

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

In the Matter of	)	
	)	
Stephen R. Peters	)	File Number: EB-10-CF-153
	)	
Licensee of FM Station WHAW	)	NAL/Acct. No. 201132340001
Lost Creek, WV	)	
Facility ID # 63489	)	FRN: 0004993507
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: May 23, 2011

Released: May 24, 2011

By the District Director, Columbia Field Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Stephen R. Peters, licensee of AM Station WHAW, Lost Creek, West Virginia, apparently willfully and repeatedly violated section 73.3526(e)(12) of the Commission's Rules (“Rules”)<sup>1</sup> by failing to maintain and make available quarterly radio issues/programs lists in the local public inspection file. We conclude that Mr. Peters is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On August 24, 2010, an agent from the Enforcement Bureau’s Columbia Office conducted an inspection during normal business hours with Mr. Peters at Station WHAW’s main studio, located at 300 Harrison Avenue in Weston, West Virginia. The agent reviewed the materials in the public inspection file and found that the file did not contain any issues/programs lists for the current license term.<sup>2</sup> Mr. Peters admitted to the agent that the station did not maintain issues/programs lists.

**III. DISCUSSION**

3. Section 503(b)(1) of the Communications Act of 1934, as amended (“Act”), 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 to the United States for a forfeiture penalty.<sup>3</sup> 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.<sup>4</sup> The legislative history to section

<sup>1</sup> See 47 C.F.R. § 73.3526(e)(12).

<sup>2</sup> The current license term began on October 1, 2003. See BR-20030527ACZ, granted September 25, 2003.

<sup>3</sup> See 47 U.S.C. § 503(b). See also 47 C.F.R. § 1.80(a)(1).

<sup>4</sup> 47 U.S.C. § 312(f)(1).

312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>5</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>6</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>7</sup> “Repeated” means that the act was committed or omitted more than once, or last more than one day.<sup>8</sup>

4. Section 73.3526 of the Rules (known as the “public inspection file rule”) requires broadcast stations to maintain and make available a public inspection file for public inspection at any time during normal business hours.<sup>9</sup> Section 73.3526(e)(12) of the Rules specifically 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.<sup>10</sup> This list is known as the “issues/programs list” and must include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs must include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. 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. On August 24, 2010, an agent reviewed Station WHAW’s public inspection file and found that it did not include any quarterly issues/programs lists for the current license term, which began October 1, 2003. Mr. Peter’s admitted that the station did not maintain issues/programs lists. Accordingly, based on the evidence before us, we find that Mr. Peters apparently willfully and repeatedly violated section 73.3526(e)(12) of the Rules by failing to maintain the issues/programs lists and make them available in Station WHAW’s public inspection file.

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture for violation of the public file rule is \$10,000.<sup>11</sup> 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.<sup>12</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Stephen R. Peters is apparently liable for a ten thousand dollar (\$10,000) forfeiture.

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<sup>5</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> 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 . . . .”).

<sup>6</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>7</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (2001) (“*Callais Cablevision*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>8</sup> See *Southern California Broadcasting*, 6 FCC Rcd at 4388; *Callais Cablevision*, 16 FCC Rcd at 1362.

<sup>9</sup> See 47 C.F.R. § 73.3526.

<sup>10</sup> See 47 C.F.R. § 73.3526(e)(12).

<sup>11</sup> See *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.

<sup>12</sup> See 47 U.S.C. § 503(b)(2)(E).

#### IV. ORDERING CLAUSES

6. 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 Rules, Stephen R. Peters is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 73.3526(e)(12) of the Rules.<sup>13</sup>

7. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Stephen R. Peters **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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.<sup>14</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Stephen R. Peters shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

9. 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, Northeast Region, Columbia Office, 9200 Farm House Lane, Columbia, MD, 21046, and must include the NAL/Acct. No. referenced in the caption.

10. 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.

<sup>13</sup> See 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.3526(e)(12).

<sup>14</sup> See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Stephen R. Peters at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Salomon Satche  
District Director  
Columbia Office  
Northeast Region  
Enforcement Bureau