

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

In the Matter of
Sun Valley Radio, Inc.
Licensee of Station KKEX(FM),
Preston, Idaho
Facility ID No.63834
NAL/Acct. No. MB20051810113
FRN 0001600659
File No. BRH-20050601AZK

FORFEITURE ORDER

Adopted: October 28, 2008

Released: October 30, 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 Sun Valley Radio, Inc. ("Sun Valley"), licensee of Station KKEX (FM), Preston, Idaho (the "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 November 18, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL"), in the amount of nine thousand dollars (\$9,000) to Sun Valley for the violation.² KKEX filed a Request for Cancellation or Reduction of Forfeiture ("Request") on December 16, 2005.

3. On June 1, 2005, Sun Valley 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. Sun Valley indicated "No" to that certification, attaching an Exhibit explaining that, when it was preparing to file its 2005 renewal application, it discovered that it was missing Quarterly Issues and Programs lists prior to the fourth quarter of 2004.³ Sun Valley indicated that it has since recreated the missing Issues and Programs lists and placed these lists into the Station's public file. On November 18, 2005, the staff advised Sun Valley 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, four years of Issues and Programs lists were missing from Station KKEX's public inspection file. In response, Sun Valley filed the subject Request.

¹ 47 C.F.R. § 73.3526.

² Letter to David Oxenford, Esq., from Peter H. Doyle, Chief, Audio Division, Media Bureau, reference 1800B3-SS (MB Nov. 18, 2005) (the "Letter").

³ The Station received its initial license on July 27, 2000. See File No. BLH-19960213KC, granted on July 20, 2000.

4. In support of its Request, Sun Valley states that the forfeiture amount assessed against it is in excess of those imposed on other licensees for violations similar to or more serious in nature than Sun Valley's violation;⁴ that the forfeiture amount should be reduced to take into account its history of overall compliance with the Commission's Rules; that there was no public harm since no member of the public requested to see the Issues and Programs list; that the forfeiture should be reduced or cancelled since co-owned stations were in compliance with the Rules; that its corrective actions warrant a reduction; and that a 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,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

6. Sun Valley 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 Sun Valley's public files were incomplete for four years, missing all Issues and Programs lists prior to the fourth quarter of 2004. The \$9,000 forfeiture issued to the Station is consistent with prior forfeitures for similar violations.⁹

7. In addition, we reject Sun Valley's argument regarding its history of compliance with the rules. Sun Valley 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 four years. We note that at the time of the violations, Sun Valley was licensee of Station KBLQ, Logan, Utah. On June 6, 2005, Sun Valley disclosed a public file violation including several years of missing Issues and Programs lists in

⁴ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10927 (MB 2008) citing *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 n.14 (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); *WGSO, L.L.C.*, Forfeiture Order, 2008 WL 4403051, (MB 2008) (\$10,000 forfeiture issued for 10 missing issues/programs lists).

KLBQ(FM)'s license renewal application.¹⁰ We therefore cannot find that Sun Valley's history of compliance warrants reduction of the forfeiture amount.¹¹

8. We likewise reject Sun Valley's argument that the forfeiture should be reduced or cancelled because there was no "public harm" since no member of the public asked to review the station's public file. As we discussed at length in *Faith Christian Music Broadcast Ministries*,¹² Issues/Programs lists provide both the Commission and the listening public with important information regarding the extent to which a station has met the needs and interests of its community during the prior license term, and therefore, whether license renewal is warranted.¹³ The rule also is designed to facilitate the airing of programming responsive to community needs.¹⁴ As such, these requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations.¹⁵ The harm, inability to provide full information to the public, exists whether or not a member of the public requests to inspect the public inspection file.¹⁶

9. We also reject Sun Valley's contention that a further reduction is warranted based on its "voluntary disclosure" of the KKEX (FM) 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.¹⁷

10. Sun Valley further argues that the forfeiture should be cancelled or reduced since Stations KVFX and KLZX, both of which it also owns, shared resources with KKEX, and were all located in the same office space as KKEX, were in compliance with Section 73.3526 and maintained their Issues and Programs lists for public inspection. We are not persuaded by Sun Valley's argument. Section 73.3526 of the Rules is clear that each station must maintain a separate public inspection file. KKEX cannot share its Issues and Programs lists with KVFX or KLZX. The lists identify programming, which addresses the needs of the communities of license, which in this case are not the same.¹⁸ We therefore find no merit to Sun Valley's argument that KVFX and KLZX's compliance excuse KKEX's non-compliance.

¹⁰ See Application No. BRH-20050601AZP, Section III, Item 3 and Exhibit 11. The staff issued a \$9,000 NAL to Sun Valley on November 18, 2005 for this violation of Section 73.3526 of the Rules. *Letter to David Oxenford, Esq., from Peter H. Doyle, Chief, Audio Division, Media Bureau*, reference 1800B3-SS (MB Nov. 18, 2005). We are this same date issuing a *Forfeiture Order* affirming the forfeiture amount for the violation at KBLQ(FM).

¹¹ *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).

¹² *Faith Christian Music Broadcast Ministries, Inc.*, Forfeiture Order, 20 FCC Rcd 19051, 19053. (2005).

¹³ See *Normandy Broadcasting Corp. and Lawrence N. Brandt* 8 FCC Rcd 1, 14 (1992), citing *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice, 4 FCC Rcd 6363, 6365 (1989).

¹⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁵ See 47 U.S.C. § 307(a).

¹⁶ *Wilson Broadcasting, Inc.*, Forfeiture Order, 22 FCC Rcd 15963 (EB 2007).

¹⁷ 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.

¹⁸ *Wilson Broadcasting, Inc.*, 22 FCC Rcd at 15965.

11. Sun Valley also argues that it is entitled to a cancellation or reduction of its forfeiture on the basis that it took corrective action following the discovery of the station's deficiencies. We reject this argument. While we recognize Sun Valley'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.¹⁹

12. We have considered Sun Valley's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Sun Valley willfully²⁰ and repeatedly²¹ violated Section 73.3526 of the Rules. We find that there is no basis for reduction of the proposed monetary forfeiture.

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 Sun Valley Radio, Inc. SHALL FORFEIT to the United States the sum of nine thousand dollars (\$9,000) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Station.

14. 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).

¹⁹ *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)).

²⁰ 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*").

²¹ 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).

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

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 Sun Valley Radio, Inc., P.O. Box 570, Logan, UT 84321, and to its counsel, David D. Oxenford, Esq., Davis Wright Tremaine LLP, Suite 200, 1919 Pennsylvania Avenue, N.W., Washington, DC 20006

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau