

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

In the Matter of
WGSO, L.L.C.
Licensee of Station WGSO(AM),
New Orleans, Louisiana
Facility ID No.52433
NAL/Acct. No. MB-AD20041810055
FRN 0007637481
File No. BR-20040202AGY

FORFEITURE ORDER

Adopted: September 26, 2008

Released: September 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 nine thousand dollars (\$9,000) to WGSO, L.L.C. ("Licensee"), licensee of Station WGSO(AM), New Orleans, Louisiana ( the "Station"), for its willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules")<sup>1</sup> by failing to properly maintain a public file for the Station.

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 Licensee for the violation.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture ("Request") on July 21, 2004, and a Supplement to Request for Reduction, requesting additional reductions, on March 20, 2006.

3. On February 2, 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 when it was preparing to file its 2004 renewal application, it discovered that ten Quarterly Issues and Programs lists were missing from the public files. Specifically, the licensee determined that lists were missing for September 2000 through January 2003. Also missing was WGSO's contour map. In addition, the 2003 Biennial Ownership report was untimely placed in the file. Licensee indicated that it has since recreated the missing Issues and Programs lists and placed these lists into the Station's public file. It also indicated that it placed a new copy of the contour map in the file. With respect to the ownership report, Licensee stated that it waited to file the report until consummation of its transfer of control application, which occurred on April 3, 2003. Licensee stated that

<sup>1</sup> 47 C.F.R. § 73.3526

<sup>2</sup> Letter to Joseph C. Chautin from Peter Doyle, reference 1800B3-KV (MB June 21, 2004) (the "Letter").

it placed the ownership report in the station's public file at that time. On June 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, ten Issues and Programs lists, were missing from Station WGSO's public inspection file over a two year period, its contour map was missing for an undefined length of time, and the 2003 Biennial Ownership report was placed in the file two months past the filing deadline. In response, Licensee filed the subject Request and Supplement.

4. In support of its Request, Licensee states that the forfeiture amount should be reduced to take into account its history of overall compliance with the Commission's Rules. In its Supplement, Licensee states that the forfeitures assessed against it are in excess of those imposed on other licensees for violations similar to or more serious in nature.<sup>3</sup> Licensee also states that a 25% reduction in the forfeiture amount is warranted based on its voluntary disclosure of the public file deficiencies.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</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>7</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 files were incomplete for 2 years and 4 months, missing ten Issues and Programs lists, as well as a contour map and ownership report. The \$9,000 forfeiture issued to the Station is consistent with prior forfeitures for similar violations.<sup>8</sup>

7. In addition, we reject Licensee's argument regarding its history of compliance with the rules. Licensee disclosed in the Station's license renewal application that it had retained no Issues and Programs lists in the Station's public inspection files for well over two years of the eight-year license term. We note that at the time of the violations,<sup>9</sup> Licensee was 100% owned by MC Media, L.L.C., which also owned 100% of WFNO, L.L.C., licensee of Station WFNO, Norco, Louisiana. On February 2, 2004,

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<sup>3</sup> *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. 1.80.

<sup>6</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>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> See *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10927, (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>9</sup> Both stations have since been sold. See File Nos. BAL-20070216AAW (assignment of license of Station WGSO(AM), New Orleans, LA, from WGSO, L.L.C., to Northshore Radio, L.L.C., granted on April 13, 2007) and BAL-20060922ACQ (assignment of license of Station WFNO(AM), Norco, LA, from WFNO, L.L.C., to Davidson Media Station WFNO, granted on November 8, 2006).

WFNO, L.L.C. disclosed a public file violation including ten issues and programs list, and a late-filed ownership report and missing station license in WFNO(AM)'s license renewal application.<sup>10</sup> We therefore cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.<sup>11</sup>

8. We also reject Licensee's contention that a 25% reduction is warranted based on its "voluntary disclosure" of the WGSO(AM) deficiencies. Although the licensee admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that compelled such disclosure.<sup>12</sup>

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 willfully<sup>13</sup> and repeatedly<sup>14</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

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,<sup>15</sup> that WGSO, L.L.C. 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 Station.

11. 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/Act. 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

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<sup>10</sup> See Application No. BR-200400202ANT, Section III, Item 3 and Exhibit 11. The staff issued a \$9,000 NAL to the Licensee on February 22, 2006 for this violation of Section 73.3526 of the Rules. *Letter to Joseph C. Chautin from Peter Doyle*, reference 1800B3-SS (MB Feb. 22, 2006). We are this same date issuing a *Forfeiture Order* affirming the forfeiture amount for the violation at WFNO(AM).

<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> Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *Faith Baptist Church, Inc.*, 22 FCC Rcd at 9148; *Geneva Broadcasting, Inc.*, 21 FCC Rcd at 10644.

<sup>13</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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

<sup>14</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>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

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).

12. 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 WGSO, L.L.C., 111 Veterans Boulevard, Suite 1810, Metairie, Louisiana, 70005, and to its counsel, Joseph Chautin, III, Hardy, Carey, Chautin and Balkin, LLP, 1080 West Causeway Approach, Mandeville, Louisiana, 70471.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau