

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

In the Matter of)	
)	
Opus Broadcasting Tallahassee, LLC	)	FRN: 0013350509
)	
Licensee for:)	
)	
Station WWOV(FM)	)	Facility I.D. No. 9312
Tallahassee, Florida	)	NAL/Acct. No. MB201241410027
	)	File No. BRH-20111003AJJ
and)	
)	
Station WQTL(FM)	)	Facility I.D. No. 31792
Tallahassee, Florida	)	NAL/Acct. No. MB201241410028
	)	File No. BRH-20111003AJN
and)	
)	
Station WANK(FM)	)	Facility I.D. No. 9311
Lafayette, Florida	)	NAL/Acct. No. MB201241410029
	)	File No. BRH-20111003AJU
and)	
)	
Station WHTF(FM)	)	Facility I.D. No. 18550
Havana, Florida	)	NAL/Acct. No. MB201241410030
	)	File No. BRH-20111003AJS

FORFEITURE ORDER

Adopted: September 19, 2012

Released: September 19, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000) to Opus Broadcasting Tallahassee, LLC (“Licensee”), licensee of Stations WHTF(FM), Havana, Florida; WWOV(FM), Tallahassee, Florida; WANK(FM), Lafayette, Florida; and WQTL(FM), Tallahassee, Florida (collectively, “Stations”), for its willful and repeated violations of Section 73.3526 of the Commission’s Rules (“Rules”),¹ by failing to retain all required documentation in the Stations’ public inspection files. We assess a forfeiture of \$4,000 for violations at each station, for a total forfeiture amount of \$16,000.

¹ See 47 C.F.R. § 73.3526.

II. BACKGROUND

2. On October 3, 2011, Licensee filed applications to renew the Stations' licenses. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 of the Rules, as applicable, has been placed in the station's public inspection file at the appropriate times. Licensee answered "No" to that certification in each application, attaching in each case an exhibit explaining that the Stations did not include seven quarterly issues programs lists in their public inspection files between October 2005 and the first quarter of 2007.²

3. On August 26, 2012, the Media Bureau ("Bureau") issued four Notices of Apparent Liability for Forfeiture ("NALs") to the Stations for \$4,000 each to Licensee for apparent willful and repeated violations of Section 73.3526 of the Rules.³ Licensee filed its "Request for Cancellation or Reduction of Forfeiture" ("Response") on May 31, 2012.

4. In its Response, Licensee asserts that the proposed forfeitures should be reduced because: (1) it has a history of compliance with Commission regulations, (2) the violation occurred shortly after its purchase of the Stations, (3) it took subsequent measures to ensure future compliance with Section 73.3526, and (4) it self-reported the violations on the Stations' renewal applications.⁴

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.⁸

6. We reject Licensee's argument regarding its history of compliance with the Rules. Licensee failed to comply with the Section 73.3526 at four of its stations. Where stations are commonly owned, findings of violations at one station negate the history of compliance of the

² Application, Exhibit 12.

³ *Opus Broadcasting Tallahassee, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4327 (MB 2012) (WHTF(FM), Havana, Florida); *Opus Broadcasting Tallahassee, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4332 (MB 2012) (WVOF(FM), Tallahassee, Florida); *Opus Broadcasting Tallahassee, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4337 (MB 2012) (WANK(FM), Lafayette, Florida); *Opus Broadcasting Tallahassee, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4342 (MB 2012) (WQTL(FM), Tallahassee, Florida).

⁴ Response at 2-3.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

other stations.⁹ In this case, the violation occurred at four different stations owned by Licensee, and therefore no forfeiture reductions are warranted for Stations' histories of compliance.

7. We also find unpersuasive Licensee's arguments that a reduction in the forfeiture amount is warranted because "the missing issues programs lists were all from the period immediately following the [Licensee's] purchase of the [Stations]. . . ."¹⁰ The timing of a violation is not included in the downward adjustment criteria for rule violations listed in the Commission's *Forfeiture Policy Statement*¹¹ or Section 1.80 of the Rules.¹² Additionally, Licensee has not cited to any Commission precedent for reducing a forfeiture because the violation happened immediately following a licensee's purchase of a station, and we are aware of none.

8. We also reject Licensee's argument that the proposed forfeiture amount should be reduced because the violations happened "before all of its systems were fully in place" and that it subsequently took measures to ensure future compliance.¹³ In this regard, "where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation."¹⁴ Thus, the facts that such systems were not in place when the violations occurred and that Licensee implemented a system for compliance after the violations occurred do not warrant a reduction of the proposed forfeitures.

9. Finally, we reject Licensee's argument that its self-reporting of the violations warrants a reduction of the forfeiture. Although Licensee admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that

⁹ See *Media Associates, Inc.*, Forfeiture Order, 26 FCC Rcd 3703, 3705 (MB 2011) (rejecting argument that station's history of compliance deserved a reduction of the monetary forfeiture because the Bureau had issued a *NAL* to another Media Associates-owned station on the same day and for the same violations); see also *Urban Radio, III, LLC*, Forfeiture Order, 24 FCC Rcd 8215, 8217 n. 14 (MB 2009) ("Findings of violations, or apparent violations, by parent, sister or commonly controlled companies are imputed to, and also negate the past history claim, of the company under investigation").

¹⁰ Response at 2.

¹¹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17116 (downward adjustment criteria include minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay).

¹² See 47 C.F.R. § 1.80(b)(5), Note.

¹³ Response at 2.

¹⁴ See, e.g., *Yeary Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 27 FCC Rcd 5172, 5173 (MB 2012), citing *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999); *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970); *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962); and *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

compelled such disclosure.¹⁵ The disclosure of violations in this context is not “self-reporting,” and does not warrant any reduction in the forfeiture amount.¹⁶

10. We have considered Licensee’s Response, and conclude that it willfully and repeatedly violated Section 73.3526 of the Rules. We also find that there is no basis for reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,¹⁷ that Opus Broadcasting Tallahassee, LLC, SHALL FORFEIT to the United States the sum of sixteen thousand dollars (\$16,000) for willfully and repeatedly violating Section 73.3526 of the Commission’s Rules.¹⁸

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁹ 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/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).²⁰ Licensee will also send electronic notification on the date said payment is made to Alex.Polley@fcc.gov and Kelly.Donohue@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²¹

¹⁵ Since 2007, we have declined to reduce forfeiture amounts based on a licensee’s voluntary disclosure because, although licensees may admit to Section 73.3526 rule violations, they only do so in the context of a question contained in the license renewal application compelling such disclosure. *Faith Baptist Church, Inc.*, 22 FCC Rcd 9146, 9148 (MB 2007).

¹⁶ *See Saga Communications of Illinois, LLC*, Forfeiture Order, 24 FCC Rcd 1306, 1308 (disclosing 73.3526 violation in a renewal application is not “voluntary” and does not serve to reduce a forfeiture amount).

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁸ 47 C.F.R. § 73.3526.

¹⁹ 47 U.S.C. § 504(a).

²⁰ *See* 47 C.F.R. § 1.1914.

²¹ *Id.*

13. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Opus Broadcasting Tallahassee, LLC, 1200 N. 18th Street, Suite D, Monroe, LA 71201, and to its counsel, David Oxenford, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street N.W., Suite 700, Washington, DC 20037-1122.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau