 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 Frank Neely, P.O. Box 861, Rock Hill, South Carolina 29731, and to his counsel, David Tillotson, Esq., 4606 Charleston Terrace N.W., Washington, DC 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau