

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

In re Applications of Boone Biblical Ministries, Inc. For Renewal of License for Stations KFFF(AM), Boone, Iowa and KFFF-FM, Boone, Iowa
NAL/Acct. No. MB200641410022
FRN: 0002591824
Facility I.D. No. 6416
File No. BR-20041001AHF
Facility I.D. No. 6417
File No. BRED-20041001AHK

FORFEITURE ORDER

Adopted: December 1, 2009

Released: December 2, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Boone Biblical Ministries, Inc. (the "Licensee"), licensee of Station KFFF(AM), Boone, Iowa, formerly, KFGQ(AM) and Station KFFF-FM, Boone, Iowa (collectively, the "Stations") for willfully and repeatedly violating Sections 73.3526 and 73.3527 of the Rules¹ by failing to retain required documentation in the KFFF(AM) and KFFF-FM public inspection files.

2. On February 12, 2007, the Bureau issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("NAL") in the amount of twenty thousand dollars (\$20,000) to Licensee for these violations.² Licensee filed a "Statement Seeking Reduction of Proposed Forfeiture" ("Response") on March 12, 2007.

3. As noted in the NAL, Licensee acknowledged at the time it filed the renewal applications for KFFF(AM) and KFFF-FM that the Stations' public inspection files did not contain the issues/programs lists required to be retained in the file by Sections 73.3526 and 73.3527 of the Rules. In response to a staff inquiry letter, Licensee filed an amendment stating that it had located misplaced files that contained most of the required information and had obtained the remainder of the information from programming sources.³ Licensee also provided Commission staff with copies of the recreated and previously

¹ See 47 C.F.R. §§ 73.3526, 73.3527.

² Boone Biblical Ministries, Inc., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2731 (MB 2007).

³ In response to an August 10, 2005, verbal inquiry made by Commission staff, Licensee filed an additional amendment for each Station on August 16, 2005, indicating that it was able to locate the issues-programs lists for the following quarters which had been created but were misplaced: all four quarters of 1997, all four quarters of 1998,

(continued....)

misplaced public inspection file materials. On February 12, 2007, noting that the Stations' violations were "extensive, occurring over the entire eight-year license term," the staff advised Licensee of its apparent liability for a forfeiture for violating Sections 73.3526 and 73.3527 of the Rules, for its failure to maintain the Stations' public files. Upon receipt of the NAL, Licensee filed its Response.

4. In its Response, Licensee asserts that the proposed forfeiture is premised solely on the Commission's incorrect determination that the public file did not contain "any" of the items required to be retained in the file, in that, Licensee, by amendment and telephone communication, informed the staff that the public file contained ". . . all of the ownership, employment and political reports required to be kept in the file . . .," and that the file contained 12 quarterly issues/programs lists, with the remaining lists recreated. Licensee states that the filing of the renewal applications provided the "first and only" opportunity it had to voluntarily report the public file's deficiency, and that the staff's statement that the disclosure was compelled only in the context of the question contained in its renewal application is disconcerting. Licensee states that it has a history of compliance with the Rules, and that the forfeiture of \$10,000 per station is vastly disproportionate to those assessed to small religious broadcasters for more serious violations, citing *Faith Christian Music Broadcast Ministries, Inc.*⁴

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. First, Licensee argues that the forfeiture amount is inconsistent with Commission precedent for similar violations. We disagree. Insofar as Licensee relies on the Bureau's *Forfeiture Order* in *Faith Christian* to support its contention that the \$10,000 forfeiture amounts levied here are somehow disproportionate to that imposed on other similar "small religious broadcasters,"⁹ we note that the *Order* there does not specify the number of missing issues-programs lists that were missing from the public

(Continued from previous page) _____

and the first three quarters of 1999. Lists for the remaining quarters were recreated from information retrieved from each Station's programming sources.

⁴ *Faith Christian Music Broadcast Ministries, Inc.* 20 FCC Red 19051 (2005) ("*Faith Christian*").

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 In *Faith Christian*, the Bureau reduced a \$3,000 forfeiture amount to \$500 based upon that licensee's documented inability to pay the full forfeiture amount. 20 FCC Rcd at 19055. The Licensee here makes no argument concerning its ability to pay the full forfeiture amount.

inspection file of Station WYRV(AM), Cedar Bluff, Virginia.¹⁰ Here, there were at least 20 missing issues/programs lists. It is undisputed that Licensee was missing at least 20 issues/programs lists during the pertinent license term. We find that a forfeiture of \$10,000 for each station, for a total forfeiture amount of \$20,000, is appropriate in the instant case and consistent with recent precedent involving violations of the Commission's Rules regarding public files.¹¹ Insofar as the underlying *Notice of Apparent Liability in Faith Christian*¹² may be read to suggest that forfeiture amounts of \$3,000 are appropriate in cases where there are eight or more issues-programs lists missing from a renewal applicant's public inspection file, we disavow *Faith Christian* to the extent that it is inconsistent with other, more recent forfeitures issued for similar violations.¹³

7. We also disagree with Licensee that the first opportunity it had to voluntarily disclose the issues/programs lists deficiencies was in the context of filing the renewal applications. In this regard, Licensee had a responsibility to diligently monitor the completeness of its issues/programs lists. If it had done so, Licensee could have, at any time during the license term, *voluntarily* notified the Commission of any detected deficiency and the remedial steps taken. Forfeiture reductions based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations, or that they had established compliance programs in place, *prior to the Commission's involvement*.¹⁴ Here, Licensee's argument that the renewal application constituted its "first chance to disclose" the public file violations evidences its lack of diligence in monitoring the completeness of its issues/programs lists rather than any lack of opportunity to report voluntarily the Stations' public file deficiencies and any remedial action taken. Reporting the violations subsequent to Commission involvement, *i.e.* by responding to the question in the renewal applications,¹⁵ does not warrant a reduction in the forfeiture amount.

8. Finally, we reject Licensee's argument that it deserves a reduction based on its history of compliance with the Rules. Licensee, by its own admission, failed to properly maintain its

¹⁰ The *Faith Christian Forfeiture Order* indicates only that "requisite issues/programs lists were not placed in the public file on a quarterly basis." *Id.* at 19051.

¹¹ See, e.g., *Colby-Sawyer College*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 21682 (MB 2007) (\$10,000 Notice of Apparent Liability issued for 14 missing issues-programs lists); *Capstar TX Limited Partnership*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12715, 12715 (MB 2007) (same).

¹² *Faith Christian Music Broadcast Ministries*, Letter, 18 FCC Rcd 20151 (MB 2003)

¹³ See, e.g., *New Inspiration Broadcasting Company, Inc.*, Forfeiture Order, 24 FCC Rcd 3205, 3207 (MB 2009) (prior, inconsistent precedent suggesting lower forfeiture amount for nine missing issues-programs lists disavowed by Media Bureau).

¹⁴ See *Brahmin Broadcasting Corporation*, Forfeiture Order, 23 FCC Rcd 3519, 3521 (2008).

¹⁵ Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3527 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. See *Emerson College*, Forfeiture Order, 24 FCC Rcd 5733, n9, 5735 (2009); see also *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10935, 10937 n.16 (MB 2008); *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007).

issues/programs lists for both KFFF(AM) and KFFF-FM. Based on these combined offenses, we cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.¹⁶

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 willfully¹⁷ and repeatedly¹⁸ violated Section 73.3526 and Section 73.3527 of the Rules and that no mitigating circumstances warrant reduction of the proposed forfeiture amount assessed against Stations KFFF(AM) and KFFF-FM. 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,¹⁹ that Boone Biblical Ministries, Inc. SHALL FORFEIT to the United States the sum of twenty thousand dollars (\$20,000) for willfully and repeatedly violating Sections 73.3526 and 73.3527 of the Commission's Rules.

11. 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 within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁰ 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

¹⁶ See, e.g., *Sun Valley Radio, Inc.*, Forfeiture Order, 23 FCC Rcd 15738, 15739-10 (MB 2008) ("history of compliance" argument rejected where licensee had violated Section 73.3526 of the Rules at two separate stations); *LaSalle County Broadcasting Corporation*, Forfeiture Order, 23 FCC Rcd 12935, 12937 (MB 2008) ("history of compliance" argument rejected where licensee had violated Section 73.3526 of the Rules at three separate stations).

¹⁷ 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, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

¹⁸ 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).

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

²⁰ 47 U.S.C. § 504(a).

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).²¹

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, to Boone Biblical Ministries, Inc., 924 West 2nd Street, Boone, Iowa 50036, and to its attorney Peter Gutmann, Esq., Womble Carlyle Sandridge & Rice, PLLC, 1401 I Street, NW Seventh Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau

²¹ See 47 C.F.R. § 1.1914.