

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

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| In the Matter of |) | |
| |) | |
| 6 Johnson Road Licenses, Inc. |) | File Number: EB-09-NY-0281 |
| Licensee of FM Station WXPB |) | |
| White Plains, NY |) | NAL/Acct. No.: 201132380003 |
| Facility ID # 50056 |) | |
| |) | FRN: 0005827969 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 27, 2010

Released: October 28, 2010

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 6 Johnson Road Licenses, Inc. (“6 Johnson Road”), licensee of FM Station WXPB, Briarcliff Manor, New York, apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Commission’s Rules (“Rules”)¹ by failing to maintain and make available the quarterly issues/programs lists in the local public inspection file. We conclude that 6 Johnson Road is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On September 28, 2009, an agent from the Enforcement Bureau’s New York Office conducted an inspection with Station WXPB’s program director at the station’s main studio, located at 56 Lafayette Avenue, Suite # 365 in White Plains, New York. The agent reviewed the materials in Station WXPB’s public inspection file and found that the file did not contain any issues/programs lists for the current license term.² The only issues/programs lists in the file were from 2004 and 2005. Neither the program director nor any other station employee could locate any more recent issues/programs lists.³

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any

¹ 47 C.F.R. § 73.3526(e)(12).

² The current license term began on June 1, 2006. See BRH-20060201BEF, granted May 26, 2006.

³ We note that the program director indicated to the agent that he had been “planning to check” the public file and that it was not currently in order because station management had not clearly assigned responsibility for maintaining it. To ensure future compliance with the Commission’s local public inspection file rules, we urge 6 Johnson Road to clearly assign responsibility for maintaining the local public inspection file to a station employee.

⁴ 47 U.S.C. § 503(b).

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) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁶

4. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.⁷ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,⁸ and section 73.3526(e)(12) of the Rules specifically requires licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period.⁹ This list is known as the issues/programs list and must include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs must include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. Copies of the issues/programs list must be retained in the public inspection file until final action has been taken on the station’s next license renewal application. On September 28, 2009, an agent reviewed Station WXPB’s public inspection file and found that it did not have any quarterly issues/programs lists for the current license term, which began June 1, 2006. Accordingly, based on the evidence before us, we conclude that 6 Johnson Road apparently willfully and repeatedly violated Section 73.3526(e)(12) by failing to maintain the issues/programs lists and make them available in Station WXPB’s public inspection file.

5. Pursuant to the Commission’s *Forfeiture Policy Statement* “”and Section 1.80 of the Rules, the base forfeiture amount for violation of the public file rule is \$10,000.¹⁰ 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, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that 6 Johnson Road Licenses is apparently liable for a forfeiture in the amount of \$10,000 for its failure to maintain any quarterly issues/program lists during the current license term..

⁵ 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.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁶ 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.”

⁷ 47 C.F.R. § 73.3526(a)(2).

⁸ 47 C.F.R. § 73.3526(c)(1).

⁹ 47 C.F.R. § 73.3526(e)(12).

¹⁰ *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) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 503(b)(2)(E).

IV. ORDERING CLAUSES

6. 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, 6 Johnson Road Licenses, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for violation of Section 73.3526(e)(12).¹²

7. **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, 6 Johnson Road Licenses, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture must be made by credit card, 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 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. 20554.¹³ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. 6 Johnson Road shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

9. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to NER-Response@fcc.gov.

10. 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 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526(e)(12).

¹³ See 47 C.F.R. § 1.1914.

11. **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 6 Johnson Road Licenses, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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