

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

In the Matter of)	
)	Facility ID No. 35729
KUOA, INCORPORATED)	NAL/Acct. No. MB20041810066
)	FRN: 0003754934
Licensee of Station KUOA(AM))	File No. BR-20040128ADF
Siloam Springs, Arkansas)	

FORFEITURE ORDER

Adopted: March 10, 2009

Released: March 11, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand two hundred dollars (\$7,200) to KUOA, Incorporated (“KUOA”), licensee of Station KUOA(AM), Siloam Springs, Arkansas (the “Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (the “Rules”).¹ The violations involve KUOA’s failure to properly maintain the Station’s public inspection file.

II. BACKGROUND

2. On June 21, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to KUOA in the amount of nine thousand dollars (\$9,000) for the violations.² KUOA timely filed a response to the NAL on July 28, 2004, requesting reduction of the proposed forfeiture (“Request”).

3. Previously, on January 28, 2004, KUOA filed the referenced application (“Application”) to renew the license of the Station. Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527 of the Rules has been placed in the station’s public inspection file at the appropriate times. KUOA indicated “No” to that certification explaining in an amended Exhibit that:

Information relating to the licensee’s efforts to provide programming covering local issues [had been] placed in the Station’s public file. However, it is not possible to determine whether the information was placed in the public file at the appropriate times. In addition, the presentation of the information did not, in most cases, include sufficient information to comply with the Commission’s rules *i.e.* [it] failed to provide a narrative description of the topic covered, or the specific date and time and duration that the program was aired

¹ 47 C.F.R. § 73.3526.

² Letter to James P. Riley, Esq. from Peter H. Doyle, 19 FCC Rcd 11242 (MB 2004) (“NAL”).

In response [to the public file compliance certification] . . . complete issues/programs lists for Station KUOA were not placed in the public file from October 10, 1996, through January 10, 2003.³

In addition, KUOA noted that it enacted measures to ensure that future issues/programs lists are timely prepared and placed in the public file.

4. In support of its Request, KUOA argues that reduction of the forfeiture is warranted because: (1) the Station made good faith “efforts” to comply with Section 73.3526 of the Commission’s Rules (the “Rules”); (2) the forfeiture amount assessed against KUOA is in excess of those imposed on other licensees for similar violations; and (3) it has a history of compliance with the Rules. For these reasons, KUOA contends, a reduction of the proposed forfeiture is warranted.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission’s *Forfeiture Policy Statement*.⁶ In examining KUOA’s Request, Section 503(b) of the Act⁷ and the other cited authority require 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 other such matters as justice may require.

6. KUOA argues that its efforts to comply with the Rules should mitigate the gravity of the violations. First, KUOA notes that the Station’s public file contained some, albeit incomplete, information on its public service. This argument is without merit. Section 73.3526(e)(12) of the Rules details with specificity the format required for the quarterly issues/programs lists.⁸ KUOA admits that the Station’s public file “did not contain all of the information that is required [by the Rules]”⁹ Hence, we find, as set forth in the Rules and by KUOA’s own admission, that the Station’s public file was not in compliance with the Rules.¹⁰

³ Application, Exhibit 1 as amended June 4, 2004.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. § 73.3526(e)(12) provides, in pertinent part, that issues/programs lists “shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include . . . the time date, duration, and title of each program in which the issue was treated.”

⁹ Request at 4.

¹⁰ See *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13330 (2004) (rejecting placement of National Public Radio programming lists in station’s public file as meeting issues/programs lists requirements).

7. Next, KUOA cites, as grounds for mitigation, its voluntary disclosure of the missing issues/programs lists along with its remedial efforts to recreate some of the lists and to ensure future compliance. We disagree. KUOA admitted to violating Section 73.3526 only in the context of the question contained in its license renewal application that compelled such disclosure.¹¹ Moreover, the Bureau previously reduced KUOA's proposed forfeiture of ten thousand dollars by one thousand dollars for this disclosure.¹² A further reduction is not warranted. As for KUOA's subsequent remedial action, while we recognize KUOA's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior violations.¹³

8. KUOA further argues that we should cancel the forfeiture because it is inconsistent with that issued to other licensees in similar situations. Again, we disagree. It is undisputed that the Station's public file was incomplete for nearly seven years, encompassing almost the whole license term, and missing twenty six issues/programs lists. The nine thousand dollar forfeiture we are issuing here is consistent with prior forfeitures for similar violations.¹⁴

9. We have considered KUOA's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. As a result of our review, we conclude that Licensee willfully¹⁵ and repeatedly¹⁶ violated Section 73.3526 of the Rules. However, given KUOA's history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.¹⁷

¹¹ See e.g. *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); and *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

¹² NAL, 19 FCC Rcd at 11243. Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, the admission is compulsory on the renewal application. See e.g. *Saga Communications of Illinois, LLC*, Forfeiture Order, 2008 WL 5262460 at note 20 (MB Dec. 17, 2008).

¹³ See *Pittman Broadcasting Services, LLC*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.* Letter, 14 FCC Rcd 9709 (1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962).

¹⁴ See e.g. *Capital Assets, Inc.*, Forfeiture Order, 23 FCC Rcd 12947 (MB 2008) (\$9,000 forfeiture issued for sixteen missing issues/programs lists); *Frank Neely*, Forfeiture Order, 23 FCC Rcd 11922 (MB 2008) (same); and *La Salle County Broadcasting Corporation.*, Forfeiture Order, 23 FCC Rcd 12935 (MB 2008) (\$9,000 forfeiture issued to each station for twenty eight missing issues/programs lists at each station).

¹⁵ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

¹⁶ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁷ See, e.g., *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁸ that KUOA, Incorporated, SHALL FORFEIT to the United States the sum of seven thousand two dollars (\$7,200) for willfully and repeatedly violating Section 73.3526 of the Rules.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission, within thirty (30) days of the date of this Order. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).¹⁹

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to KUOA, Incorporated, 2000 W. University Street, Siloam Springs, AR, 72761, and to its counsel, James P. Riley, Esquire, Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA, 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁹ See 47 C.F.R. § 1.1914.