

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

In the Matter of)	
)	Facility ID No. 34389
ENTERCOM GREENVILLE LICENSE, LLC)	NAL/Acct. No. MB-AD 200418102110
)	FRN: 0003245594
)	File No. BR-20030801DAH
Licensee of Station WYRD(AM) Greenville, SC)	

FORFEITURE ORDER

Adopted: August 6, 2008

Released: August 7, 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 three thousand dollars (\$3,000) to Entercom Greenville License, LLC (“Entercom”), licensee of Station WYRD(AM), Greenville, South Carolina (the “Station”) for its willful and repeated violation of Section 73.3526 of the Commission's Rules (the “Rules”).¹ The noted violation involves Entercom's failure to maintain station WYRD(AM)’s public inspection file.

II. BACKGROUND

2. On November 3, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of three thousand dollars (\$3,000) to Entercom.² Entercom filed a response requesting rescission of the forfeiture (the “Response”) on January 4, 2004.³

3. As noted in the NAL, 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, as applicable, has been placed in the station's public inspection file at the appropriate times. Entercom indicated "No" to that certification, explaining in its attached Exhibit that "in reviewing its public inspection file, the licensee found that the quarterly issues and programs lists for the second and third quarters of 2000 and the third and fourth quarters of 2001 were missing from its public inspection file. The licensee is not able to ascertain whether

¹ 47 C.F.R. § 73.3526.

² Letter to Brian M. Madden Esq. from Peter Doyle, Chief, Audio Division, reference 1800B3 (November 3, 2004).

³ Entercom was granted an extension until January 4, 2004, to file its response.

these reports were compiled and timely placed in the public inspection file and subsequently removed for research, historical and/or public review purposes or whether they were not compiled."

4. In its Response, Entercom states that it has taken efforts to locate the archived information necessary to recreate the missing issues/programs lists, and that using the station's records, it was able to successfully recreate each of the missing lists and place them in the station's public file. Entercom states that it understands the importance of the issues/programs lists and that it takes measures to ensure that all quarterly issues/programs lists are prepared and placed in the public file by the appropriate deadlines. Entercom states that it has instructed all of WYRD(AM)'s personnel, who are responsible for the creation of the issues/programs lists and for the maintenance of the public inspection file, of the importance that the lists be carefully prepared and timely placed in the public file. Entercom asserts that the staff has also been reminded of the need to safeguard the contents of the station's public inspection file so that documents are not removed from the file and then lost or misfiled. It concludes that, for these reasons, the *NAL* should be rescinded.

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 Entercom willfully⁴ and repeatedly⁵ violated Section 73.3526 of the Rules based on its admission that the quarterly issues and programs lists for the second and third quarters of 2000 and the third and fourth quarters of 2001 were missing from its public file.

6. As noted in the *NAL*, the proposed forfeiture amount in this case was determined in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ In considering Entercom's Response, Section 503(b) of the Act requires that the Bureau take into account the nature, circumstances, extent and gravity of the

⁴ 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 California*, 6 FCC Rcd at 4387-88.

⁵ 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).

⁶ 47 U.S.C. § 503(b)

⁷ 47 C.F.R. § 1.80.

⁸ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 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.

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.⁹

7. We have examined Entercom's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Entercom willfully and repeatedly violated Section 73.3526 of the Commission's Rules. Specifically, we reject Entercom's suggestion that its implementation of measures to ensure future compliance is a basis for rescinding the forfeiture. While we recognize Entercom's efforts, corrective action taken to come into

compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁰ Therefore, we find that there is no basis for cancellation of the proposed monetary forfeiture.

IV. ORDERING CLAUSES

8. 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,¹¹ that Entercom Greenville License, LLC SHALL FORFEIT to the United States the sum of \$3,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment of the 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 above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1-A625, Washington, DC 20554.¹³

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹¹ 47 C.F.R. §§ 0.283, 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.

10. 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 Entercom Greenville License, LLC, 401 City Avenue, Baya Cynwyd, Pennsylvania 19004, and to its counsel, Brian M. Madden Esq., Leventhal, Senter & Lerman, PLLC, 2000 K Street N.W, Suite 600, Washington, DC 20006.

COMMISSION

FEDERAL COMMUNICATIONS

Peter H. Doyle, Chief
Audio Division
Media Bureau