



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

November 14, 2008

DA 08-2508

In Reply Refer to:

1800B3-VM

NAL/Acct No.: MB20041810026

FRN: 0001754217

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Harry C. Martin, Esq.
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1300 North 17th Street
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In re: WQEM(FM), Columbiana, AL
Glen Iris Baptist School
Facility ID: 41641
File No. BRED-20031206BQL

Dear Mr. Martin:

The Chief, Audio Division, has before him the July 13, 2004, letter filed on behalf of Glen Iris Baptist School ("Glen Iris"), licensee of Station WQEM(FM), Columbiana, Alabama.¹ The Response requests reduction or cancellation of a June 21, 2004, Notice of Apparent Liability for a Forfeiture ("NAL") in the amount of three thousand dollars (\$3,000) for violations of Section 73.3527² of the Commission's Rules (the "Rules") regarding Glen Iris's failure to maintain station WQEM(FM)'s public inspection file.³ By this action, we cancel the NAL and admonish Glen Iris for violating Section 73.3527 of the Rules.

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. Glen Iris indicated "No" to that certification, attaching an Exhibit 11 supplement explaining that it purchased the station on January 22, 2003, and that when it reviewed the public file in connection with the renewal, it found no issues/programs lists for the entire term, from April 1, 1996, through December 31, 2002, predating Glen Iris's ownership of the Station. It stated that it had recreated the issues/programs lists for which it would have been responsible as licensee, all four quarters of 2003, and placed them in the public file. In its Exhibit 11 supplement, Glen Iris also notes that it has instituted a system to avoid this omission in the future.

¹ Response to Notice of Apparent Liability for Forfeiture, filed by Glen Iris Baptist School, on July 13, 2004 ("Response").

² 47 C.F.R. § 73.3527.

³ *Letter to Harry C. Martin, Esq.*, Reference 1800B3-SS (Jun. 21, 2004).

On June 21, 2004, the Bureau issued the NAL for a violation of Section 73.3526 of the Rules for its failure to maintain an issues/programs list for the four quarters of 2003. On July 13, 2004, Glen Iris submitted a response to the NAL seeking reduction of the proposed forfeiture based on forfeitures levied on other licensees with similar violations. Glen Iris asserts that the Commission's basis for the forfeiture is based on the incorrect assumption that it failed to maintain its issues/programs lists for four quarters. It points out that, although it prepared and filed the fourth quarter's issues/programs list prior to filing its renewal application, it was not required to do so until January 10, 2004, which was after the renewal deadline of December 1, 2003. Accordingly, it contends that its forfeiture should be based on three, rather than four, missing issues/programs lists.⁴ Glen Iris argues that it did keep records of all its programming, albeit not in the form required by Section 73.3527 of the Rules, and that, in light of the circumstances here, the forfeiture amount is excessive.

The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and The Commission's *Forfeiture Policy Statement*.⁷ In examining Glen Iris's response, Section 503(b) of the Act requires that the Commission 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.⁸

Section 73.3527 of the Rules requires commercial broadcast stations to maintain a public inspection file containing, among other things, "radio issues/programs lists."⁹ It is undisputed that the issues/programs list for the first three quarters of 2003 were missing from the WQEM(FM) public inspection file from the time Glen Iris took ownership of the station on January 22, 2003, until it reviewed the file in preparation for the renewal application in December 2003. Glen Iris contends that it is a school-operated station with no professional management whose staff was unaware of the requirement to maintain an issues/programs list, but that it has recreated all of the documents it was required to maintain during its short tenure as licensee. However, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the non-commercial status of a station.¹⁰ Furthermore, where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee,

⁴ See Response at 3. Glen Iris consents to payment of a \$1,000 forfeiture for the three missing issues/programs lists. *Id.*

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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) ("*Forfeiture Policy Statement*").

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. §§ 73.3527(a), 73.3527(e)(8).

¹⁰ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd. 8743 (MB 2008) (rejecting argument that forfeiture should be cancelled or reduced because of 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").

excuse or nullify a licensee's rule violation.¹¹ We conclude that willfully¹² and repeatedly¹³ violated Section 73.3527 of the Rules.

Glen Iris posits that its actions were mitigated by the facts that 75% of its programming was directed to community concerns through a religious talk show format, and that it kept records of all of its programming, albeit in a different form than the issues/programs list.¹⁴ We disagree. 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.¹⁵ 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.¹⁶ 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.¹⁷ 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."¹⁸ Therefore, the violation is not mitigated by the licensee's perception that no harm was committed by the omission of the issues/programs lists.

Although Glen Iris admits that it failed to maintain its public inspection file, it contends that the Commission's assessed forfeiture amount is excessive.¹⁹ We agree. At the time we issued the NAL, the forfeiture amount was based on Glen Iris's own statement that it had four missing issues/programs lists. In light of our determination that the correct number of missing issues/programs lists for which Glen Iris was responsible is three, rather than four, we will cancel the forfeiture and issue an admonishment. In adopting the forfeiture guidelines and implementing rules, the Commission stated that it "will initially assess . . . violations [of the Act and the Commission's Rules] at the statutory amount," but, as appropriate, will adjust the base amount upward or downward based on the factors set out in Section 503

¹¹ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (1999), 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); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

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 Supplement to Exhibit 11.

¹⁵ 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).

¹⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁷ See 47 U.S.C. § 307(a).

¹⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁹ Response at 3.

of the Act and particular facts presented in each case.²⁰ Although the Commission has rejected arguments that characterize violations of the public file rule as minor and deserving of reduced forfeitures,²¹ considering the record as a whole, and staff practice in similar cases, we believe that an admonishment, rather than a forfeiture, is appropriate for the violation in this case.²²

In view of the foregoing, Glen Iris's July 13, 2004, response to our June 14, 2004, NAL in the amount of \$3,000 IS GRANTED, and the Notice of Apparent Liability (NAL/Acct. No. MB-20041810026) for violation of the public inspection file rule is HEREBY CANCELLED. Glen Iris Baptist School is instead hereby ADMONISHED for its violation of 47 C.F.R. § 73.3527.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Harry C. Martin, Esq.

²⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 26.

²¹ *Id.* at 17104-05 ¶ 39.

²² See note to 47 C.F.R. § 1.80(b)(4). See also, *EZ New Orleans, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7164 (1999) (renewal granted and licensee admonished for failure to comply with public file rule); *American Family Association*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (EB 2003) (NAL cancelled and licensee admonished based on response to NAL).