
Federal Communications Commission

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

In the Matter of)	
)	
WSKQ Licensing, Inc.)	File Number EB-09-NY-0186
)	
Licensee of WSKQ-FM)	NAL/Acct. No. 200932380007
New York, New York)	
Facility ID # 61649)	FRN 0004976882

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 26, 2009

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that WSKQ Licensing, Inc. (“WSKQ”), licensee of commercial station WSKQ-FM, New York, New York, apparently willfully violated Section 73.3526 of the Commission's Rules (“Rules”)¹ by failing to make available a complete public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that WSKQ is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On May 15, 2009, an agent from the Commission’s New York Office of the Enforcement Bureau (“New York Office”) inspected station WSKQ-FM’s public inspection file at its main studio in New York, New York during normal business hours. The agent conducted the inspection with WSKQ-FM's Market Manager and Program Specialist, neither of whom was able to locate or make available the Issues/Programs lists for 2007, 2008, and for the first quarter of 2009. The latest Issues/Programs lists in the file were from 2006. The employees were given as much time to locate the files as needed but suspended the search after searching all work areas where the Issues/Programs lists could have been located. The Market Manager reported to the agent that they had the files and would contact the agent when they were located.

3. On May 28, 2009, the New York Office sent a Letter of Inquiry (LOI) to WSKQ regarding the missing Issues/Programs lists for 2007, 2008, and 2009. On June 18, 2009, the New York Office received a reply to the LOI. WSKQ stated in its reply that, during some building renovations, the public inspection file was placed in two file boxes and moved to a temporary location where employees were reviewing the documents and removing ones that no longer needed to be retained. WSKQ further stated that, although the radio issues/programs lists for 2007, 2008 and the first quarter of 2009 were prepared in a timely fashion, and the re-labeling and reorganization of that portion of the public file had been completed at the time of the inspection, due to inadvertent error, those radio issues/programs lists had not yet been returned to the public inspection file. They further stated that, once this oversight was

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

brought to the Station's attention, the missing issues/programs lists were promptly placed in the public file.

III. DISCUSSION

4. 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 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 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

5. Section 73.3526(a)(2) of the Rules requires every licensee in the commercial broadcast services to maintain for public inspection, a file containing materials listed in that section.⁵ The Rules require that the public inspection file be available during regular business hours at the main studio of the station.⁶ Section 73.3526(e)(12) of the Rules requires a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period ("Issues/Programs list") to be placed in the public inspection file. Copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application.⁷ On May 15, 2009, in response to a request made during regular business hours at the station's main studio, station personnel were unable to make available Issues/Programs lists for the years 2007, 2008, and the first quarter of 2009. Based on the evidence before us, we find that WSKQ apparently willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

6. 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 public inspection file rules is \$10,000.⁸ Because only a portion of the WSKQ-FM public inspection file was not available at the time of inspection, a downward adjustment of the base forfeiture amount to \$4,000 is warranted. 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.⁹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that WSKQ 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 See 47 C.F.R. §§ 73.3526(b) and (c)(1).

⁷ 47 C.F.R. § 73.3526(e)(12).

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

⁹ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

7. 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, WSKQ Licensing, 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.¹⁰

8. **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, WSKQ Licensing, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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/Account Number and FRN Number 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. 20554.¹¹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. If payment is made, WSKQ Licensing, Inc. shall send electronic notification on the date said payment is made to NER-Response@fcc.gov.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption.

11. 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.

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 WSKQ Licensing, Inc. at its address of record.

¹⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 47 C.F.R. § 73.3527.

¹¹ See 47 C.F.R. § 1.1914.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau