

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

In the Matter of)	
)	
R-S Broadcasting Company, Inc.)	File Number: EB-08-CF-0311
)	
Licensee of Radio Station WCWV)	NAL/Acct. No.: 200932340002
Facility ID # 54368)	
Summersville, West Virginia)	FRN: 0009053117

FORFEITURE ORDER

Adopted: January 7, 2010

Released: January 11, 2010

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 five thousand dollars (\$5000) to R-S Broadcasting Company, Inc. (“R-S Broadcasting”), licensee of FM station WCWV, in Summersville, West Virginia, 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 station’s public inspection file. In this *Order*, we consider R-S Broadcasting’s arguments that the violation occurred as a result of oversight by new management, and that the forfeiture should be reduced because of R-S Broadcasting’s inability to pay.

II. BACKGROUND

2. On August 15, 2008, agents conducted an inspection at WCWV’s main studio in Summersville, WV with the station’s owner. The agents reviewed the contents of the public inspection file and found that the station did not have any quarterly issues/programs lists for the current license period, which began in 2003.

3. On June 5, 2009, the Columbia Office issued a *NAL* in the amount of \$10,000 to R-S Broadcasting, finding that they apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Rules by failing to maintain quarterly issues/programs list in the WCWV’s public inspection file.² R-S Broadcasting filed a response to the *NAL* on June 18, 2009. In its response, R-S Broadcasting does not dispute the violation, but claims that the failure to maintain the issues/programs lists was not willful, but merely an oversight by new management that took over in September 2006. R-S Broadcasting further claims that the forfeiture amount should be reduced because of R-S Broadcasting’s demonstrated inability to pay.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section

¹ 47 C.F.R. § 73.3526(e)(12).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932340002 (Enf. Bur., Columbia Office, released June 5, 2009).

503(b) of the Act,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").⁵ In examining R-S Broadcasting'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.⁶

5. Section 73.3526(e)(12) of the Rules requires AM and FM broadcast licensees to place in their public inspection file, for each quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.⁷ R-S Broadcasting is required to maintain in WCWV's public inspection file all quarterly radio issues/programs lists since the grant date of the latest WCWV renewal application, which occurred on September 25, 2003. On August 15, 2008, agents inspection WCWV's public inspection file and found that the most recent quarterly issues/programs list was from 2002.

6. In its response to the *NAL*, R-S Broadcasting does not dispute that it did not maintain issues/programs lists for WCWV. Instead, R-S Broadcasting argues that the violation was not willful because it was merely an oversight that resulted from a change in management that took place in September 2006. We do not find this argument persuasive. While we do not doubt that the station's new management faced many challenges, we believe that the almost two years between new management taking over in September 2006 and the station inspection in August 2008 was more than enough time to come into compliance with the Commission's public inspection file requirements. Moreover, Section 312(f)(1) of the Act, which applies to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act"⁸

7. R-S Broadcasting also asks that the forfeiture amount be reduced because of its inability to pay. To support this claim, R-S Broadcasting supplies the last three years of tax records. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.⁹ While we find that R-S Broadcasting willfully and repeatedly violated Section 73.3526(e)(12) of the Rules, based upon its inability to pay, we conclude that pursuant to Section 503(b) of the Act and the *Forfeiture Policy Statement*, reduction of the \$10,000 forfeiture to \$5,000 is warranted.

IV. ORDERING CLAUSES

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ 47 C.F.R. § 73.3526(e)(12). This list is known as the radio issues/programs list.

⁸ 47 U.S.C. § 312(f)(1); *See also Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991). We also note that, because the violation was repeated, we are not required to make a finding that the violation was willful. *Id.* at 4388 (in issuing a forfeiture pursuant to 47 U.S.C. § 503(b) of the Act, we are only required to find either a "willful" or "repeated" violation).

⁹ *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

Commission's Rules, R-S Broadcasting Company, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,000 for willfully and repeatedly violating Section 73.3526(e)(12) of the Rules.¹⁰

9. 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 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. 20554.¹¹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. R-S Broadcasting Company, Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to R-S Broadcasting Company, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.3526(e)(12).

¹¹ See 47 C.F.R. § 1.1914.