

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

In the Matter of)
James J. Chladek) File No. EB-08-NY-0093
Licensee of AM Radio Station WXMC) NAL/Acct. No. 200832380011
Parsippany-Troy Hill, New Jersey) FRN: 0004 8028 80
Facility ID # 29957)

FORFEITURE ORDER

Adopted: July 24, 2009

Released: July 28, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to James J. Chladek ("Chladek"), licensee of AM radio station WXMC in Parsippany-Troy Hill, New Jersey, for willfully and repeatedly violating Section 73.3526(e)(12) of the Commission's Rules ("Rules")¹ by failing to maintain radio issues/programs lists in the public inspection file.

II. BACKGROUND

2. On his most recent license renewal application (File No. BRED-20060201AQA) for station WXMC, granted May 26, 2006, Chladek certified that the station's quarterly issues/programs lists had not been timely placed in the public inspection file, and that the licensee had taken corrective steps to ensure that all necessary documentation required to be kept in the file has been, or will immediately be, placed in the file.

3. On March 17, 2008, an agent from the Commission's New York Office conducted an inspection of radio station WXMC's main studio and transmitter located at 1 Percypenny Lane, Parsippany, New Jersey. The inspection was conducted with the station's alternate chief operator and the manager of the leased-time entity. The agent also spoke to the chief operator by phone during the inspection. The agent inspected the station's public file and found that it did not contain any quarterly radio issues/programs lists. The chief operator, alternate chief operator, and station manager all admitted to the agent that the station did not have any issues/programs lists. The agent advised the chief operator, alternate chief operator, and station manager of the violation. The chief operator stated that the required items will be placed in the public file.

¹ 47 C.F.R. § 73.3526(e)(12).

4. On June 19, 2008, the Commission's New York Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Chladek for a forfeiture in the amount of four thousand dollars (\$4,000) for willful and repeated violation of Section 73.3526(e)(12) of the Rules.² Chladek filed a response to the NAL by letter dated July 9, 2008.³ Although Chladek does not dispute the agent's findings, Chladek claims that the chief operator and assistant operator did not know that the station was required to maintain issues/programs lists. Chladek therefore requests a waiver of the forfeiture in light of the station's unique public service programming and the fact that the station is now in compliance with the Commission's Rules.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and the *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In assessing forfeitures, Section 503(b)(2)(D) 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.⁷ As discussed below, we have considered Chladek's response to the NAL in light of these statutory factors and have found that neither a cancellation nor a reduction of the proposed forfeiture amount is warranted.

6. We reject Chladek's claim that the NAL should be cancelled because the chief operator and assistant operator were not aware of the requirement to maintain an issues/programs list. Specifically, Chladek states that the chief operator and assistant operator believed that the station was not required to maintain issues/programs lists because of the public service nature of the station's programming, which is being provided by a Hispanic religious group under a Local Marketing Agreement. The Commission has consistently stated, however, that ignorance of the law is not a mitigating factor.⁸ To the extent Chladek is attempting to shift responsibility for the violation to his chief operator and assistance operator, we note that the Commission also has consistently held that licensees are responsible for the acts and omissions of their employees and independent contractors.⁹ As the licensee, Chladek is

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832380011 (Enf. Bur., New York Office, released June 19, 2008).

³ Letter from James Chladek, to New York Field Office, dated July 9, 2008.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), citing *Vernon Broadcasting, Inc.*, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, 19 FCC 2d 829 (1969).

⁹ See e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002).

ultimately responsible for the failure to maintain the issues/programs lists, not his chief operator, not his assistant operator, and not the employees of the entity with whom he entered into the Local Marketing Agreement. As evidenced by the certification in his 2006 license renewal application, Chladek is well aware of the station's obligations to maintain issues/programs lists.¹⁰ We therefore decline to reduce or cancel the forfeiture on this basis.

7. We also decline to reduce or cancel the proposed forfeiture based on Chladek's claim that, based on the nature of WXMC's programming, it is appropriate to treat WXMC differently than a station with a "broad programming agenda." The requirement to maintain issues/programs lists is not linked to a station's programming content and there is no exemption in Section 73.3526(e)(12) for stations that provide a particular type of programming. Indeed, even stations licensed as non-commercial FM stations, which must be used for the "advancement of an educational program,"¹¹ are required to maintain issues/programs lists in the same manner as commercial stations.¹²

8. We also find that reduction or cancellation is not warranted based on Chladek's remedial actions. Chladek claims that a reduction or cancellation is warranted because the station is now maintaining an issues/programs list. As the Commission has stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹³

9. We have examined Chladek's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Chladek willfully and repeatedly violated Section 73.3526(e)(12) of the Rules and that the \$4,000 forfeiture proposed in the *NAL* is warranted.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules¹⁴ that James J. Chladek **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willful and repeated violation of 47 C.F.R. § 73.3526(e)(12).

11. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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

¹⁰ As noted in paragraph 2 *supra*, Chladek certified in his 2006 license renewal application that the station's quarterly issues/programs lists had not been timely placed in the public inspection file, and that the licensee had taken corrective steps to ensure that all necessary documentation required to be kept in the file has been, or will immediately be, placed in the file.

¹¹ 47 C.F.R. § 73.503(a).

¹² *See* 47 C.F.R. § 73.3527(e)(12)

¹³ *See Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f).

Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁵ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. James J. Chladek shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to James J. Chladek's address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt.
Regional Director, Northeast Region
Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.1914.