

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

In the Matter of)
)
SAGA COMMUNICATIONS OF) Facility ID No. 58537
ILLINOIS, LLC) NAL/Acct. No. MB-20051810058
) FRN: 0009269655
Licensee of Station WYMG(FM),) File No. BRH-20040802BCX
Chatham, Illinois)

MEMORANDUM OPINION AND ORDER

Adopted: April 14, 2011

Released: April 15, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. Saga Communications of Illinois, Inc. ("Saga"), licensee of Station WYMG(FM), Chatham, Illinois ("Station"), filed a Petition for Reconsideration (the "Petition") of the Forfeiture Order issued to Saga for its willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules") by failing to properly maintain public inspection files at the Station. In this Memorandum Opinion and Order, we deny reconsideration in the Petition and affirm the forfeiture issued by the Media Bureau, Audio Division ("Bureau") in the amount of nine thousand dollars (\$9,000) to Saga.

II. BACKGROUND

2. On August 2, 2004, Saga 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 of the Rules has been placed in the station's public inspection file at the appropriate times. Saga indicated "No" to that certification, explaining in an Exhibit that the Station's public file was missing eight quarterly issues/programs lists for all of 1998 and 1999. Subsequently, Saga reconstructed the missing reports based on available but imprecise information and placed these reconstructions into the Station's public file.

3. On June 23, 2005, the staff issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of nine thousand dollars (\$9,000) to Saga for its admitted public file rule violations. In

1 On January 7, 2009, the Commission granted a minor change application to relocate the Station from Jacksonville, Illinois, to Chatham, Illinois. An application for license to cover the permit was filed on January 21, 2009.

2 Saga Communications of Illinois, Licensee of Station WYMG(FM), Forfeiture Order, 24 FCC Rcd 1306 (MB 2009)("Forfeiture Order").

3 47 C.F.R. § 73.3526.

4 See Application, Exhibit 11.

5 Letter to Gary S. Smithwick, Esq., from Peter Doyle., Reference No. 1800B3-JWR (MB June 23, 2005).

response, Saga filed a request for cancellation of the proposed forfeiture (“Request”) on July 25, 2005. The Bureau rejected the Request in the Forfeiture Order. Saga then filed the subject Petition.

4. In its Petition, Saga repeats several arguments considered and rejected in the Forfeiture Order, notably that the violations were neither willful⁶ nor repeated.⁷ Further, Saga argues that the forfeiture amount issued in this case is inconsistent with or disproportionate to that issued in similar or more egregious cases.⁸

III. DISCUSSION

5. The Commission will consider a Petition for Reconsideration only when petitioner shows either a material error in the Commission’s original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.⁹ Saga has failed to meet this burden.

6. Saga first suggests that, absent supporting federal precedent, the Commission may not enforce its “unsupportable view” that violations resulting from inadvertent error are “willful” violations of the Rules.¹⁰ We disagree. The Commission is entitled to rely on its own published precedent.¹¹ We thus find that the Forfeiture Order properly relied on Commission precedent in finding that violations resulting from inadvertent error or failure to become familiar with the Commission’s requirements are willful violations.¹² Accordingly, we find this argument to be meritless.

7. Without citing any supporting legal authority, Saga next argues that its public file violations were not repeated. This argument was considered and rejected in the Forfeiture Order. As Saga does not raise any new information reflecting changed circumstances, does not present additional facts not known at the time of its Request, and does not attempt to show anything more than a disagreement with the Commission’s finding on this point, we reject without further consideration this unsupported and repetitious argument.

8. Saga also argues that the forfeiture amount, for what it refers to as a “minor mistake” and “inadvertent omission,” is unreasonable and unjust when compared to the decision in *Logos Broadcasting*

⁶ Petition at 6.

⁷ *Id.* at 7-8.

⁸ *Id.* at 8-9.

⁹ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹⁰ Petition at 6-7. Saga further cites *CBS Corp. v. FCC*, 535 F.3d 167 (3d Cir. 2008) in questioning the validity of the Commission’s consistent interpretations of the statutory “willfulness” standard in Section 312(f)(1) of the Act. The Supreme Court, however, vacated *CBS Corp.* on May 4, 2009, and remanded to the Third Circuit Court of Appeals. 129 S. Ct. 2176 (2009). The case, therefore, carries no persuasive value.

¹¹ 47 C.F.R. § 0.445(e). Pursuant to Section 0.445(e) of the Rules, interpretations designed to have general applicability and legal effect that are published in the FCC Record “may be relied upon, used or cited as precedent by the Commission” in any manner.

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

Corp.,¹³ in which the Commission admonished a licensee for making false certifications in violation of Section 1.17 of the Rules. Saga, however, neglects to mention the reason for the Commission's seemingly light treatment for what we agree is a serious Rule violation – that issuance of a forfeiture was barred by the statute of limitations.¹⁴ As such, the decision in *Logos* carries no persuasive weight.

9. Lastly, Saga reiterates arguments made in its Request that the imposition of a forfeiture for the violation is inconsistent with Commission precedent.¹⁵ We have previously considered and rejected Saga's arguments on this point¹⁶ and will therefore not grant reconsideration "to debate matters upon which the Commission has already deliberated and spoken."¹⁷

IV. CONCLUSION

10. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by Saga Communications of Illinois, LLC, on March 6, 2009, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ *Letter to Dan Alpert, Esq.*, 23 FCC Rcd 10202 (MB June 30, 2008).

¹⁴ *Id.* at 10206.

¹⁵ Saga again cites two cases in which licensees were admonished for missing public file documents, and argues that it should receive a similar sanction. Petition at 9, citing *Southern Entertainment Corporation*, Letter, 20 FCC Rcd 11957 (MB 2005), *rescinded on other grounds*, Letter, 20 FCC Rcd 12105 (MB 2005); *Emmis Television License Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 22851 (EB 2004).

¹⁶ Forfeiture Order at 1304 (finding cited cases to be inapposite because those cases did not involve missing issues/programs lists but rather were situations where licensees had failed to include other documents in the stations' respective public files).

¹⁷ *WWIZ, Inc.*, 37 FCC at 686; see also *William L. Carroll*, 8 FCC Rcd 6279 (1993).