

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

In the Matter of)	
)	Facility ID Nos. 61275/58931
Radio License Holding CBC, LLC)	NAL/Acct. Nos. MB-20041810074/75
)	FRN: 0001595214
Licensee of Stations WIBR(AM))	File Nos. BR-20040202AXR;
Baton Rouge; WEMX(FM))	BRH-20040202AYD
Kentwood, Louisiana)	

MEMORANDUM OPINION AND ORDER

Adopted: July 22, 2011

Released: July 22, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration and Request for Rescission of Forfeiture Order ("Petition") filed by Radio License Holding CBC, LLC ("Licensee"), licensee of Stations WIBR(AM), Baton Rouge, Louisiana, and WEMX(FM), Kentwood, Louisiana ("Stations"). Licensee seeks reconsideration of the Media Bureau's ("Bureau") *Forfeiture Order*¹ in the amount of eight thousand dollars (\$8,000) for Licensee's willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules")² by failing to retain all required documentation in the stations' public inspection files. In this Memorandum Opinion and Order, we deny reconsideration and affirm the forfeiture.

II. BACKGROUND

2. On February 2, 2004, Licensee filed the captioned applications to renew the licenses of WIBR(AM) and WEMX(FM) (the "Applications"). 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. Licensee responded "no" with regard to WIBR(AM). It disclosed that the station failed to timely place the following issues/programs lists in the WIBR(AM) public file: the issues/programs lists for the four quarters of 1999; the first three quarters of 2000; first quarter of 2001; the first quarter of 2002; and the first three quarters of 2003. Licensee also responded "no" with regard to WEMX(FM). It disclosed that the station failed to timely place the following issues/programs lists in the WEMX(FM) public file: the issues/programs lists for the four quarters of 1999; the first three quarters of 2000; the third and fourth quarters of 2001; the third and fourth quarters of 2002; and the first three quarters of 2003.³ Licensee added that the majority of the initially absent quarterly issues and programs lists had been re-created and placed in the respective public inspection files and that steps had been taken to assure that in the future all quarterly lists are timely prepared and placed in the public files.⁴

¹ *Citadel Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 15060 (MB 2010) ("*Forfeiture Order*").

² 47 C.F.R. § 73.3526.

³ Licensee also indicated that "the lists do not meet all of the technical requirements of 47 C.F.R. § 73.3526(e)(12)."

⁴ See Applications at Exhibit 11.

3. On August 5, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture (“NAL”)⁵ to Licensee in the amount of nine thousand dollars (\$9,000) to each Station – for a total of eighteen thousand dollars (\$18,000) – for willfully and repeatedly⁶ violating Section 73.3526 of the Rules. Licensee filed a joint response to each NAL on September 3, 2004, requesting cancellation of each of the proposed forfeitures, arguing that: (1) the forfeiture amounts were inconsistent with precedent respecting similar public file violations; and (2) a number of the violations occurred before Licensee acquired the Stations on June 26, 2001.

4. In the *Forfeiture Order*, the Bureau rejected Licensee’s argument regarding the consistency of the forfeiture amounts with precedent and granted a reduction of each forfeiture amount to four thousand dollars (\$4,000) – for a total of eight thousand dollars (\$8,000) – based on the fact that many of the Section 73.3526 violations took place before Licensee acquired the Stations. Licensee timely filed the subject Petition on November 24, 2010.

5. In its Petition, Licensee argues for the first time that the Bureau must rescind the *Forfeiture Order* because it is statutorily barred.

III. DISCUSSION

6. 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.⁷ Licensee has failed to meet this burden.

7. The forfeiture amount for the violation was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission’s *Forfeiture Policy Statement*.¹⁰ 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.¹¹

8. Licensee contends that the general five-year statute of limitations on government enforcement of forfeitures, codified at 28 U.S.C. § 2462, requires cancellation of the *Forfeiture Order*.¹² We disagree. Section 2462 governs only the initiation of collection actions by the United States

⁵ See *Letters to Nancy A. Ory, Esq.*, Ref. 1800B3-SS (MB Aug. 5, 2004). The Bureau granted the captioned renewal applications on August 5, 2004.

⁶ For purposes of Section 503(b) of the Communications Act of 1934, as amended (“Act”), the term “willful” means that the violator knew it was taking the action or failing to take the required action, irrespective of any intent to violate the Rules. A continuing violation is “repeated” if it lasts for more than one day. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁷ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub 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).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

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), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² See Petition at 2. Licensee reasons that, because the violations ended in 2002 and the *Forfeiture Order* issued in 2010, the Commission is time-barred from enforcing the *Forfeiture Order* under Section 2462.

Department of Justice, not the Commission's issuance of *NALs* and *Forfeiture Orders*.¹³ The relevant statute of limitations for a Commission forfeiture proceeding is Section 503(b)(6) of the Act.¹⁴ Section 503(b)(6) prohibits the Commission from issuing a forfeiture for violations of its rules that occurred "prior to the date of commencement of the current term of such license"¹⁵ or, if a new term has commenced, "more than 1 year prior to the date of issuance"¹⁶ of the *NAL*. Here, the Bureau issued the *NALs* and granted the license renewal applications on August 5, 2004. As such, no new license term commenced until that date, and the statute of limitations provisions of Section 503(b)(6) were not triggered.¹⁷ Because the *NALs* addressed conduct during the license term under review, we find no grounds for cancellation of the *Forfeiture Order*.

9. We have considered Licensee's Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Radio License Holding CBC, LLC, willfully and repeatedly violated Section 73.3526 of the Rules, and we find no other mitigating circumstances that warrant cancellation or further reduction of the forfeiture. We find that the *Forfeiture Order* issued to Radio License Holding CBC, LLC is reasonable and consistent with precedent.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Radio License Holding CBC, LLC, on October 20, 2010, IS DENIED.

11. IT IS FURTHER ORDERED, that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: Radio License Holding CBC, LLC, c/o Hillary E. Glassman, 261 Madison Avenue, 3rd Floor, New York, NY 10016, and to its counsel, Nancy A. Ory, Lerman Senter PLLC, 2000 K Street N.W., Suite 600, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ See *Evergreen Media Corporation of Chicago AM*, Memorandum Opinion and Order, 6 FCC Rcd 5950, 5950, fn. 9 (MB 1991) (finding that Section 503(b)(6) covers Commission forfeiture proceedings, while Section 2462 is relevant only to "whether the forfeiture is ultimately collectible in a suit brought in the District Court by the Department of Justice").

¹⁴ 47 U.S.C. § 503(b)(6).

¹⁵ 47 U.S.C. § 503(b)(6)(A)(ii).

¹⁶ 47 U.S.C. § 503(b)(6)(A)(i).

¹⁷ See *Emmis Broadcasting Corporation of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541 (1996). There, the Commission held that the simultaneous issuance of an *NAL* and the grant of a renewal application in a single document would not trigger the restrictive one-year statute of limitations provisions, and the *NAL* could properly address conduct during the license term under review.