

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

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

FORFEITURE ORDER

Adopted: April 30, 2013

Released: May 1, 2013

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Stephen R. Peters, former licensee of FM Station WHAW, Lost Creek, West Virginia (Station),¹ for willfully and repeatedly violating Section 73.3526(e)(12) of the Commission's rules (Rules)² by failing to maintain and make available quarterly radio issues/programs lists in the local public inspection file.

II. BACKGROUND

2. On August 24, 2010, an agent from the Enforcement Bureau's Columbia Office conducted a routine inspection during normal business hours at Station WHAW's main studio, located at 300 Harrison Avenue in Weston, West Virginia, with Mr. Peters, who also serves as the Station's manager. 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.³ Mr. Peters admitted to the agent that the Station did not maintain issues/programs lists.

3. On May 24, 2011, the Columbia Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$10,000 to Mr. Peters for failing to maintain and make available quarterly radio issues/programs lists in the public inspection file.⁴ Mr. Peters responded to the *NAL* on June 9, 2011, asserting that he never stated that the Station did not maintain issues/programs lists and that the *NAL* should be canceled on the grounds that (1) at the time of the inspection the issues/programs lists could

¹ On October 2, 2012, the FCC granted the request to assign the license for Station WHAW from Stephen R. Peters to Della Jane Woofler. See BAL-20120801ANP. The parties consummated the assignment on October 4, 2012.

² See 47 C.F.R. § 73.3526(e)(12).

³ The current license term began on October 1, 2003 and the Station therefore was missing 26 quarterly issues/programs lists. See BR-20030527ACZ, granted September 25, 2003.

⁴ *Stephen R. Peters*, Notice of Apparent Liability for Forfeiture, 26 FCC Red 7623 (Enf. Bur. 2011) (*NAL*).

not be located because they were drying out from water damage sustained during a devastating storm on June 24, 2010 and (2) the amount of the proposed forfeiture is excessive given the nature of the violation.⁵

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ In examining Mr. Peters' *Response*, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.⁹ We considered Mr. Peters' *Response* to the *NAL* in light of these statutory factors and find that neither cancellation nor reduction of the forfeiture is warranted for the reasons discussed below.

5. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM or FM station shall maintain a public inspection file containing the material relating to that station described in Section 73.3526(e) of the Rules.¹⁰ Specifically, Section 73.3526(e)(12) 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.¹¹ This list is known as the radio issues/programs list and copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application.¹² Further, as required by Section 73.3526(b), the public inspection file shall be maintained at the station's main studio.¹³ On August 24, 2010, an agent from the Columbia Office found that the Station's public inspection file did not contain any issues/programs lists since the Station's current license term began on October 1, 2003.

6. The evidence does not support Mr. Peters' claim that he maintained the lists and that they were unavailable during the August 24, 2010, inspection because they were "soaked and . . . drying out" from water damage sustained during a devastating storm on June 24, 2010, a storm which Mr. Peters also alleges blew the roof off the studio and destroyed a substantial amount of broadcast equipment.¹⁴ During the August 24, 2010, inspection, the agent did not observe any visible damage to the main studio building or to the broadcast equipment. Further, when the agent inspected the Station's public file, he found that the file contained other required documents, such as a copy of the Station authorization, the ownership

⁵ See Letter from Lauren A. Colby, Counsel for Mr. Peters, to Salomon Satche, District Director, Columbia Office, Northeast Region, Enforcement Bureau (filed June 9, 2011, in EB-10-CF-152) (*Response*) and Declaration of Mr. Peters (*Declaration*) at 1. We note that Mr. Colby passed away on May 22, 2012, and Mr. Peters has not retained new counsel.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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), *recons. denied*, 15 FCC Rcd 303 (1999) (Forfeiture Policy Statement).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. § 73.3526(a)(2).

¹¹ 47 C.F.R. § 73.3526(e)(12).

¹² *Id.*

¹³ 47 C.F.R. § 73.3526(b).

¹⁴ See *Declaration* at 1.

report, and the Station's contour map, none of which appeared to have water damage.¹⁵ In addition, the lists Mr. Peters submits with his *Response*, which allegedly were the ones that had been "drying out," have no sign of water damage. Based on our review of the facts, we conclude that the preponderance of the evidence does not support Mr. Peters' account.¹⁶ Accordingly, we affirm the finding in the *NAL* that Mr. Peters willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain and make available issues/programs lists.¹⁷

7. We also disagree with Mr. Peters that the proposed forfeiture amount is excessive. Mr. Peters notes that the proposed \$10,000 forfeiture for the public file violation is substantially more than the \$7,000 forfeiture assessed for a serious public safety issue involving an antenna structure owner's failure to properly maintain antenna structure lighting.¹⁸ While it is correct that the case Mr. Peters cites resulted in the assessment of a \$7,000 forfeiture, the amount initially proposed in that case was \$20,000 and it was only later reduced to \$7,000 based on the antenna structure owner's demonstrated inability to pay.¹⁹ The base forfeiture amount under Section 1.80(b) of the Rules for public violations is \$10,000²⁰ and the forfeiture proposed in this case is consistent with Commission precedent.²¹ We therefore see no reason to cancel or reduce the proposed forfeiture amount on this basis.

8. In sum, we have examined Mr. Peters' *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Peters willfully and repeatedly violated Section 73.3526 of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$10,000 is warranted.

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(f)(4) of the Commission's Rules, Stephen R. Peters **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3526 of the Commission's rules.²²

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²³ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for

¹⁵ We also question the likelihood that it would take more than two months for the issues/programs lists to sufficiently dry out.

¹⁶ We note that Mr. Peters' claim in the *Response* that he never told the agent that Station WTOR did not maintain issues/programs lists (*Declaration* at 1), is inconsistent with the agent's contemporaneous inspection notes. In any event, even if we set aside that admission, it does not change our conclusion that the Station violated Section 73.3526 of the Rules, given the agent's other observations during the inspection.

¹⁷ Given our conclusions, we remind Mr. Peters of the duty of candor and truthfulness expected of all Commission licensees, as well as the possible penalties for misrepresentation, including monetary forfeitures and license revocation or non-renewal. *See, e.g.*, 47 U.S.C. § 312(a); 47 C.F.R. § 1.17.

¹⁸ *See Response* at 1.

¹⁹ *See Big Fish Broadcasting, LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 201032480003 (Enf. Bur. Atlanta Office, rel. January 26, 2010).

²⁰ 47 C.F.R. § 1.80(b).

²¹ *See, e.g., Mapleton License of San Luis Obispo, LLC*, Forfeiture Order, 27 FCC Rcd 4099 (Enf. Bur. 2012).

²² 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526.

²³ 47 C.F.R. § 1.80.

enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁴ Stephen R. Peters shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

11. Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested to Stephen R. Peters at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

²⁴ 47 U.S.C. § 504(a).

²⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁶ See 47 C.F.R. § 1.1914.