

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

In the Matter of
Urban Radio, III, L.L.C.
Licensee of Station KVTO(AM),
Berkeley, California
Facility ID No.28681
NAL/Acct. No. MB2006414040
FRN 0011744422
File No. BR-20050729DHH

FORFEITURE ORDER

Adopted: June 18, 2009

Released: June 19, 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 ten thousand dollars (\$10,000) to Urban Radio, III, L.L.C. ("Urban Radio"), licensee of Station KVTO(AM), Berkeley, California (the "Station"), for its willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules")¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On June 8, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL"), in the amount of ten thousand dollars (\$10,000) to Urban Radio for the violation.² In response to the NAL, Urban Radio filed a "Statement" on July 10, 2006, seeking cancellation or reduction of the proposed forfeiture.

3. On July 29, 2005, Urban Radio 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. Urban Radio indicated "No" to that certification, attaching an Exhibit explaining that, when it was preparing to file its 2005 renewal application, it discovered that it was missing quarterly issues/programs lists for the periods from July 1, 1998 to March 31, 2000, and from July 1 to October 31, 2000. Urban Radio indicated that it has since recreated the missing issues/programs lists and placed these lists into the Station's public file. In the NAL 2006, the Bureau advised Urban Radio of its apparent liability for a forfeiture of \$10,000 for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that, by its admission, eight

¹ 47 C.F.R. § 73.3526.

² Urban Radio III, L.L.C., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6376 (MB 2006).

issues/programs lists were missing from the Station's public inspection file. In response, Urban Radio filed the subject Statement.

4. In the Statement, Urban Radio argues that a reduction in the forfeiture amount is warranted based on its voluntary disclosure of the public file deficiencies; that no members of the public opposed or otherwise commented on the Station's renewal application and its omission was thus a harmless mistake; and that the forfeiture amount should be reduced or cancelled to take into account its history of overall compliance with the Commission's Rules. Urban Radio also suggests that the forfeiture amount inappropriately penalizes a minority-owned station.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,³ Section 1.80 of the Rules,⁴ and the Commission's *Forfeiture Policy Statement*.⁵ 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.⁶

6. We reject Urban Radio's contention that the forfeiture is excessive based on its "voluntary admission" of the Station's public file deficiencies. Although the 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. Our precedent holds that this form of "voluntary admission" does not warrant a reduction of a forfeiture amount.⁷

7. We also reject Urban Radio's argument that the NAL failed to consider that no member of the public protested the Station's application renewal and its omission was therefore a harmless mistake. As we discussed at length in *Faith Christian Music Broadcast Ministries*, issues/programs lists provide both the Commission and the listening public with important information regarding the extent to which a station has met the needs and interests of its community during the prior license term, and therefore, whether license renewal is warranted.⁸ The rule also is designed to facilitate the airing of programming responsive to community needs.⁹ As such, these requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations.¹⁰ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. 1.80.

⁵ *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).

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ *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) (declining to reduce forfeiture amount based on a voluntary disclosure of public file deficiencies in a license renewal application); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 10644 (MB 2006).

⁸ *Faith Christian Music Broadcast Ministries, Inc.*, Forfeiture Order, 20 FCC Rcd 19051, 19053. (2005).

⁹ *See Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁰ *See* 47 U.S.C. § 307(a).

public's ability to determine and comment on whether the station is serving the community.”¹¹ Therefore, the violation is not mitigated by Licensee's perception that no harm was committed by the omission of the lists.

8. In addition, we reject Urban Radio's argument regarding its history of compliance with the rules.¹² Urban Radio is entirely owned by Urban Radio, L.L.C., which in turn is entirely owned by Inner City Broadcasting Corporation. During the license period, the Enforcement Bureau issued a Forfeiture Order in the amount of \$12,000 to Urban Radio of Pennsylvania for its violation of the Commission Rules.¹³ Urban Radio of Pennsylvania is likewise entirely owned by Inner City Broadcasting Corporation.¹⁴ We therefore cannot find that Urban Radio's history of compliance warrants reduction of the forfeiture amount.¹⁵

9. Finally, we reject Urban Radio's suggestion that we should take into account the fact that the station is “minority owned” when assessing the appropriate penalty for its violation of the Rules.¹⁶ We are aware of no precedent, and Urban Radio provides none, which supports such a reduction.¹⁷ Previously, the Enforcement Bureau rejected such an argument and reaffirmed that reductions of forfeiture orders based on financial hardships are appropriate only when adequate financial documentation is provided.¹⁸ We therefore find that no reduction is warranted here.

10. We have considered Urban Radio's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Urban Radio willfully¹⁹ and

¹¹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05.

¹² Statement at 4.

¹³ *Urban Radio of Pennsylvania, L.L.C.*, Forfeiture Order, 19 FCC Rcd 19467 (EB 2004) (issuing \$12,000 forfeiture order for willful and repeated violations of Sections 17.47(a), 17.48(a) and 17.51(a) of the Rules by failing to exhibit red obstruction lighting on its antenna structure, failing to make observation of the obstruction lighting once every 24 hours and failing to notify the Federal Aviation Administration of an obstruction lighting outage).

¹⁴ Findings of violations, or apparent violations, by parent, sister or commonly controlled companies are imputed to, and also negate the past history claim, of the company under investigation. *Petracom of Texarkana, L.L.C.*, Forfeiture Order, 19 FCC Rcd 8096 (EB 2004) (citing *CCN, Inc.*, Order to Show Cause and Opportunity for Hearing, 13 FCC Rcd 13599, 13599-600 ¶ 1(1998); *Hill Country Real Estate Development Corp.*, Forfeiture Order, 18 FCC Rcd 21079, 21080 ¶ 5 (EB 2003); *Rio Grande Transmission, Inc.*, Forfeiture Order, 16 FCC Rcd 17040, 17042-43 ¶ 10 (EB 2001); *Mega Communications of St. Petersburg, Licensee, L.L.C.*, Forfeiture Order, 16 FCC Rcd 15948, 15949 ¶ 6 (EB 2001)).

¹⁵ *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (in determining whether a licensee has a history of overall compliance, offenses need not be “prior” to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination).

¹⁶ Statement at 4 (“Failure by the Bureau to take such warranted ameliorative action [i.e., elimination or reduction of the forfeiture order] would undermine the public interest in self-reporting and subject a minority owned and operated broadcast licensee to inappropriately harsh penalties.”).

¹⁷ See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Section II (“Adjustment Criteria for Section 03 Forfeitures”).

¹⁸ See, e.g., *Minority Business and Housing Development, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 8929 (EB 2004).

¹⁹ 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* (continued...)

repeatedly²⁰ violated Section 73.3526 of the Rules. We find that there is no basis for reduction of the proposed monetary forfeiture.

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,²¹ that Urban Radio, III, L.L.C. SHALL FORFEIT to the United States the sum of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Station.

12. 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).

IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Urban Radio, III, L.L.C., care of its counsel, Charles R. Naftalin, Esq., Holland & Knight LLP, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

(...continued from previous page)

California Broadcasting Co., Memorandum Opinion and Order, 6 FCC Rcd 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

²⁰ 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).

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