

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

In re Application of)
)
PECONIC PUBLIC BROADCASTING) Facility ID No. 38340
) NAL/Acct. No. MB-201541410015
For Renewal of License for) FRN: 0020296422
Station WPPB(FM)) File No. BRED-20140203ARX
Southampton, New York)

FORFEITURE ORDER

Adopted: March 7, 2016

Released: March 7, 2016

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 Peconic Public Broadcasting (Licensee), licensee of Station WPPB(FM), Southampton, New York (Station), for its willful and repeated violation of Section 73.3527 of the FCC Rules (Rules)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On February 3, 2014, Licensee filed the captioned application to renew the Station’s license (Application). 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 73.3527 has been placed in the station’s public inspection file at the appropriate times. Licensee answered “No” to that certification and attached an Exhibit explaining that the Station’s public file was missing 13 quarterly issues-programs lists, commencing when Licensee acquired the station in December of 2010, although it subsequently reconstructed those lists based on the Station program logs which were maintained in the same publicly-accessible room as the Station public file.

3. On March 11, 2015, the Media Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of ten thousand dollars to Licensee for its violations.² In the NAL, the Bureau specifically found that “a downward adjustment is not appropriate here considering the extensive violations that occurred.”³ On April 10, 2015, Licensee filed a Petition for Reconsideration of the NAL⁴ claiming that, although it does not argue that it should be excused from its violation of the public file rules, the Commission should: (1) examine the context of when and why the infraction took place; (2) take into account that the violations were “entirely inadvertent and in no way purposeful or willful”; and (3) note that Licensee has a clean record with no other Commission violations.⁵ Licensee indicates that

¹ 47 CFR § 73.3527.

² Peconic Pub. Broad., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2205 (MB 2015).

³ Id. at 2207, para. 7.

⁴ We will treat the response here as a timely response to the NAL

⁵ Petition for Reconsideration at 2.

the Station is a “small facility with locally produced programming and locally managed by an unpaid manager, the “public radio equivalent of a ‘mom-and-pop-operation.’”⁶ Licensee states that it acquired the Station in 2010 in an effort to save the station after the prior licensee, Long Island University (LIU), decided to defund the station, lay off all staff, and sell the facility; it claims that the station went from a staff of 14 and a budget of \$1.4 million to “a handful of employees and volunteers, and an eviscerated budget being raised virtually on a day-to-day basis,” with virtually all funding being used for programming and all paid station administrative positions abolished.⁷ Licensee requests that the Commission take a “hard look” at the circumstances surrounding the Station’s violations, observing that it should apply the standard used for considering waivers of Commission rules because “the principle is a general one.”⁸

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the Act),⁹ Section 1.80 of the Rules,¹⁰ and the Commission’s *Forfeiture Policy Statement*, which establish a base forfeiture amount of \$10,000 for violations of the FCC’s public file rules.¹¹ 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.¹² Because the Commission’s issuance of monetary forfeitures is governed by statute, we reject initially Licensee’s novel and unsupported argument that the Commission should apply the “hard look” waiver standard in connection with our enforcement authority regarding forfeitures.

5. Licensee does not dispute that it failed to maintain a complete public file for the Station, but raises several arguments as to why the forfeiture should be cancelled or reduced based on financial hardship to the Station. Although we are mindful of Licensee’s efforts to preserve the Station, we reject the claim of financial hardship due to Licensee’s failure to document that claim.¹³ The Commission will not consider reducing or canceling a forfeiture in response to financial hardship unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 3. Licensee includes with the Petition a declaration from Wallace A. Smith, President of Peconic Public Broadcasting, describing the acquisition of the station in light of LIU’s decision to terminate its affiliation with the Station, the Station’s “financial emergency” pursuant to which he served as Station General Manager on a volunteer basis, and expressing his “sincere regret” at neglecting to take better care of the Station’s public file “in the midst of the battle to secure and stabilize the station.” Petition for Reconsideration, Declaration Under Penalty of Perjury of Wallace A. Smith, at paras. 3-5.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 CFR § 1.80.

¹¹ *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). (*Forfeiture Policy Statement*).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536, para. 15 (EB 2006) (holding that “the argument that payment of a forfeiture would limit Evangelism’s ‘ability to generate programming in the public interest’ is, in effect, a claim of financial hardship for which licensee had not provided the required documentation”), *modified*, 23 FCC Rcd 15959 (2008).

documentation that accurately reflect the licensee's current financial status.¹⁴ In this case, the *NAL* plainly described the type of documentation needed to support a claim of financial hardship.¹⁵ We note that the staff also contacted Licensee's counsel by e-mail on three separate occasions—May 18, 2015, July 1, 2015, and October 19, 2015—requesting that Licensee provide documentation supporting its claim of financial hardship, but received no response. Because Licensee has not provided any such documentation, we will not reduce the forfeiture based on financial hardship.¹⁶

6. We also find unpersuasive the Licensee's argument that the failure to maintain a complete public inspection file for 13 straight quarters at the Station does not constitute a "willful or repeated" violation. The Act defines willful conduct as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law¹⁷ and defines repeated conduct as "the commission or omission of such act more than once or, is such commission or omission is continuous, for more than one day."¹⁸ Violations resulting from inadvertent error are willful violations.¹⁹ Licensee has failed to justify why a departure from precedent is justified. Thus, Licensee's failure to properly maintain the Station's public file constituted a "willful" violation of Section 73.3527 of the Rules, irrespective of its lack of intent.

7. Finally, we reject the claim that the proposed forfeiture should be rescinded or reduced based upon the Station's history of compliance with the FCC's Rules. Although Licensee has a history of compliance with the Rules, as noted by the Bureau in the *NAL*, a downward adjustment is not appropriate here considering the extensive violations that occurred.²⁰ Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the Section 73.3527 violations in this case.²¹

8. We have considered the Licensee's response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that the Licensee willfully and repeatedly violated Section 73.3527 of the Rules, and we find that there is no basis for reduction of the proposed monetary forfeiture.

9. We will grant the captioned application for renewal of the Station's license by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the violations discussed here that would preclude grant of the application.

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount based on financial hardship).

¹⁵ See 30 FCC Rcd at 2208, para. 14.

¹⁶ See, e.g., *Westport Board of Education*, Forfeiture Order, 26 FCC Rcd 1088 (MB 2011) (forfeiture not reduced where licensee provided no documentation regarding its ability to pay).

¹⁷ 47 U.S.C. § 312(f)(1).

¹⁸ 47 U.S.C. § 312(f)(2).

¹⁹ See *PJB Commc'ns of Va., Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Company*, 6 FCC Rcd 4387, para. 3 (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

²⁰ See, e.g., *Adelante Media of Ca. License, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 28 FCC Rcd 16896, 16897-98, para. 7 (MB 2013) (notwithstanding licensee's history of compliance, downward adjustment not warranted due to extensive nature of public file violations).

²¹ See, e.g., *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508 (MB 2009) (\$10,000 Forfeiture issued for 12 missing issues-programs lists); *Boone Biblical Ministries, Inc.*, Forfeiture Order, 24 FCC Rcd 14293 (MB 2009) (\$20,000 Forfeiture issued for 14 missing issues-programs lists at two separate stations).

IV. ORDERING CLAUSES

10. 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 FCC's Rules,²² that Peconic Public Broadcasting SHALL FORFEIT to the United States the sum of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3527 of the FCC's Rules at the Station.

11. Payment of the proposed forfeiture must be made by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (callsign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Penelope Dade at Penelope.Dade@fcc.gov and Michael Wagner at Michael.Wagner@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank–Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²³

12. 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 Mr. Wallace A. Smith, Peconic Public Broadcasting, P.O. Box 1410, Southampton, NY 11969, and to counsel, Ernest T. Sanchez, Esq., Suite 1050, 1155 F Street, N.W., Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² 47 U.S.C. § 503(b); 47 CFR §§ 0.283, 1.80.

²³ *Id.*