

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

In the Matter of)	
)	
Pacific Empire Radio Corporation)	
)	File No.: EB-FIELDWR-12-00002389
Licensee of:)	NAL/Acct. No.: 201232920001
Station KLBM, La Grande, Oregon)	FRN: 0006196612
Station KBKR, Baker, Oregon)	Facility ID Nos.: 35047, 24794
Station KUBQ, La Grande, Oregon)	24796, 24795
Station KKBC-FM, Baker, Oregon)	164224
Station KRJT, Elgin, Oregon)	
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 21, 2012

Released: May 22, 2012

By the Resident Agent, Portland Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Pacific Empire Radio Corporation (Pacific Empire), licensee of Station KLBM, La Grande, Oregon, Station KBKR, Baker, Oregon, Station KUBQ, La Grande, Oregon, Station KKBC-FM, Baker, Oregon and Station KRJT, Elgin, Oregon (Stations), apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Commission’s rules (Rules),¹ by failing to retain multiple issues and programs lists in the local public inspection file for each of the Stations. We conclude that Pacific Empire is apparently liable for a forfeiture in the amount of twenty five thousand dollars (\$25,000). In addition, we direct Pacific Empire to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that Pacific Empire is now in compliance with Section 73.3526 of the Rules.

II. BACKGROUND

2. The main studios of the Stations are co-located at 2510 Cove Avenue, La Grande, Oregon. On August 11, 2011, an agent from the Enforcement Bureau’s Portland Resident Agent Office (Portland Office) conducted an inspection of the Stations. The agent reviewed the Stations’ public inspection files and found that the files did not contain issues/programs lists for twelve consecutive quarters for any of the Stations. Specifically, each of the files was missing issues/programs lists from the third quarter of 2008 through the second quarter of 2011.

3. On September 8, 2011, the Portland Office sent a Letter of Inquiry (LOI) to Pacific Empire.² In its reply to the LOI,³ Pacific Empire stated that “[e]ach [of the Stations] was missing the same

¹ 47 C.F.R. § 73.3526(e)(12).

² See Letter of Inquiry from Binh Nguyen, Resident Agent, Portland Office, Western Region, FCC Enforcement Bureau, to Pacific Empire Radio Corporation (Sep. 8, 2011) (on file in EB-11-PO-0096, 97, 98, 99, 100).

issues and programs [lists] from July 2008 to August 11, 2011 due to the lack of transparency between new management and outgoing management. In this process the files were either misplaced or missing altogether.”⁴ Pacific Empire also stated that it had developed a timeline with a completion date of October 15, 2011, to ensure that the issues/programs lists for each of the Stations are complete and that as of the date of the *LOI Response*, it had completed the issues/programs lists from January 2011 through August 2011 for all of the Stations.⁵

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (Act),⁶ 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 monetary 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹¹

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³ Letter from to Pacific Empire Radio Corporation to Binh Nguyen, Resident Agent, Portland Office, Western Region, FCC Enforcement Bureau (Sep. 16, 2011) (on file in EB-11-PO-0096, 97, 98, 99, 100) (*LOI Response*).

⁴ *Id.* at 1.

⁵ *Id.* at 2.

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ 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”).

⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

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

¹¹ 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

A. Failure to Retain the Issues and Programs Lists in the Public Inspection File

5. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.¹² 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,¹³ 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).¹⁴ 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.¹⁵ 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.¹⁶

6. During an inspection conducted on August 11, 2011, an agent from the Portland Office found that 12 consecutive issues and programs lists, from the third quarter of 2008 through the second quarter of 2011, were missing from public inspection files of each of the Stations. Pacific Empire admitted to the Portland Office that the lists were either missing or misplaced due to changes in management. Based on the evidence before us, we find that Pacific Empire apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Rules by failing to maintain the Stations' issues/programs lists and make them available in the Stations' public inspection files.

B. Proposed Forfeiture Amount and Reporting Requirement

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violating of the public file rules is \$10,000 for each radio station.¹⁷ 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.¹⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we also take into account the number of Stations involved, the fact that the Stations' public inspection files were partially complete, and that the missing issues/programs lists would have been substantially similar given the proximity of the communities served by the Stations.¹⁹ We also take into account Pacific Empire's history of compliance with the Rules.²⁰ We conclude that Pacific Empire is apparently liable for a total forfeiture in the amount of \$25,000.

¹² 47 C.F.R. § 73.3526(a)(2).

¹³ 47 C.F.R. § 73.3526(c)(1).

¹⁴ 47 C.F.R. § 73.3526(e)(12).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ *See, e.g., Wilson Broadcasting, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 15963 (Enf. Bur. 2007) (affirming a forfeiture of \$4,000 for each of three co-located stations with public files missing multiple quarterly issues/programs lists).

8. We also direct Pacific Empire to submit a statement under penalty of perjury and signed by an officer or director of Pacific Empire stating that they are now in full compliance with Section 73.3526 of the Rules. This statement must be provided to the Portland Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

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, 0.311, 0.314, and 1.80 of the Commission's rules, Pacific Empire Radio Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty five thousand dollars (\$25,000) 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 (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Pacific Empire Radio Corporation **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 Pacific Empire Radio Corporation **SHALL SUBMIT** a written statement, as described in paragraph 8, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington 98666-1469. Pacific Empire Radio Corporation shall also e-mail the written statement to WR-Response@fcc.gov.

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 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. 20554.²² If you have questions regarding payment procedures, please contact the

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²⁰ We note that Pacific Empire had a history of compliance with the Rules prior to the August 11, 2011, inspection by the Portland agent. Along with the instant NAL, this inspection resulted in Notices of Violation issued against each of the Stations for violations of Sections 11.61(b) and 73.1870(b)(3) of the Rules, concerning Emergency Alert System logs and Chief Operator designation. *See, e.g., Pacific Empire Radio Corp., Station KLBM*, Notice of Violation, V201132920031 (rel. Sep. 8, 2011). Because these violations were observed during the same inspection as the violations described in this NAL, we do not believe that they negate Pacific Empire's history of compliance prior to the inspection.

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

²² *See* 47 C.F.R. § 1.1914.

Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov. Pacific Empire Radio Corporation will also send electronic notification on the date said payment is made to WR-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 to Sections 1.16 and 1.80(f)(3) of the Rules.²³ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington 98666-1469, and include the NAL/Acct. No. referenced in the caption. Pacific Empire Radio Corporation shall also email the written response to WR-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 Pacific Empire Radio Corporation at 403 "C" Street, Lewiston, Idaho 83501.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Resident Agent Office
Western Region
Enforcement Bureau

²³ 47 C.F.R. §§ 1.16, 1.80(f)(3).