

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

In the Matter of	)	
	)	Facility ID No. 2194
<b>New Inspiration Broadcasting Company, Inc.</b>	)	NAL/Acct. No. MB-20051810126
	)	FRN: 0001520303
Licensee of Station KXXM(AM),	)	File No. BR-20050801DRH
Anaheim, California	)	
	)	

**FORFEITURE ORDER**

**Adopted: March 16, 2009**

**Released: March 17, 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 nine thousand dollars (\$9,000), to New Inspiration Broadcasting Company, Inc. (“Licensee”), licensee of Station KXXM(AM), Anaheim, California (“Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to properly maintain a public file for the Station.

**II. BACKGROUND**

2. On December 20, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to Licensee for this violation.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on January 19, 2006.

3. On August 1, 2005, Licensee filed an 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, as applicable, has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, attaching an exhibit explaining that issues/programs lists for quarters prior to the second quarter of 2002, and the issues/programs lists for the fourth quarter of 2002 and the first and second quarters of 2003 were missing from the public inspection file.<sup>3</sup> On December 20, 2005, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that it was responsible for nine issues/programs lists which were missing from the Station public inspection file during the license period.<sup>4</sup> In response, Licensee filed the subject Request.

<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> *Letter to Ann Bavender, Esq. from Peter Doyle*, reference 1800B3-SS (MB Dec. 20, 2005).

<sup>3</sup> Licensee acquired KXXM(AM) on August 2000, making it responsible for the contents of the public file from that date onward.

<sup>4</sup> The Commission granted the above-referenced license renewal application on December 20, 2005.

4. In support of its Request, Licensee states that a reduction of the forfeiture is warranted because: (1) the cases cited in the NAL do not support the proposed forfeiture amount; (2) the \$9,000 forfeiture is disproportionate to forfeitures issued in similar or more egregious cases; and (3) it voluntarily disclosed its public file deficiencies and undertook procedures to prevent future violations. Licensee asserts these reasons warrant a reduction of the assessed forfeiture to \$3,000.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act 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.<sup>8</sup>

6. Licensee argues that neither the cases cited in the NAL nor Commission precedent support a \$9,000 NAL for its public file violations. Licensee asserts that the noncompliance in the cases cited in the NAL "was clearly far more egregious" than Licensee's violations, characterizing them as including: "(1) a commercial station that was fined for having no programs and issues reports over a four-year period;<sup>9</sup> (2) a station whose violations over a four-year period included a missing renewal application, as well as missing ownership reports, annual employment reports, as well as denial of access to its public file;<sup>10</sup> and (3) a licensee that was fined for not only having a public file incomplete on many counts but also denying access to the file to a member of the public."<sup>11</sup> Licensee also cites several Media Bureau decisions involving "comparable" public file violations<sup>12</sup> or violations occurring over an "indiscernible period of time"<sup>13</sup> in which the licensees were fined \$3,000 forfeitures. In light of this precedent, Licensee argues that the imposition of a \$9,000 forfeiture in the instant case is "excessive, inappropriate, and inequitable" and that the Commission is required to explain the reason for such discrepancies.<sup>14</sup>

---

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> *Dick Broadcasting Co. of Tennessee*, Letter, 19 FCC Rcd 6319 (MB 2004).

<sup>10</sup> *Pacific Spanish Network, Inc.*, Letter, 14 FCC Rcd 10021 (MB 1999).

<sup>11</sup> *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9702 (MB 1999).

<sup>12</sup> Request at 4-5. Specifically, Licensee cites to *Bison Media, Inc.*, Letter (MB rel. Sept. 21, 2005) (issuing a \$3,000 forfeiture for seven missing issues/programs lists), and several cases in which Capstar TX Limited Partnership was issued a \$3,000 forfeiture for eleven missing issues/programs lists. See *Capstar TX Limited Partnership (WJJS-FM)*, Letter, 19 FCC Rcd 2325 (MB 2004); *Capstar TX Limited Partnership (WJJX-FM)*, Letter, 19 FCC Rcd 2329 (MB 2004); *Capstar TX Limited Partnership (WROV-FM)*, Letter, 19 FCC Rcd 2337 (MB 2004); and *Capstar Limited Partnership (WMJA-FM)*, Letter, 19 FCC Rcd 2341 (MB 2004) (collectively, the "Capstar Cases"). We note that *Bison Media, Inc.* is an unpublished decision and is therefore neither binding nor precedent. See 47 C.F.R. § 0.445(e).

<sup>13</sup> Request at 5, citing *Oakland Media Group, Inc.*, Letter, 18 FCC Rcd 20219 (MB 2003) (issuing a \$3,000 forfeiture for public file violations that continued for an "indiscernible amount of time"). Licensee argues that these violations could arguably have been far greater than those in the instant case.

<sup>14</sup> Request at 3 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965) (holding that the Commission must explain its disparate treatment of contemporaneous cases with similar underlying facts)).

7. We reject Licensee's claim that the forfeiture proposed is inconsistent with precedent. We acknowledge that the *Capstar Cases* involved a greater number of missing issues/programs lists and a lesser forfeiture than the instant case. However, the licensee in those cases should in fact have been issued an NAL in the amount of \$9,000 for its public file violations.<sup>15</sup> Accordingly, we disavow the *Capstar Cases* to the extent that they are inconsistent with other forfeitures issued for similar public file violations, and find that a \$9,000 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3526 of the Rules.

8. Additionally, Licensee argues that the Commission should reduce the proposed forfeiture given its voluntary disclosure of its violations. We disagree with the assertion that its disclosure of the public file violations was voluntary. Although Licensee admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Moreover, our decision is consistent with our Rules and our *Forfeiture Policy Statement* and encourages companies to voluntarily disclose violations and promptly correct violations.<sup>16</sup> Indeed, the Bureau previously reduced Licensee's forfeiture amount by \$1,000 in light of its voluntary disclosure.<sup>17</sup>

9. Finally, Licensee argues that a reduction of its forfeiture is warranted because it took corrective action following the discovery of the Station's deficiencies and implemented new measures at the Station to ensure future compliance. We reject these arguments. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>18</sup>

10. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>19</sup> and

---

<sup>15</sup> See, e.g., *South Atlanta Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8471 (MB 2006) (issuing \$10,000 forfeiture for nine missing issues/programs lists). See also *Saga Communications of Illinois, LLC*, Forfeiture Order, DA 09-191 (MB Feb. 5, 2009) (affirming \$9,000 forfeiture issued for eight missing issues/programs lists); *Manuel Huerta Licensee of Station WJHX(AM), Lexington, AL*, Forfeiture Order, 23 FCC Rcd 14647 (MB 2008) (same); *ROA Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 11333 (MB 2008) (noting initial \$9,000 forfeiture issued for eight missing issues/programs lists, but reducing the forfeiture amount to \$7,200 based on licensee's history of compliance with the Rules).

<sup>16</sup> See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. See also *Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd. 8952 (2008) (finding that the issuance of a forfeiture despite petitioner's voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules).

<sup>17</sup> See NAL at 2. Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

<sup>18</sup> *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 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)).

<sup>19</sup> 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 (1991).

repeatedly<sup>20</sup> violated Section 73.3526 of the Rules. Furthermore, we find that Licensee's arguments do not support cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

11. 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,<sup>21</sup> that New Inspiration Broadcasting Company, Inc., SHALL FORFEIT to the United States the sum of \$9,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>22</sup> Payment of the proposed 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 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).<sup>23</sup>

13. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to: New Inspiration Broadcasting Company, Inc., 4880 Santa Rosa Road, Camarillo, California, 93012, and to its counsel, James P. Riley, Esq., Fletcher, Heald & Hildreth, PLC, 1300 17<sup>th</sup> St., 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>20</sup> 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).

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

<sup>23</sup> *See* 47 C.F.R. § 1.1914.