

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Gerald Parks)	File No.: EB-FIELDNER-12-00005646 ¹
)	NAL/Acct. No.: 201332360001
Licensee of AM Station WEKC)	FRN: 0007921190
Williamsburg, Kentucky)	Facility ID No.: 72790

FORFEITURE ORDER

Adopted: June 30, 2015

Released: June 30, 2015

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$1,500 against Gerald Parks, licensee of AM Station WEKC in Williamsburg, Kentucky (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. Mr. Parks acknowledges that the Station's public file did not contain numerous issues/programs lists, but requests reconsideration of the penalty proposed against him in light of his purported good faith efforts to correct the violations and inability to pay the forfeiture. We find that the corrective efforts undertaken by Station staff took place after Mr. Parks received notice of the violations and do not warrant forfeiture cancellation or reduction. However, we find that reducing the forfeiture to \$1,500 is appropriate based on Mr. Parks's demonstrated inability to pay.

II. BACKGROUND

2. On March 14, 2012, agents from the Enforcement Bureau's Detroit 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.² On January 3, 2013, the Enforcement Bureau (Bureau) issued the *NAL* proposing a \$15,000 forfeiture against Mr. Parks for his apparent willful and repeated violations of Sections 73.3526(c)(1) and 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.³

3. On February 1, 2013, Mr. Parks filed a response to the *NAL*.⁴ Mr. Parks makes two arguments as to why the *NAL* should be canceled or reduced. First, Mr. Parks states that the public file was brought into compliance with the assistance of a consultant after he received notice of the missing

¹ The investigation began under EB-10-DT-0371 and was subsequently assigned File No. EB-FIELDNER-12-00005646. Any future correspondence with the Commission concerning this matter should reflect the new case number.

² *Gerald Parks*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15, 15, para. 2 (Enf. Bur. 2013) (*NAL*). Specifically, the public file was missing 19 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 *Id.* at 17, para. 8; 47 C.F.R. §§ 73.3526(c)(1), 73.3526(e)(12).

⁴ See *Gerald Parks*, Response to Notice of Apparent Liability for Forfeiture and Order (Feb. 1, 2013) (on file in EB-FIELDNER-12-00005646) (*NAL Response*).

issues/programs lists.⁵ Mr. Parks indicates that although the Station's management was "previously unaware of the importance of staying current" with the Commission's public file requirements, the Station has implemented measures to ensure future compliance.⁶ Second, Mr. Parks asserts that the proposed forfeiture amount would represent a "serious financial hardship" that would require closure of the Station and "constitute a loss to [his] local community."⁷ Mr. Parks submitted federal tax returns in support of his request to cancel or reduce the proposed forfeiture.⁸

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),⁹ Section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ 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."¹² As discussed below, we have fully considered Gerald Parks's response to the *NAL*, and find that a reduction of the forfeiture is warranted based on inability to pay.

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

5. Mr. Parks requests cancellation or reduction of the proposed forfeiture, arguing that he undertook corrective actions to maintain and make available the issues/programs lists in the Station's public inspection file after being notified of the violations by Bureau agents.¹³ Mr. Parks also asserts that the Station implemented a new public file management system to ensure future compliance.¹⁴ 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.¹⁵ As the Commission has repeatedly stated, "corrective action taken to come into compliance with Commission rules or policy

⁵ See *id.* at 1–2.

⁶ See *id.*

⁷ *Id.* at 2.

⁸ See *id.* at Attachment. On June 8, 2015, at the request of Commission staff, Mr. Parks provided updated financial data in support of his inability to pay claim.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ *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).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See *NAL Response* at 1–2.

¹⁴ See *id.*

¹⁵ 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 . . .").

is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁶ Mr. Parks presented no evidence that he undertook corrective efforts to replace the missing issues/programs lists prior to the inspection by Bureau agents. Although Mr. Parks suggests that reconsideration of the forfeiture is appropriate because the Station’s management was previously unaware of the importance of staying current with the Commission’s public file requirements, licensees are expected to know and comply with their obligations under the Rules.¹⁷ The Commission has consistently held that violations resulting from inadvertent error or failure to become familiar with Commission requirements can be and often are willful violations.¹⁸ We therefore decline to reduce or cancel the proposed forfeiture on this basis.

B. Mr. Parks’s Demonstrated Inability to Pay Warrants a Forfeiture Reduction

6. Mr. Parks also seeks cancellation or a reduction of the proposed forfeiture based on an inability to pay, and provided financial information supporting his 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 Mr. Parks, we find sufficient basis to reduce the forfeiture to \$1,500.²¹ However, we caution Mr. Parks 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 malicious acts or otherwise egregious violations.²³ We therefore warn Mr. Parks that we could impose

¹⁶ 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.”).

¹⁷ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (“The Commission expects, and it is each licensee’s obligation, to know and comply with all of the Commission’s rules.”); see also, e.g., *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

¹⁸ See, e.g., *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (by issuing forfeitures for inadvertent violations corrected after the fact, “the Bureau impels licensees to be more familiar with the applicable rules in structuring future conduct”), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Profit Enters., Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (in denying a mitigation claim based on the mistaken belief that certain Rules were inapplicable, the Commission explained that “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . The Commission . . . does not consider ignorance of the law a mitigating factor.”), *cancelled on other grounds*, Order, 12 FCC Rcd 14999 (1997); *PJB Commc’ns of Va., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088, para. 5 (1992) (stating that inadvertent violations are “willful” violations as “[a]ll that is necessary is that the licensee knew it was doing the act in question”); *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991) (“[I]nadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”) (internal quotations omitted); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (“If ignorance of [the Rules] were accepted as an excuse, we would be encouraging licensees to know as little as possible.”).

¹⁹ *NAL Response* at 2, Attachment.

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 Mr. Parks finds it financially infeasible to make full payment of this amount within 30 days, he can request an installment plan as described in paragraph 11 of this Forfeiture Order.

²² See 47 U.S.C. § 503(b)(2)(E).

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 (continued. . . .))

significantly higher penalties regardless of his financial circumstances if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Commission's rules.

7. Based on the record before us and in light of the applicable statutory factors, we conclude that Mr. Parks willfully and repeatedly violated Sections 73.3526(c)(1) and 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 Mr. Parks's *NAL Response* and supportive financial materials, that cancellation of the proposed forfeiture against Mr. Parks is unwarranted, but a reduction of the forfeiture amount to \$1,500 is appropriate based on his demonstrated inability to pay.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁴ and Section 1.80 of the Rules,²⁵ Gerald Parks **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for willfully and repeatedly violating Sections 73.3526(c)(1) and 73.3526(e)(12) of the Rules.²⁶

9. 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

10. 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. Gerald Parks shall send electronic notification of payment to Kathy Harvey at Kathy.Harvey@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@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 TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

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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(c)(1), 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>.

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.

11. 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.

12. **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 Gerald Parks, 402 Main Street, Williamsburg, Kentucky 40769, and to his counsel, Leroy A. Gilbert, Esq., 401 Main Street, Williamsburg, Kentucky 40769.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

³⁰ See 47 C.F.R. § 1.1914.