

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

In the Matter of)	
)	Facility ID No. 9961
SAGA COMMUNICATIONS OF ILLINOIS, LLC)	NAL/Acct. No. MB20031810059
)	FRN: 0009269655
)	File No. BR-20040802BDD
Licensee of Station WTAX(AM) Springfield, IL)	

FORFEITURE ORDER

Adopted: February 25, 2009

Released: February 26, 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 three thousand dollars (\$3,000), to Saga Communications of Illinois, LLC (“Licensee”), licensee of Station WTAX(AM), Springfield, Illinois (“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 June 23, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of three thousand dollars (\$3,000) to Licensee for the violations.² On July 25, 2005, Licensee filed a "Response to Notice of Apparent Liability" (the “Response”).

3. On August 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 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 the issues/programs lists were missing from the public inspection file for all of the year 1999. Licensee stated that it has reconstructed the missing lists based on a good faith effort and has placed them in the file. Licensee also stated that it had taken steps to prevent a recurrence of this situation. On June 23, 2005, the staff advised Licensee of its apparent liability for a forfeiture of \$3,000 for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that, by its admission, the four issues/ programs lists for 1999 were missing from the Station’s public inspection file.³ On July 23, 2005, Licensee filed its Response.

4. In support of its Response, Licensee states that the NAL should be vacated because it is not supported by "probative" evidence that the violation was "willful or repeated."⁴ Specifically, Licensee states that because it was "unaware" that the issues/programs lists were missing from the public file, there was no "conscious and deliberate" omission, thus there is no sufficient evidence to support the

¹ 47 C.F.R. § 73.3526.

² See *Letter to Gary S. Smithwick, Esq. from Peter Doyle*, reference 1800B3-JWR (MB June 23, 2005) (“Letter”).

³ The Commission granted the above-referenced license renewal application on June 23, 2005.

⁴ Response at 1.

staff's determination that the violation was "willful."⁵ Similarly, Licensee states that "on the day it learned" the issues/program lists were missing, it took remedial steps to recreate the missing issues/programs lists and place them in the file, thus there is no sufficient evidence to support the determination that the violation was "repeated."⁶ In sum, Licensee states that its failure to monitor the contents of the files was neither willful nor repeated, but was an "honest mistake."⁷

5. Licensee also maintains that the forfeiture is inconsistent with the decision in *Vernon Broadcasting*,⁸ where the Commission rescinded a forfeiture against a licensee based upon a finding that the licensee's apparent violation of the Rules was not committed willfully. Licensee also submits that the forfeiture "cannot be harmonized" with *Melody Music, Inc. v. FCC*, in that the Bureau's policy of equal treatment of similarly situated parties dictates that the Bureau vacate the NAL and admonish Licensee.⁹ Finally, Licensee claims that imposing a forfeiture against licensees that voluntarily disclose their Rule violations is contrary to the public interest because it will discourage licensees from "com[ing] clean" with the Commission. Licensee asserts that these reasons warrant a cancellation of the assessed forfeiture and the imposition of an admonishment.

III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² 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.¹³

7. Licensee does not dispute that it failed to maintain its public file for the Station, but states that these violations were an "honest mistake." Licensee further maintains that the violations were neither willful nor repeated. As the Commission has held, violations resulting from inadvertent error are willful violations.¹⁴ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking the

⁵ *Id.* at 3.

⁶ *Id.* at 3-4.

⁷ *Id.* at 6.

⁸ *Id.* at 3. See *Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 R.R. 2d 1275 (1986) ("*Vernon Broadcasting*").

⁹ *Id.* at 7, citing *Melody Music Inc. v. FCC*, 45 F.2d 730 (D.C. Cir. 1965).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *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).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

action in question, irrespective of any intent to violate the Rules.¹⁵ Licensee has failed to justify why departure from this precedent is warranted.

8. Moreover, Licensee's reliance on *Vernon Broadcasting* is misplaced. There, the Commission rescinded a forfeiture imposed against a licensee who allegedly failed to enclose its antenna tower with a secure fence, in apparent violation of Section 73.49(a)(8) of the Rules. The Commission acknowledged that the existing fence had been vandalized on prior occasions and that, because of such vandalism, the licensee regularly inspected the fence and made necessary repairs. The evidence before the Commission further indicated that the fence had been vandalized just after the licensee's most recent inspection, but prior to an official Commission inspection, during which damage to the fence was revealed. On the basis of the foregoing, the Commission ruled that there was no indication that the licensee was either aware of the most recent damage to the fence or that it had failed to monitor the condition of its transmitter site. It did, however, affirm a liability for an unintentional public file violation, rejecting the licensee's argument that its public file violations were the result of its "misinterpretation" of the Rules.

9. While the fence in *Vernon Broadcasting* was, by its very nature and location, subject to influences outside the immediate knowledge and control of the licensee, Licensee's public files were, at all relevant times, under its exclusive domain. Any public file violations are attributable directly and solely to Licensee. This distinction is underscored by the Commission's holding in *Vernon Broadcasting*. Thus, Licensee's failure to properly maintain the Station's public file constituted a "willful" violation of Section 73.3526 of the Rules, irrespective of Licensee's lack of intent.

10. Licensee next argues that its violations of Section 73.3526 of the Rules were not repeated. The term "repeated" merely means that the act was committed or omitted more than once, or lasts more than one day.¹⁶ In this case, Licensee's violations of Section 73.3526 of the Rules lasted one year. Accordingly, we find that its violations were repeated.

11. Licensee's claim that we are bound by *Melody Music* to follow *John Garziglia, Esquire et al.*¹⁷ and *Emmis Television License Corp.*,¹⁸ in this case also is misplaced. In those cases, admonitions were issued for public file violations involving, respectively, the missing copy of "The Public and Broadcasting" procedural manual and the failure to place letters from the public in the public file. We find these cases to be inapposite as they do not involve missing issues/programs lists. 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."¹⁹ The Commission's public information file rule also safeguards the public's ability to assess the station's service and to meaningfully participate in the license renewal process, and helps ensure the station's accessibility to and nexus with its community, and the station's service to the community and responsiveness to community programming needs.²⁰ As such, the public

¹⁵ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹⁶ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

¹⁷ See *John Garziglia, Esquire et al.*, Letter, 20 FCC Rcd 11957, 11962 (MB 2005).

¹⁸ See *Emmis Television License Corp.*, Memorandum, Opinion and Order, 19 FCC Rcd 22851 (EB 2004).

¹⁹ 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)).

²⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

information requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations.²¹ 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.”²² Here, the Station's public file was missing four issues/programs lists over its license term. We find that the \$3,000 forfeiture issued was an appropriate sanction for Licensee's violations.

12. Finally, Saga argues that the Commission should rescind the proposed forfeiture given its voluntary disclosure of its violations, and that forfeiture in this instance would discourage companies from voluntarily disclosing Rules violations. Specifically, Saga asserts that to sanction such self-reported violations “may encourage less scrupulous broadcasters not to report missing public file documents and hope they get away with it.”²³ Moreover, it contends that “honest mistakes should be punished by no more than a public admonition; not a forfeiture.”²⁴ While we do not challenge Saga's claim that the violations were inadvertent, we do disagree with the assertion that its disclosure of the public file violations was voluntary. Although Saga 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. Moreover, our decision is consistent with our Rules and our *Forfeiture Policy Statement* and encourages companies to voluntarily disclose violations and promptly correct violations.²⁵ Indeed, the Bureau previously reduced Saga's forfeiture amount by \$1,000 in light of its voluntary disclosure.²⁶

13. 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 willfully²⁷ and repeatedly²⁸ violated Section 73.3526 of the Rules at the Station and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

²¹ See 47 U.S.C. § 307(a).

²² See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

²³ Request at 4.

²⁴ *Id.* at 6.

²⁵ See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. See also *Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd. 8952 (2008) (finding that the issuance of a forfeiture despite petitioner's voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules).

²⁶ See NAL at 2. 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 73.3526 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.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

²⁷ 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.

²⁸ 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).

IV. ORDERING CLAUSES

14. 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,²⁹ that Saga Communications of Illinois, LLC, SHALL FORFEIT to the United States the sum of \$3,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Station.

15. 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.³⁰ 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).³¹

16. 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 Saga Communications of Illinois, 73 Kercheval Avenue, Grosse Pointe Farms, Michigan 48236, and to its counsel, Gary S. Smithwick, Esq., Smithwick & Belundiuk, P.C., 5028 Wisconsin Ave., N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau

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

³⁰ 47 U.S.C. § 504(a).

³¹ See 47 C.F.R. § 1.1914.