

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

In the Matter of)
L. Stanley Wall) File Number: EB-10-PA-0115
Licensee of FM Station WLSW) NAL/Acct. No.: 201132400008
Scottdale, Pennsylvania) FRN: 0010019792
Facility ID # 36116)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: June 16, 2011

Released: June 17, 2011

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order ("NAL"), we find that L. Stanley Wall ("Wall"), licensee of FM Station WLSW, Scottdale, Pennsylvania, apparently willfully and repeatedly violated section 73.3526(e)(12) of the Commission's Rules ("Rules")¹ by failing to maintain and make available the quarterly issues/programs lists in the local public inspection file. We conclude that Wall is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000). We further direct Wall to submit a written statement signed under penalty of perjury stating that Station WLSW is now in compliance with section 73.3526 of the Rules.

II. BACKGROUND

2. On April 16, 2010, an agent from the Enforcement Bureau's Philadelphia Office conducted an inspection with Station WLSW's office assistant at the station's main studio, located at 2532 Springfield Pike (Route 711), Connellsville, Pennsylvania. The agent reviewed the materials in Station WLSW's public inspection file and found that the file did not contain any quarterly issues/programs lists for the current license term, *i.e.*, it was missing fifteen quarters of issues/programs lists.²

3. In response to a Letter of Inquiry issued by the Philadelphia Office, Wall admitted that the public inspection file did not contain the issues/programs lists on the day of the inspection, but stated that "[w]e could tell that a person or persons had gone through the file and that some items had been removed. . ."³ Wall committed to "replacing the missing files that we had copies of and putting together

¹ 47 C.F.R. § 73.3526(e)(12).

² The current license term began when the license renewal application was granted on July 28, 2006. See BRH-20060329ABN.

³ Letter from Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, to L. Stanley Wall, dated June 10, 2010 ("June 2010 LOI"); Response from Chris Molton, Station Manager for L. Stanley Wall, via electronic mail to David Dombrowski, Electronic Engineer, Philadelphia Office, Northeast Region, Enforcement Bureau, dated July 30, 2010 ("July 2010 LOI Response"). Wall stated that there were several

new files for those items that we do not have copies of."⁴ Wall further stated that, to avoid any problems in the future, it planned to make copies of major parts of the file for storage in another location.

4. On February 7, 2011, agents conducted a follow-up inspection with Station WLSW's manager at the station's main studio. The agent reviewed the materials in Station WLSW's public inspection file and found that the file only contained one issues/programs list (3rd Quarter 2010), *i.e.*, it was now missing a total of seventeen quarters of issues/programs lists. In response to another Letter of Inquiry issued by the Philadelphia Office⁵, Wall admitted that the public inspection file was missing quarterly issues/programs lists on the day of the inspection, but claimed that the missing lists had been moved to storage.⁶ Wall further claimed that many of the files in storage were lost or damaged when part of the roof on an adjoining building collapsed from the weight of snow.⁷ During the inspection on February 7, 2011, however, station employees did not inform the agent that the missing issues/programs lists had been moved to storage in another building or that those files may have been lost or damaged. In addition, although Wall reported in response to the *March 2011 LOI* that any files that they can find, save or reconstruct would be provided, no such files have been provided.

III. DISCUSSION

5. Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁸ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. 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.⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹⁰ and the Commission has so interpreted the term in the section 503(b) context.¹¹ The Commission may also assess a forfeiture for violations that are merely

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weekend station announcers who were suspected of going through the station's files in order to obtain information about the station's financial condition. *July 2010 LOI Response* at 1.

⁴ *June 2010 LOI* at 1.

⁵ Letter from Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, to L. Stanley Wall, dated March 9, 2011 ("*March 2011 LOI*"); Response from L. Stanley Wall to the Philadelphia Office, Northeast Region, Enforcement Bureau, dated March 29, 2011 ("*March 2011 LOI Response*").

⁶ *March 2011 LOI Response* at 1.

⁷ *March 2011 LOI Response* at 1.

⁸ 47 U.S.C. § 503(b).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (*e.g.*, section 503).... As defined ... 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms ...").

¹¹ See, *e.g.*, *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("Southern California Broadcasting Co.").

repeated, and not willful.¹² The term “repeated” means the commission or omission of such act more than once or for more than one day.¹³

6. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.¹⁴ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,¹⁵ and section 73.3526(e)(12) of the Rules specifically requires licensees to place in their public inspection file each calendar quarter a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period (known as the issues/programs list).¹⁶ The issues/programs lists must include “a brief narrative describing what issues were given significant treatment and the programming that provided this treatment,” including, but not limited to, the time, date, duration, and title of each program in which the issue was treated.¹⁷ Copies of the issues/programs list must be retained in the public inspection file until final action has been taken on the station’s next license renewal application.

7. On April 16, 2010, an agent reviewed Station WLSW’s public inspection file and found that it did not have any quarterly issues/programs lists for the current license term. In its *July 2010 LOI Response*, Wall acknowledged that the issues/programs lists were not in the station’s public inspection file at the time of the April 16, 2010 inspection. On February 7, 2011, agents again inspected Station WLSW’s public inspection file and found that it contained only the issues/programs list for 3rd Quarter 2010. In its *March 2011 LOI Response*, Wall acknowledged that there were missing issues/programs lists in the station’s public inspection file at the time of the February 7, 2011 inspection. Wall’s claim that, at the time of the February 7, 2011 inspection, many of the issues/programs lists had been moved to a different location and that some lists were damaged when a roof collapsed, does not change the fact that the issues/programs lists were not available at the main studio on the day of inspection as required by section 73.3526 of the Rules.¹⁸ Accordingly, based on the evidence before us, we conclude that Wall apparently willfully and repeatedly violated section 73.3526(e)(12) by failing to maintain the issues/programs lists and make them available in Station WLSW’s public inspection file.

8. Pursuant to the Commission’s *Forfeiture Policy Statement*, and section 1.80 of the Rules, the base forfeiture amount for violation of the public file rule is \$10,000.¹⁹ In assessing the monetary

¹² See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹³ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁴ 47 C.F.R. § 73.3526(a)(2).

¹⁵ 47 C.F.R. § 73.3526(c)(1).

¹⁶ 47 C.F.R. § 73.3526(e)(12).

¹⁷ *Id.*

¹⁸ We are skeptical of Wall’s claims regarding the missing lists given that the agent was not told during the inspection that the missing issues/programs lists were in storage and Wall has never provided any of the missing lists, despite a commitment to do so.

¹⁹ *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) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

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.²⁰ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that an upward adjustment is warranted, given that Wall failed to correct the violation after the first inspection in 2010. We therefore conclude that Wall is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for its failure to maintain and make available all but one of its quarterly issues/programs lists in its public inspection file. We also direct Wall to submit a written statement signed under penalty of perjury stating that Station WLSW is now in compliance with section 73.3526 of the Rules. This statement must be provided to the Enforcement Bureau at the address listed in paragraph 13 within thirty days of the release date of this *NAL*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204(b), 0.311, 0.314 and 1.80 of the Commission's Rules, L. Stanley Wall is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of section 73.3526(e)(12) of the Rules.²¹

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, L. Stanley Wall **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that L. Stanley Wall **SHALL SUBMIT** a sworn statement as described in paragraph 8 to the Enforcement Bureau Office listed in paragraph 13 within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, L. Stanley Wall will send electronic notification on the date said payment is made to NER-Response@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 73.3526(e)(12).

⁸ See 47 C.F.R. § 1.1914.

to sections 1.80(f)(3) and 1.16 of the Rules. Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. L. Stanley Wall also shall email the written response to NER-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to L. Stanley Wall at RD # 7, Box 56, Greensburg, Pennsylvania 15601.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stambro
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau