

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

In the Matter of)	
)	
)	
CONNECTICUT RADIO FELLOWSHIP, INC.)	File No. EB-09-IH-0615
)	FRN: 0005086509
)	NAL/Account No.: 201032080012
Licensee of WIHS(FM), Middletown, Connecticut)	Facility ID No. 13634

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 1, 2010

Released: April 1, 2010

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we propose a monetary forfeiture in the amount of one thousand two hundred fifty dollars (\$1,250) against Connecticut Radio Fellowship, Inc. (“CRFI” or the “Licensee”), licensee of Station WIHS(FM), Middletown, Connecticut (“WIHS” or the “Station”), for its apparent willful and repeated violation of Sections 73.3526(c)(1) and (e)(5) of the Commission’s rules.¹ As discussed below, we find that CRFI violated the public inspection file requirements by failing to maintain a copy of its articles of incorporation and by-laws or, alternatively, a list of these documents, in the Station’s local public inspection file, and by failing to provide requested copies within a reasonable amount of time.

II. BACKGROUND

2. On April 20, 2009, the Enforcement Bureau (the “Bureau”) received a complaint (the “Complaint”) alleging that on March 24, 2009, CRFI failed to provide WIHS’s public file “upon request.”² The Complainant claims that he was particularly interested in obtaining “a copy of the Station’s by-laws,”³ but alleges that they were “unavailable at the time” of his visit.⁴ The Complainant

¹ See 47 C.F.R. § 73.3526(c)(1), (e)(5).

² See Letter to Federal Communications Commission, Investigations and Hearings Division, dated April 8, 2009 (“Complaint”). Although multiple complainants supported the letter, the events recited therein relate only to a single individual’s (the “Complainant”) visit to the Station. We subsequently received an additional complaint from another individual containing similar allegations against CRFI. See Letter to Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 7, 2009 (the “Second Complaint”). The Second Complaint reiterates matters under investigation as a result of the April 8, 2009, Complaint.

³ Complaint at 1. Although the Complainant alleges generally that CRFI failed “to provide [the] public file upon request,” it appears, in context, that this only refers to a portion of the file containing CRFI’s corporate information. *Id.*

⁴ *Id.* The Complainant argues that the Station was required to keep a copy or list of this document, among others, as part of the ownership report and related materials required to be kept in the Station’s public inspection file.

also alleges that he submitted a written request for the by-laws on the same date, but that as of April 8, 2009, he had not received anything from CRFI.⁵

3. On May 13, 2009, and July 31, 2009, we sent letters of inquiry to CRFI directing it to respond to the allegations in the Complaint.⁶ In its response, CRFI concedes that the Complainant requested a copy of its by-laws and that station personnel were unable to locate the document at the time it was requested, yet asserts that it believes it otherwise complied with the Commission's public file requirements.⁷ In support of its assertion, CRFI offers the following explanations: (1) the reason the by-laws were missing was that they "were being reviewed," and their exclusion was inadvertent;⁸ (2) the file had been independently reviewed under the Alternative Broadcast Inspection Program;⁹ (3) a copy of the by-laws and articles were placed in the public file as soon as the Station's attorney recommended it;¹⁰ and finally, (4) the delay in mailing a copy of the documents to the Complainant was merely an oversight.¹¹ Below, we respond to each of these explanations in turn.

III. DISCUSSION

4. Under Section 503(b)(1) of the Communications Act of 1934, as amended (the "Act"), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.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.¹³ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are merely repeated,

⁵ *See id.*

⁶ *See* Letters from Kenneth M. Scheibel, Jr., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to Connecticut Radio Fellowship, Inc., dated May 13, 2009 ("*First LOI*") and July 31, 2009 ("*Second LOI*").

⁷ *See* Letter from Howard M. Wood, III, Attorney, Phelon, FitzGerald, & Wood, P.C. to Anjali K. Singh, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated May 27, 2009 at 5 ("*First LOI Response*"). Sworn affidavits were provided for: G.J. Gerard (General Manager and Chief Engineer for the Station), Robert West (Manager for the Station), Paul Kretschmer (Operations Manager for the Station), William Bacon (President of CRFI), and Tina Clegg (Office Assistant for the Station). *See* Letter from Howard M. Wood, III, Attorney, Phelon, FitzGerald, & Wood, P.C. to Anjali K. Singh, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 4, 2009 at attachments ("*Second LOI Response*").

⁸ *First LOI Response* at 6.

⁹ *See id.* at 4.

¹⁰ *See id.* at 6.

¹¹ *See id.*

¹² *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

and not willful.¹⁶ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁷ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.¹⁸ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.¹⁹ As described in greater detail below, we conclude under this procedure that CRFI is apparently liable for a forfeiture in the amount of one thousand two hundred fifty dollars (\$1,250) for its apparent willful and repeated violations of Sections 73.3526(c)(1) and (e)(5) of the Commission’s rules.²⁰

5. Under Section 73.3526, licensees must maintain a public inspection file and allow public access to it during regular business hours.²¹ In addition, the public inspection file must contain, *inter alia*, ownership reports and related materials, such as articles of incorporation and by-laws.²² In lieu of keeping these documents in the public inspection file, licensees may instead keep an up-to-date list of such contracts in the file.²³ Furthermore, as provided in the rule, “[r]equests for copies shall be fulfilled within a reasonable period of time, which generally should not exceed 7 days.”²⁴

6. In this case, we find that CRFI violated Section 73.3526 of the Commission’s rules by failing to maintain a complete public inspection file. The rule requires that certain corporate documents, such as by-laws and articles of incorporation, be maintained in a station’s public inspection file.²⁵ CRFI acknowledges that it did not regularly keep these documents in its file until sometime after March 24, 2009.²⁶ CRFI’s explanation that, at the time of the request, the by-laws were under review due to

¹⁶ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁷ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

¹⁸ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

²⁰ See 47 C.F.R. § 73.3526(c)(1), (e)(5).

²¹ See 47 C.F.R. § 73.3526 (requiring licensees of commercial broadcast stations to maintain public inspection files with specific contents, including ownership reports and related materials).

²² See 47 C.F.R. §§ 73.3613(b), 73.3615(a)(4)(i), 73.3526(e)(5); *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15713 ¶ 50 (1998) (“*Main Studio and Local Public Inspection Files Report and Order*”), stayed, Order, 13 FCC Rcd 18174 (1998), *affirmed in pertinent part*, 14 FCC Rcd 11113 (1999).

²³ See 47 C.F.R. § 73.3526(e)(5).

²⁴ 47 C.F.R. § 73.3526(c)(1).

²⁵ See 47 C.F.R. § 73.3526(e)(5); *Main Studio and Local Public Inspection Files Report and Order*, 13 FCC Rcd at 15713 ¶ 50.

²⁶ See *First LOI Response* at 4; *Second LOI Response* at Bacon Affidavit. Although the record does not reflect precisely how long the ownership documents were missing from the Station’s file, under Commission precedents, any omissions longer than one day are deemed repeated. See Section 47 U.S.C. § 312(f)(2) (defining “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.”); *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5 (applying this definition of “repeated” to Sections 312 and 503(b) of the Act).

questions arising from personnel actions, is not exculpatory.²⁷ Even accepting that explanation as true, CRFI's public file should have contained current copies of the Licensee's by-laws and articles of incorporation or, alternatively, contained a list of such documents.²⁸

7. CRFI also argues that it did not violate the rules because it relied on the alternative inspection program offered by its state broadcasters' association.²⁹ In particular, CRFI notes that the deficiencies in its public file were not brought to its attention during "three FCC sanctioned Alternate Broadcast Inspection Program inspections performed by independent inspectors over the past nine years."³⁰ We reject this argument. The Commission has long held that Licensees are responsible for compliance with Commission rules and may not rely on the advice or actions of others to shield it from liability.³¹

8. Next, CRFI appears to suggest that it should be shielded from liability because it took corrective action.³² In particular, CRFI notes that, after it was unable to locate the by-laws upon the Complainant's request for inspection, it sought advice of counsel and was advised to place a copy of the document in the public file.³³ CRFI claims that it then placed both the articles of incorporation and the by-laws in the file.³⁴ Despite CRFI's efforts in this regard, the rule nonetheless had already been violated at the time the Complainant visited the station because the documents were missing from the public file. It is well established that such remedial actions do not absolve licensees of liability.³⁵ Consequently, we find that this argument is without merit.

9. Finally, CRFI explains that the delay in providing the Complainant with the documents he requested from the public file was "an oversight."³⁶ The record reflects that the Complainant requested CRFI's by-laws in person and by writing on March 24, 2009,³⁷ and again in writing on May 5, 2009,

²⁷ See *First LOI Response* at 6. See, e.g., *Chesterman Communications of Jamestown, Inc.*, Forfeiture Order, 24 FCC Rcd 2931, 2932 ¶ 6 (Media Bur., Audio Div. 2009) (citing *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992)); *Southern California Broadcasting Co.*, 6 FCC Rcd at 4387 ¶ 3 (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

²⁸ CRFI does not explain why it could not have used copies, or replaced the originals with copies, when conducting the review of its bylaws.

²⁹ See *First LOI Response* at 5-6.

³⁰ *Id.* The Station provides a copy of its most recent "Certificate of Compliance" issued by the Connecticut Broadcasters Association as part of the Alternative Broadcast Inspection Program. See *id.* at Attachment E.

³¹ See, e.g., *Chesterman Communications*, 24 FCC Rcd at 2932 ¶ 6 (assessing \$9,000 forfeiture for public file rule violation and finding that inadvertence, including failure to discover deficiencies through alternative inspection program by state broadcasters' association, does not excuse licensee from liability).

³² See *First LOI Response* at 6.

³³ See *id.*

³⁴ See *Second LOI Response* and attached Affidavit of William Bacon (noting that after consultation with CRFI's attorney, copies of the articles of incorporation and by-laws were placed in the public file).

³⁵ See, e.g., *Capstar TX Limited Partnership (WKSS(FM))*, Notice of Apparent Liability, 20 FCC Rcd 10636, 10640 ¶ 9 (Enf. Bur. 2005) (forfeiture paid) (finding remedial efforts undertaken after complaint lodged not mitigating) (citing *AT&T Wireless Services, Inc.*, Notice of Apparent Liability, 17 FCC Rcd 21866, 21871 (2002); *KVGL, Inc.*, Memorandum Opinion and Order, 42 FCC 2d 258, 259 (1973)).

³⁶ *First LOI Response* at 6.

³⁷ See *Second LOI Response* at Bacon Affidavit (attached Letter to Board of Directors, Connecticut Radio Fellowship, Incorporated, dated March 24, 2009).

before the document request was finally fulfilled on May 6, 2009.³⁸ Section 73.3526 requires that copies of requested documents be provided “within a reasonable period of time, which generally should not exceed 7 days.”³⁹ CRFI’s explanation that the delay was caused by inadvertence or employee oversight is inadequate.⁴⁰ As noted above, inadvertence or employee oversight do not excuse CRFI from liability for its failure to follow Commission rules.⁴¹

10. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the rules, the base forfeiture for violations of the public inspection file rules is \$10,000.⁴² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁴³ Because the WIHS public inspection file was missing only a subset of the required items, a downward adjustment of the base forfeiture amount for this violation to \$1,250 is warranted.⁴⁴ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Connecticut Radio Fellowship, Inc. willfully and repeatedly violated Section 73.3526 of the Commission’s rules and is apparently liable for a forfeiture in the amount of one thousand two hundred fifty dollars (\$1,250).

IV. ORDERING CLAUSES

11. **ACCORDINGLY**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission’s rules, Connecticut Radio Fellowship, Inc., licensee of Station WIHS(FM), Middletown, Connecticut, **IS HEREBY NOTIFIED OF ITS APPARENT LIABILITY FOR A FORFEITURE** in the amount of one thousand two hundred fifty dollars (\$1,250) for willfully and repeatedly violating Sections 73.3526(c)(1) and (e)(5) of the Commission’s rules.⁴⁵

12. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission’s rules that within thirty days of the release of this Notice, Connecticut Radio Fellowship, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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

³⁸ See *First LOI Response* at 6.

³⁹ 47 C.F.R. § 73.3526(c)(1).

⁴⁰ See *Second LOI Response* at Bacon Affidavit.

⁴¹ See *supra* note 27 (citing cases).

⁴² See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁴³ See 47 U.S.C. § 503(b)(2)(E).

⁴⁴ See *JMK Communications*, Memorandum Opinion and Order, 21 FCC Rcd 1427 (Enf. Bur. 2006) (attributing \$1,250 of total forfeiture to missing ownership document) (citing *Community Broadcasting*, Notice of Apparent Liability, NAL/Acct. No. 200332560019 (Enf. Bur. Kansas City Office rel. March 11, 2003) (imposing \$1,250 for missing ownership report in public file)). For purposes of deciding the proposed forfeiture amount, we are treating missing articles of incorporation and by-laws the same as missing ownership reports because they are all related materials. See paragraph 5, *supra*.

⁴⁵ See 47 C.F.R. § 73.3526(c)(1), (e)(5).

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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Connecticut Radio Fellowship, Inc., will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Guy.Benson@fcc.gov.

14. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington DC 20554 and **SHALL INCLUDE** the NAL/Acct. No. referenced above. To the extent practicable, the response, if any, shall also be sent via e-mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Guy.Benson@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that the above-referenced complaint **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the instant complaint proceeding **IS HEREBY TERMINATED**.⁴⁶

17. **IT IS FURTHER ORDERED** that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Connecticut Radio Fellowship, Inc., 1933 Main Street, Middletown, Connecticut 06457; to its counsel, Howard M. Wood, III, Phelon, FitzGerald, & Wood, P.C., 773 Main Street, Manchester, Connecticut 06040; and to the Complainants.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Chief, Investigations and Hearings Division
Enforcement Bureau

⁴⁶ For purposes of the forfeiture proceeding initiated by this NAL, CRFI shall be the only party to this proceeding.