

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

In the Matter of)	
)	File Number: EB-09-SD-0156
Lazer Licenses, LLC)	
)	NAL/Acct. No.: 201132940004
Licensee of Station KSSB(FM))	FRN: 0015149842
Calipatria, California)	
Facility ID # 52469)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 16, 2011

Released: May 18, 2011

By the District Director, San Diego District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Lazer Licenses, LLC (“Lazer”), licensee of FM radio station KSSB, in Calipatria, California, apparently willfully and repeatedly violated section 73.3526¹ of the Commission’s rules by failing to maintain a complete public inspection file. We conclude, pursuant to section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Lazer is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On April 21, 2010, agents from the Enforcement Bureau’s San Diego Office inspected the main studio location of Station KSSB, which is located at 251 West Main Street, Suite O, Brawley, California. The agents reviewed the content of Station KSSB’s public inspection file with the general manager of the station and discovered that required issues and programs lists were missing for all quarters of 2007, the second, third, and fourth quarters of 2008, the first quarter of 2009, and the first quarter of 2010. A San Diego agent telephoned the general manager on April 28, 2010 to confirm the missing issues and programs lists, but the general manager advised that she was not familiar with the documents and would have her manager contact the agent later. The San Diego agent did not receive a follow-up call from any representative of Station KSSB.

3. On May 25, 2010, San Diego agents returned to the Station KSSB and reexamined the contents of Station KSSB’s public inspection file and discovered that, other than the issues/programs lists for the second and third quarters of 2007, the above lists remained missing. However, during this inspection, while the agents were examining the file contents, copies of the issues/programs lists for the first quarter of 2009 and the first quarter of 2010 were electronically sent from Lazer’s corporate offices and printed out to be placed into the public inspection file.

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ 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.⁴ 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 Act⁵ and the Commission has so interpreted the term in the section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

5. Section 73.3526(a)(2) of the Commission’s rules requires that every licensee of a commercial AM or FM station shall maintain a public inspection file containing the material relating to that station, as described in section 73.3526(e) of the rules.⁹ Specifically, section 73.3526(e)(12) of the rules requires licensees to place in their public inspection file, for 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.¹⁰ This list is known as the radio issues/programs list and copies must be maintained in the file until final action has been taken on the station’s next renewal application. Further, as required by section 73.3526(b), the public inspection file shall be maintained at the station’s main studio.¹¹

6. During the two inspections performed by the San Diego agents, the public inspection file for Station KSSB was missing quarterly radio issues/program lists for the first and fourth quarters of 2007, the second, third, and fourth quarters of 2008, the first quarter of 2009, and the first quarter of 2010, although the lists for these final two quarters were produced during the second inspection. During the first inspection, Station KSSB was also missing quarterly issues/programs lists for the second and third quarters of 2007. Consequently, Lazer failed to maintain a complete public inspection file at the

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

⁵ H.R. Conf. Rep. No. 97-765, at 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 . . .”).

⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California Broadcasting Co.*”).

⁷ 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).

⁸ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

⁹ 47 C.F.R. § 73.3526(a)(2).

¹⁰ 47 C.F.R. § 73.3526(e)(12).

¹¹ 47 C.F.R. § 73.3526(b).

Station KSSB main studio. All of the noted quarters are within the current license term, which began on January 12, 2006.¹² Based on the evidence before us, including the fact that the public inspection file was missing multiple quarters of material, we find that Lazer apparently willfully and repeatedly violated section 73.3526 of the rules by failing to ensure a complete public inspection file was properly maintained and made available at the Station KSSB main studio.

7. 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 \$10,000.¹³ 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, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Because the Station KSSB public inspection file was partially complete at the time of both inspections, a reduction in the base forfeiture amount is appropriate. We also take into account, however, the fact that Lazer had not fully corrected its violation by the time the San Diego agents made a second inspection.¹⁵ Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Lazer is apparently liable for a forfeiture in the amount of \$8,000.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Lazer Licenses, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violation of section 73.3526 of the rules.¹⁶

9. **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, Lazer Licenses, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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,

¹² Lazer became the licensee of Station KSSB on September 22, 2006. See File No. BALH-20051208ADX, granted July 31, 2006, consummated September 22, 2006.

¹³ *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.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ The Station KSSB public inspection file was missing, *inter alia*, the issues/programs lists for the second and third quarters of 2007 at the time of the first inspection. The Station's public inspection file contained these two lists at the time of the second inspection, but the other noted issues/programs lists remained missing from the file. See *supra* ¶¶ 2-3.

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

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. 20554.¹⁷ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Lazer Licenses, LLC, will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. 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 to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street - Suite 370, San Diego, CA 92111 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

12. 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.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent both by Certified Mail, Return Receipt Requested, and by regular mail, to Lazer Licenses, LLC, 200 South A Street, Suite 400, Oxnard, CA, 93030.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon
District Director
San Diego District Office
Western Region
Enforcement Bureau

¹⁷ See 47 C.F.R. § 1.1914.