

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

In the Matter of)	
)	
Curran Communications, Inc.)	File NO.: EB-11-PA-0156
)	NAL/Acct. No.: 201232400003
Licensee of AM Station WPAM)	Facility ID #: 14741
Pottsville, Pennsylvania)	FRN: 0003789781
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 14, 2012

Released: February 14, 2012

By the Acting District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Curran Communications, Inc. (Curran), licensee of AM Station WPAM, in Pottsville, Pennsylvania (Station), apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Commission's rules (Rules)¹ by failing to maintain and make available the quarterly issues/programs lists in the local public inspection file. We conclude that Curran is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000). We further direct Curran to submit a written statement signed under penalty of perjury stating that the Station is now in compliance with Section 73.3526(e)(12) of the Rules.

II. BACKGROUND

2. On August 10, 2011, agents from the Enforcement Bureau's Philadelphia Office conducted an inspection with the Station's chief operator at the Station's main studio in Pottsville, Pennsylvania. The agents reviewed the materials in the Station's public inspection file and found that the station was missing twenty quarterly issues/programs lists, *i.e.*, all quarterly issues/programs lists since the Commission granted the Station's renewal application on July 28, 2006.² The agent asked the Station's chief operator if any of the quarterly radio issues program lists were available. The chief operator responded that the Station does not maintain such records.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. 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.⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition

¹ 47 C.F.R. § 73.3526(e)(12).

² See BR-20060317AAV, granted July 28, 2006.

³ 47 U.S.C. § 503(b).

⁴ 47 U.S.C. § 312(f)(1).

of willful applies to both Section 312 and 503(b) of the Act⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

A. Failure to Maintain Issues/Programs Lists

4. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.⁹ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,¹⁰ and Section 73.3526(e)(12) of the Rules specifically requires licensees to place in their public inspection file, for each calendar quarter, a list of programs that have provided the station’s most significant treatment of community issues during the preceding three-month period.¹¹ This list is known as the issues/programs list and must include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs must include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. Copies of the issues/programs list must be retained in the public inspection file until final action has been taken on the station’s next license renewal application. On August 10, 2011, agents reviewed the Station’s public inspection file and found that it did not contain any quarterly issues/programs lists. Based on the evidence before us, we find that Curran apparently willfully and repeatedly violated Section 73.3526(e)(12) of the Rules by failing to maintain the issues/programs lists and make them available in the Station’s public inspection file.

B. Proposed Forfeiture and Reporting Requirements

5. Pursuant to the Commission’s *Forfeiture Policy Statement*, and Section 1.80 of the Rules, the base forfeiture amount for violation of the public file rule is \$10,000.¹² In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to

⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

⁶ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁷ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*

⁹ 47 C.F.R. § 73.3526(a)(2).

¹⁰ 47 C.F.R. § 73.3526(c)(1).

¹¹ 47 C.F.R. § 73.3526(e)(12).

¹² *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) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80

the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹³ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Curran is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for its failure to maintain any quarterly issues/programs lists during the current license term.

6. We direct Curran to submit a statement signed under penalty of perjury by an officer or director of Curran stating: (1) the radio issues/program lists are being compiled, and (2) the radio issues/program lists are being placed in the public inspection file by the tenth day of the succeeding calendar quarter. This statement must be provided to the Philadelphia Office at the address listed in paragraph 11 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Curran Communications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 73.3526(e)(12) of the Rules.¹⁴

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Curran Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Curran Communications, Inc. **SHALL SUBMIT** a sworn statement as described in paragraph 6 to the Enforcement Bureau Office listed in paragraph 11 within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁵ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, Curran Communications, Inc. shall send electronic notification on the date said payment is made to NER-Response@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526(e)(12).

¹⁵ See 47 C.F.R. § 1.1914.

to Sections 1.80(f)(3) and 1.16 of the Rules.¹⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and include the NAL/Acct. No. referenced in the caption. Curran Communications, Inc. also shall email the written response to NER-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Curran Communications, Inc. at 101 N. Centre Street, Pottsville, Pennsylvania 17901.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski
Acting District Director
Philadelphia District Office
Northeast Region
Enforcement Bureau

¹⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).