

Federal Communications Commission

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

In the Matter of)
)
Radio Wise, Inc)
) EB-06-NF-046
Licensee of Station WNVA) NAL/Acct. No. 200732640004
Norton, Virginia) FRN 0002068641
Facility ID # 54895)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released July 20, 2007

By the Resident Agent, Norfolk Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Radio Wise, Inc. (“Wise”), licensee of AM broadcast station WNVA in Norton, Virginia, apparently willfully violated Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to make available a complete public inspection file and apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a complete public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Wise is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On June 21, 2006, an agent of the Commission’s Norfolk Office of the Enforcement Bureau (“Norfolk Office”) requested to inspect station WNVA’s public inspection file during normal business hours at its main studio in Norton, Virginia. The station manager was unable to make available a complete public inspection file. A copy of the contour maps, the most recent ownership report, and the issues/programs lists were missing from the file. The station manager was unable to produce any issues/programs lists, and there was no evidence that these lists had ever been maintained. To date, the station manager has not provided the Norfolk Office with copies of any of the missing documents.

III. DISCUSSION

3. Section 503(b) of the Act 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

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

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comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission there under, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁴

4. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection, a file containing materials listed in that section.⁵ Section 73.3526(c)(1) of the Rules requires that the public inspection file shall be available for public inspection at any time during regular business hours.⁶ Section 73.3526(e)(4) and Section 73.3526(e)(5) of the Rules require licensees to retain a copy of contour service maps and a copy of the most recent ownership report, respectively.⁷ Section 73.3526(e)(12) of the Rules requires licensees to place in the 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.⁸ This list is known as the radio issues/programs list. On June 21, 2006, an agent from the Norfolk Office requested to inspect the station's public inspection file during normal business hours at the station's main studio. The file provided was missing a copy of the contour maps, the most recent ownership report, and the required issues/programs lists. The station manager searched the office but was unable to produce any issues/programs lists or the other missing documents. There was no evidence that issues/programs lists had ever been maintained for the station. Based on the information before us, we find that Wise apparently willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file and apparently willfully and repeatedly violated Section 73.3526 by failing to maintain a complete public inspection file.

5. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for violation of the public file rule is \$10,000.⁹ 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, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ However, because station WNVA's public inspection file contained a portion of the required items, a downward adjustment of the base forfeiture amount for this violation to \$4,000 is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Wise is apparently liable for a \$4,000 forfeiture.

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 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.”

⁵ 47 C.F.R. § 73.3526(a)(2).

⁶ 47 C.F.R. § 73.3526(c)(1).

⁷ 47 C.F.R. §§ 73.3526(e)(4), (e)(5).

⁸ 47 C.F.R. § 73.3526(e)(12).

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Wise Radio, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 73.3526 of the Rules.¹¹

7. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Radio Wise, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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 above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Norfolk Office, 1457 Mount Pleasant Road, Suite #113, Chesapeake, VA 23322 and must include the NAL/Acct. No. referenced in the caption.

10. 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.

11. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹²

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Radio Wise, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden
Resident Agent
Norfolk Office
South Central Region
Enforcement Bureau

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526.

¹² See 47 C.F.R. § 1.1914.