

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

In the Matter of	)	
	)	Facility ID No. 16891
DICK BROADCASTING COMPANY, INC.	)	NAL/Acct No.: MB-AD20041810020
OF TENNESSEE	)	FRN: 0001772920
	)	File No. BRH-20030731AGV
Licensee of FM Station WKZL(FM)	)	
Winston-Salem, North Carolina	)	

FORFEITURE ORDER

Adopted: May 29, 2008

Released: May 30, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to Dick Broadcasting Company, Inc. of Tennessee ("DBC"), licensee of Station WKZL(FM), Winston-Salem, North Carolina (the "Station"), for willful and repeated violations of Section 73.3526 of the Commission's Rules ("Rules").¹ The violation involves DBC's failure properly to maintain the Station's public inspection file.

II. BACKGROUND

2. On April 8, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of nine thousand dollars (\$9,000) to DBC for this violation.² DBC filed a response to the NAL on April 26, 2004.³

3. As noted in the NAL, on July 31, 2003, DBC 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, has been placed in the station's public inspection file at the appropriate times. DBC indicated "No" to that certification, attaching an Exhibit explaining that after reviewing its public file in preparation for the filing of its renewal application, DBC discovered that the quarterly programs and issues reports from 1996 through 2000 were missing. The licensee stated that the reports were "inadvertently purged" during a previous review of the file. DBC believes that the reports were prepared as it has copies of reports made prior to 1996.⁴ On

¹ 47 C.F.R. § 73.3526.

² *Dick Broadcasting Company, Inc. of Tennessee*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. MB-AD20041810020, 19 FCC Red 6319 (MB 2004).

³ Response to Notice of Apparent Liability for Forfeiture filed by Dick Broadcasting Company, Inc. of Tennessee on April 26, 2004 ("Response").

⁴ See Exhibit 11 of the captioned application.

April 8, 2008, the staff advised DBC 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, by its admission, all issues/programs lists from 1996-2000 – a total of 19 lists, according to the staff – were missing from the Station's public inspection file. In response, DBC filed the subject Response.

4. In support of its Response, DBC states that that it is confident that the reports were prepared during the period and that it has maintained them on a weekly basis since that time. It also states that it has prepared a quarterly summary with the weekly reports as a backup. DBC now requests that the forfeiture be reduced to comply with other forfeitures involving violations it claims are indistinguishable from DBC's violation. It goes on to argue that other proceedings in which the Bureau has assessed \$9,000 forfeitures against licensees for public file rule violations have involved more serious abuses than DBC's inadvertent purging of Station WKZL(FM)'s issues and programs lists from a four year period. Citing *Melody Music, Inc., v. FCC*,⁵ DBC argues that the Bureau's policy of equal treatment of similarly situated parties dictates that the Bureau reduce DBC's forfeiture. DBC asserts these reasons warrant a reduction of the assessed forfeiture.

III. DISCUSSION

5. Section 73.3526 of the Rules requires that certain items be retained in the public file, including quarterly issues/programs lists. We determine that DBC willfully and repeatedly violated Section 73.3526(e)(12) of the Rules⁶ based on its admission that issues/programs lists were purged and that these lists could not be recreated. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the "Act"),⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ In examining DBC's Response, Section 503(b) of the Act¹⁰ 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. We have examined DBC's Response pursuant to the statutory factors above and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we credit the licensee's representation that the requisite issues/programs lists were generated and timely placed in Station WKZL(FM)'s public inspection file, but subsequently were accidentally discarded. Under these circumstances, we reduce the \$9,000 forfeiture proposed against DBC to \$1,000.¹¹

⁵ *Melody Music Inc., v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

⁶ 47 C.F.R. § 73.3526(e)(12).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 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.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ See, e.g., *Brazos Valley Broadcasting, LLC*, Forfeiture Order, 21 FCC Rcd 6169 (MB 2006); *The Trustees of Davidson College*, Forfeiture Order, 20 FCC Rcd 17190 (MB 2005) (\$1,000 forfeiture appropriate when licensee generated and timely placed issues/programs lists into the station's public inspection file but subsequently misplaced them and the lists could neither be located nor reconstructed).

IV. ORDERING CLAUSES

7. 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,¹² that Dick Broadcasting Company, Inc., of Tennessee, SHALL FORFEIT to the United States the sum of one thousand dollars (\$1,000) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

8. 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).¹³

9. 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 James Kerr, Dick Broadcasting Company, Inc., of Tennessee, 192 East Lewis Street, Greensboro, North Carolina, 27406, and to its counsel, Barry A. Friedman, Esq., Thompson Hine, LLP, Suite 800, 1920 N Street, N.W. Washington, D.C., 20036.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

¹³ See 47 C.F.R. § 1.1914.