

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

In the Matter of	)	
	)	
<b>LASALLE COUNTY BROADCASTING CORPORATION</b>	)	
	)	
Licensee of Station WKOT(FM)	)	Facility ID No. 3958
Marseilles, Illinois	)	NAL/Acct. No. MB20041810097
	)	FRN 0002861573
	)	File No. BRH-20040729ARR

**FORFEITURE ORDER**

**Adopted: August 27, 2008**

**Released: August 28, 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 LaSalle County Broadcasting Corporation (“Licensee”), licensee of Station WKOT(FM), Marseilles, Illinois (the “Station”), for its willful and repeated violation of Section 73.3526 of the Commission Rules (the “Rules”)<sup>1</sup> by failing to properly maintain the public file.

**II. BACKGROUND**

2. On December 22, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”), in the amount of nine thousand dollars (\$9,000) to Licensee for the violations. Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on January 21, 2005.

3. On July 29, 2004, 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 it discovered in June 2004 that 28 Quarterly Programs and Issues lists were missing from the public file. Specifically, the licensee determined that the following lists were missing: in 1996, quarters three and four; in the years 1997-2002, all quarters; and in 2003, quarters one and two. LaSalle's Vice President, Joyce McCullough, states that she saw some of the missing reports, but does not know what happened to them. McCullough speculates that the missing reports were discarded during staff turnover. LaSalle has since recreated the missing Programs and Issues lists and placed these lists into WKOT(FM)'s public file with a memorandum indicating that they were added late. The licensee has instituted new reporting procedures to insure that future lists are timely

<sup>1</sup> 47 C.F.R. § 73.3526

placed in WKOT(FM)'s public file. On December 22, 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, twenty eight issues/programs lists were missing from the station's public inspection file over a seven year period. In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that the forfeiture assessed against it is in excess of those imposed on other licensees for violations similar to or more serious in nature, in contravention of *Melody Music, Inc. v. FCC*.<sup>2</sup> Licensee asserts that the alleged inconsistency in the forfeiture amount may be attributed, although not exclusively, to the Bureau making a distinction between commercial and non-commercial service, which is "unsupportable." Licensee also maintains that it has reconstructed its public file so that it is now complete, and that in light of Licensee's "previously spotless" record of compliance with the rule, and its remedial efforts to prevent any future violations, the forfeiture should be reduced.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and the Commission's *Forfeiture Policy Statement*.<sup>5</sup> 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.<sup>6</sup>

6. Licensee argues that we should reduce the forfeiture because the forfeiture amount is inconsistent with that issued to licensees in similar situations. We disagree. It is undisputed that Licensee's public file was incomplete for seven years, missing twenty-eight issues/programs lists. The \$9,000 forfeiture issued to the Station is consistent with prior forfeitures for similar violations.<sup>7</sup> Furthermore, contrary to Licensee's assertion, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.<sup>8</sup> Moreover, we reject Licensee's argument that its implementation of new measures at the Station to ensure future

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<sup>2</sup> 345 F.2d 730 (D.C. Cir. 1965).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. 1.80.

<sup>5</sup> *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).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> See *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, -- FCC Rcd --, DA 08-1655, Released July 15, 2008 (MB 2008) *citing footnote 14, 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).

<sup>8</sup> See *Bible Broadcasting Network, Inc.*, Forfeiture Order, -- FCC Rcd --, Released June 6, 2008 (MB 2008) (Staff rejects Licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation*, Memorandum, Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station").

compliance is a basis for reduction. 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.<sup>9</sup>

7. We also reject Licensee's argument regarding its "previously spotless" record of compliance with the rules. Licensee disclosed in the license renewal application for the Station that it had retained no issues-programs lists in the Station's public inspection files for seven years of the eight-year license term. It disclosed identical violations in the license renewal applications of Stations WLPO(AM) and WAJK(FM), LaSalle, Illinois.<sup>10</sup> Thus, the Licensee failed to comply with Section 73.3526 of the Rules for nearly all of the license term at three separate stations. We therefore cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.<sup>11</sup>

8. 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 willfully<sup>12</sup> and repeatedly<sup>13</sup> violated Section 73.3526 of the Rules. We find that there is no basis for reduction of the proposed monetary forfeiture.

#### IV. ORDERING CLAUSES

9. 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,<sup>14</sup> that LaSalle County Broadcasting Corporation SHALL FORFEIT to the United States the sum of \$9,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Stations.

10. 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

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<sup>9</sup> *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 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

<sup>10</sup> See Application Nos. BR-20040729ARP and BRH-20040729ART, Section III, Item 3 and Exhibit 11. The staff issued a \$9,000 NAL to the Licensee on December 22, 2004 for violation of Section 73.3526 of the Rules at these stations. *Letters to Harry C. Martin from Peter Doyle*, reference 1800B3-KV (MB Dec. 22, 2004). We are this same date issuing a *Forfeiture Order* affirming the forfeiture amount for the violations at WLPO(AM) and WAJK(FM).

<sup>11</sup> *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination).

<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> 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.<sup>16</sup>

11. 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 LaSalle County Broadcasting Corporation, P.O. Box 215, LaSalle, Illinois 61301 and to its counsel, Harry C. Martin, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17<sup>TH</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> See 47 C.F.R. § 1.1914.