

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

In the Matter of)	
)	Facility ID No. 58539
Saga Communications of Illinois, LLC)	NAL/Acct. No. MB-20051810057
)	FRN: 0009269655
Licensee of Station WIXY(FM), Champaign, Illinois)	File No. BRH-20040802BHA

FORFEITURE ORDER

Adopted: February 4, 2009

Released: February 5, 2009

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 Saga Communications of Illinois, LLC (“Saga”), licensee of Station WIXY(FM), Champaign, Illinois (“Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On August 2, 2004, Saga filed the captioned application to renew the license of the Station (“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 73.3526 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 the following quarterly issues-programs lists: the fourth quarter of 1998; the first, second, and third quarters of 1999; and the fourth quarter of 2000.² 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 Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of three thousand dollars (\$3,000) to Saga for its violations.³ On July 25, 2005, in response to the NAL, Saga filed a request for cancellation of the proposed forfeiture (“Request”). In support of its Request, Saga argues that: (1) the violations were not willful or repeated; (2) it is contrary to the public interest to assess a forfeiture for voluntary, self-reported violations; and (3) Commission precedent in similar circumstances is to admonish the licensee.

¹ 47 C.F.R. § 73.3526.

² See Application, Exhibit 11.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. MB-20051810057 (MB Jun. 23, 2005) (“NAL”).

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ 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.⁷

5. Saga 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. First, Saga contends that the violations were not willful. In support, Saga cites the Commission's decision in *Vernon Broadcasting*,⁸ where the Commission rescinded a forfeiture against a licensee based upon a finding that the licensee's apparent violation of the Rules was not committed willfully. Here, Saga asserts that its violations were not willful because it was unaware that the Station's public file was incomplete. In addition, Saga notes that once it discovered that the issues-programs lists were missing it took remedial action.

6. Saga's reliance on *Vernon Broadcasting* is misplaced. There, the Commission rescinded a forfeiture imposed against a licensee who allegedly failed to enclose its antenna tower with a secure fence, in apparent violation of Section 73.49(a)(8) of the Rules.⁹ The Commission acknowledged that the existing fence had been vandalized on prior occasions and that, because of such vandalism, the licensee regularly inspected the fence and made necessary repairs. The evidence before the Commission further indicated that the fence had been vandalized just after the licensee's most recent inspection, but prior to an official Commission inspection, during which damage to the fence was revealed. On the basis of the foregoing, the Commission ruled that there was no indication that the licensee was either aware of the most recent damage to the fence or that it had failed to monitor the condition of its transmitter site. It did, however, affirm a liability for an unintentional public file violation, rejecting the licensee's argument that its public file violations were the result of its "misinterpretation" of the Rules.

7. While the fence in *Vernon Broadcasting* was, by its very nature and location, subject to influences outside the immediate knowledge and control of the licensee, Saga's public file was, at all relevant times, under its exclusive domain. Any public file violations are attributable directly and solely to Saga. This distinction is underscored by the Commission's holding in *Vernon Broadcasting*. Thus, Saga's failure to properly maintain the Station's public file constituted a "willful" violation of Section 73.3526 of the Rules, irrespective of its lack of intent. 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.¹⁰ Thus, violations resulting from inadvertent error or failure to become familiar with the

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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").

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1275 (1986). ("*Vernon Broadcasting*").

⁹ 47 C.F.R. § 73.49(a)(8).

¹⁰ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

Commission's requirements are willful violations.¹¹ A mistaken belief or ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.¹² Moreover, while we recognize Saga's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior violations.¹³

8. Next, Saga argues that its violations of Section 73.3526 of the Rules were not repeated. In particular, Saga argues, without support, that its violation occurred “on the day it learned the lists were not in the file.”¹⁴ However, Commission precedent clearly holds that “repeated” means that the act was committed or omitted more than once, or lasts more than one day. Specifically, Section 312(f)(1)¹⁵ 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.”¹⁶ In this case, Saga’s violations of Section 73.3526 of the Rules lasted several years. Accordingly, we find that the violations were repeated.

9. Additionally, Saga argues that the Commission should rescind the proposed forfeiture given its voluntary disclosure of its violations, and that forfeiture in this instance would discourage companies from voluntarily disclosing Rules violations. Specifically, Saga asserts that to sanction such self-reported violations “may encourage less scrupulous broadcasters not to report missing public file documents and hope they get away with it.”¹⁷ Moreover, it contends that “honest mistakes should be punished by no more than a public admonition; not a forfeiture.”¹⁸ While we do not challenge Saga’s claim that the violations were inadvertent, we do disagree with the assertion that its disclosure of the public file violations was voluntary. Although Saga admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Moreover, our decision is consistent with our Rules and our *Forfeiture Policy Statement* and encourages companies to voluntarily disclose violations and promptly correct violations.¹⁹ Indeed, the Bureau previously reduced Saga's forfeiture amount by \$1,000 in light of its voluntary disclosure.²⁰

¹¹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

¹² See *Richard Mann d/b/a The Antique Radio Collector Toledo, Ohio*, Memorandum Opinion and Order, 23 FCC Rcd. 6920 (EB 2008) (denying request to reduce forfeiture based on petitioner’s claim that it was unaware that its actions constituted a violation of the Commission’s Rules); see also *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . ignorance of the law is [not] a mitigating factor”).

¹³ See *Pittman Broadcasting, LLC*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (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)).

¹⁴ Request at 4.

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ *Id.* See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of “repeated” to Sections 312 and 503(b) of the Act).

¹⁷ Request at 4.

¹⁸ *Id.* at 6.

¹⁹ See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. See also *Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd. 8952 (2008) (finding that the issuance of a forfeiture despite

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10. Lastly, we turn to Saga's arguments that the imposition of a forfeiture for the violation is inconsistent with Commission precedent. In particular, Saga cites an Enforcement Bureau decision admonishing a licensee where the Station's public file was missing the required copy of "The Public and Broadcasting" procedural manual.²¹ Additionally, Saga cites a Media Bureau decision admonishing a licensee where its station failed to place in its public file two letters from the public.²² We find these cases to be inapposite as they do not involve missing issues/programs lists. Issues/programs lists "are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community."²³ The Commission's public information file rule also safeguards the public's ability to assess the station's service and to meaningfully participate in the license renewal process, and helps ensure the station's accessibility to and nexus with its community, and the station's service to the community and responsiveness to community programming needs.²⁴ As such, the public information requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations.²⁵ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the public's ability to determine and comment on whether the station is serving the community."²⁶ Here, the Station's public file was missing five issues/programs lists over its license term. We find that the \$3,000 forfeiture issued was an appropriate sanction for Saga's violations.

11. We have considered Saga's Request in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Saga willfully and repeatedly violated Section 73.3526 of the Rules. Furthermore, we find that Saga's arguments do not support cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

12. 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,²⁷ that Saga

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petitioner's voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules).

²⁰ See NAL at 2. Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

²¹ See 26296 *Southern Entertainment Corporation*, Letter, 20 FCC Rcd 11957 (MB 2005), *rescinded on other grounds*, 20 FCC Rcd 12105 (MB 2005).

²² See *Emmis Television License Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 22851 (EB 2004).

²³ See *Normandy Broadcasting Corp. and Lawrence N. Brandt*, Initial Decision, 8 FCC Rcd 1, 14 (ALJ 1992)(*citing Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365 (1989)).

²⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

²⁵ See 47 U.S.C. § 307(a).

²⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

Communications of Illinois, 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.

13. 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.²⁸ Payment of the proposed 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).²⁹

14. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Saga Communications of Illinois, LLC, 73 Kercheval Avenue, Grosse Pointe Farms, Michigan 48236, and to its counsel, Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁸ 47 U.S.C. § 504(a).

²⁹ See 47 C.F.R. § 1.1914.