

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Curran Communications, Inc.
Licensee of AM Station WPAM
Pottsville, Pennsylvania
File No.: EB-FIELDNER-12-00004491
NAL/Acct. No.: 201232400003
FRN: 0003789781
Facility ID No.: 14741

FORFEITURE ORDER

Adopted: June 30, 2015

Released: June 30, 2015

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$720 against Curran Communications, Inc. (Curran), licensee of AM Station WPAM (Station), for failing to maintain and make available the required quarterly issues/programs lists in the Station's public inspection file. The issues/programs lists inform the public regarding a broadcaster's treatment of community issues and the requirement to maintain such lists is part of a broadcaster's obligations as a public trustee. Curran acknowledges that its public file did not contain numerous issues/programs lists, but requests cancellation or reduction of the penalty proposed against it in light of its purported good faith corrective efforts, misunderstanding regarding its public file responsibilities, and inability to pay the forfeiture. We find that Curran's corrective efforts took place after it received notice of the violations and do not warrant forfeiture cancellation or reduction. We similarly find that Curran's purported misunderstanding regarding its public file responsibilities under a time brokerage agreement does not excuse or mitigate the violations. However, we find that reducing the forfeiture to \$720 is appropriate based on Curran's demonstrated inability to pay.

II. BACKGROUND

2. On August 10, 2011, agents from the Enforcement Bureau's Philadelphia Office inspected the Station's main studio and found that its public file did not contain any quarterly issues/programs lists for the relevant license term. On February 14, 2012, the Enforcement Bureau (Bureau) issued the NAL proposing a \$10,000 forfeiture against Curran for its apparent willful and repeated violations of Section 73.3526(e)(12) of the Commission's rules (Rules) by failing to maintain the issues/programs lists and make them available in the Station's public inspection file.

1 The investigation began under EB-11-PA-0156 and was subsequently assigned File No. EB-FIELDNER-12-00004491. Any future correspondence with the Commission concerning this matter should reflect the new case number.

2 Curran Commc'ns, Inc., Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 1541, 1541, para. 2 (Enf. Bur. 2012) (NAL). Specifically, the public file was missing 20 quarters of issues/programs lists. Id. The NAL includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

3 See id at 1543, para. 7; 47 C.F.R. § 73.3526(e)(12).

3. On March 22, 2012, Curran filed a response to the *NAL*.⁴ Curran makes three arguments as to why the *NAL* should be canceled or reduced. First, Curran states that it brought its public file into compliance after being notified by Bureau agents of the missing issues/programs lists.⁵ Second, Curran asserts that it understood that the Station's public file requirements were being met by RPM Media, LLC, with whom it previously had a time brokerage agreement.⁶ Third, Curran maintains that payment of the proposed forfeiture amount would represent a financial hardship and submitted income statements in support of its claim.⁷

III. DISCUSSION

4. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ When we assess forfeitures, Section 503(b)(2)(E) 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."¹¹ As discussed below, we have fully considered Curran's response to the *NAL* and its Financial Supplement, and find that a forfeiture reduction is warranted based on inability to pay.

A. Curran's Post-Inspection Corrective Actions Do Not Support a Forfeiture Cancellation or Reduction

5. Curran requests cancellation or reduction of the proposed forfeiture, asserting that it brought its public inspection files into compliance after being notified by Bureau agents of the missing issues/programs lists.¹² While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹³ As the Commission has repeatedly stated, "corrective action taken to come into

⁴ See Curran Communications, Inc., Response to Notice of Apparent Liability for Forfeiture Order and Statement Seeking Reduction or Cancellation of the Proposed Forfeiture (Mar. 22, 2012) (on file in EB-FIELDNER-12-00004491) (*NAL Response*).

⁵ See *id.* at 1, Exhibit A at 3.

⁶ See *id.* at 2.

⁷ See *id.* at 2–3. Curran initially submitted a 2011 income statement with the *NAL Response*. In response to a subsequent Bureau request for information concerning the Station's current financial status, Curran submitted income statements for 2012 and 2013. See Letter from William D. Silva, Esq., counsel for Curran Communications, Inc., to Sharon Webber, Regional Counsel, Northeast Region, Enforcement Bureau (Feb. 18, 2014) (Financial Supplement).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² See *NAL Response* at 1, Exhibit A at 3.

¹³ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁴ Curran presents no evidence that it undertook corrective efforts to replace the missing issues/programs lists prior to the inspection by Bureau agents. We therefore decline to reduce or cancel the proposed forfeiture on this basis.

B. Curran’s Misunderstanding Regarding its Public File Responsibilities Does Not Support a Forfeiture Cancellation or Reduction

6. Curran also requests cancellation or reduction of the proposed forfeiture because it mistakenly believed that the Station’s public file requirements were being met by RPM Media, LLC, pursuant to a time brokerage agreement.¹⁵ We reject this argument. As the Station’s licensee, Curran is charged with knowledge of the full range of its obligations under the Rules and ultimately responsible for the failure to maintain the issues/programs lists.¹⁶ We have repeatedly held that “[i]nadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction.”¹⁷ The fact that Curran incorrectly believed that its public file obligations were being handled by a third party does not absolve it of liability for its violations.¹⁸ We therefore decline to reduce or cancel the proposed forfeiture on this basis.

C. Curran’s Demonstrated Inability to Pay Warrants a Forfeiture Reduction

7. Curran also requests cancellation or reduction of the proposed forfeiture based on an inability to pay, and provided financial information supporting its claim.¹⁹ With regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.²⁰ Based on the financial documents provided by Curran, we find sufficient basis to reduce the forfeiture to \$720.²¹ However, we caution Curran that a party’s inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.²² We have previously rejected inability to pay claims in cases of repeated intentional and

¹⁴ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”).

¹⁵ See *NAL Response* at 2.

¹⁶ See, e.g., *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

¹⁷ *W. Slope Commc’ns, LLC*, Forfeiture Order, 29 FCC Rcd 10470, 10471, para. 6 (Enf. Bur. 2014). See, e.g., *Steckline Commc’ns, Inc.*, Forfeiture Order, 29 FCC Rcd 1082, 1084, para. 5 (Enf. Bur. 2014) (“[I]nadvertent mistakes neither excuse a rule violation nor mitigate a forfeiture liability.”); *Emigrant Storage LLC*, Forfeiture Order, 27 FCC Rcd 8917, 8919, para. 6 (Enf. Bur. 2012) (“[I]t is well established that administrative oversight or inadvertence is not a mitigating factor.”).

¹⁸ See *Tidewater Commc’ns, LLC*, Order on Review, 25 FCC Rcd 1675, 1676, para. 5 (2010) (finding fact that employee came to an incorrect conclusion regarding the lighting status of an antenna structure did not excuse the violation and that even a “mistake” can be willful if a party “consciously and deliberately made a determination” resulting in a violation).

¹⁹ *NAL Response* at 2–4; Financial Supplement.

²⁰ See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); see also *Tommie Salter*, Forfeiture Order, 30 FCC Rcd 1041 (Enf. Bur. 2015) (finding reduced forfeiture fell within the percentage range that the Commission previously found acceptable).

²¹ This forfeiture amount falls within the percentage range that the Commission previously found acceptable. See *supra* note 20. If Curran finds it financially infeasible to make full payment of this amount within 30 days, it can request an installment plan, as described in paragraph 12 of this Forfeiture Order.

²² See 47 U.S.C. § 503(b)(2)(E).

malicious acts or otherwise egregious violations.²³ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Curran's financial circumstances.

8. Based on the record before us and in light of the applicable statutory factors, we conclude that Curran willfully and repeatedly violated Section 73.3526(e)(12) of the Rules by failing to maintain and make available the required issues/programs lists in the Station's public inspection file. We further find after consideration of the entire record, including Curran's *NAL Response* and supportive financial materials, that cancellation of the proposed forfeiture is unwarranted, but a reduction of the forfeiture amount to \$720 is appropriate based on Curran's demonstrated inability to pay.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁴ and Section 1.80 of the Rules,²⁵ Curran Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven hundred and twenty (\$720) dollars for willfully and repeatedly violating Section 73.3526(e)(12) of the Rules.²⁶

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 of this Forfeiture Order.²⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁸

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Curran Communications, Inc. shall send electronic notification of payment to Jennifer Burton at Jennifer.Burton@fcc.gov and to Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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

²³ See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (Enf. Bur. 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (Enf. Bur. 2013) (violator's demonstrated inability to pay outweighed by gravity of multiple intentional violations).

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. § 1.80.

²⁶ 47 C.F.R. § 73.3526(e)(12).

²⁷ 47 C.F.R. § 1.80.

²⁸ 47 U.S.C. § 504(a).

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

- 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.

12. 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, SW, Room 1-A625, Washington, DC 20554.³⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to James J. Curran, Jr., Curran Communications, Inc., 101 North Centre Street, Suite 400, Pottsville, Pennsylvania 17901, and to William D. Silva, Esq., Counsel for Curran Communications, Inc., P.O. Box 1121, Stevensville, Maryland 21666.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

³⁰ See 47 C.F.R. § 1.1914.