

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

In the Matter of	)	
	)	Facility ID No. 10774
<b>Chesterman Communications of Jamestown, Inc.</b>	)	NAL/Acct. No. MB-20051810050
	)	FRN: 0003729415
	)	File No. BR-20041123ABE
Licensee of Station KSJZ(FM), Jamestown, North Dakota	)	

**FORFEITURE ORDER**

**Adopted: March 4, 2009**

**Released: March 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 nine thousand dollars (\$9,000), to Chesterman Communications of Jamestown, Inc. (“Licensee”), licensee of Station KSJZ(FM), Jamestown, North Dakota (“Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to properly maintain a public file for the Station.

**II. BACKGROUND**

2. On May 24, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to Licensee for this violation.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on June 13, 2005.

3. On November 23, 2004, Licensee filed an application to renew the license of the Station. 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 of the Rules, as applicable, has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, attaching an exhibit explaining that the issues/programs lists for more than half of the subject license term, from April 1, 1998 to June 30, 2002, and from January 1, 2003, to June 30, 2003, were not completed. Licensee further stated that the lists that were in the Station’s public inspection file may not have complied fully with the requirements of Section 73.3526(e)(12) of the Rules. On May 24, 2005, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3526 of the Rules, based on the fact that, by its admission, several years’ worth of issues/programs lists were missing from the Station’s public inspection file between 1998 and 2003.<sup>3</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because: (1) the violation was not intentional; (2) Licensee voluntarily disclosed the violation in its renewal application; (3) Licensee took immediate corrective action upon learning that it was not in

<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> *Letter to Patrick R. Pfeiffer from Peter Doyle*, reference 1800B3-JWR (MB May 24, 2005).

<sup>3</sup> The Commission granted the above-referenced license renewal application on May 24, 2005.

compliance with the Commission's public file Rules and implemented new measures to ensure future compliance; and (4) payment of the proposed forfeiture would be "devastating," especially when coupled with the fact that Licensee is also facing a possible forfeiture for its public file deficiencies at another station.<sup>4</sup> Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</sup> 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.<sup>8</sup>

6. Licensee first argues that the violations were not willful, but the result of staff miscommunication. Specifically, Licensee states that one of the Station's programmers informed the Station's Vice President and General Manager that the issues/programs lists were being done when in fact they were not. Moreover, Licensee indicates that the Station participated in a voluntary mock inspection program by the state broadcasting association and the public file deficiencies were not brought to Station management's attention. However, as the Commission has held, violations resulting from inadvertent error are willful violations.<sup>9</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.<sup>10</sup> Licensee has failed to justify why departure from this precedent is warranted.

7. Additionally, Licensee argues that the Commission should rescind the proposed forfeiture given its voluntary disclosure of its violations. We disagree with the assertion that its disclosure of the public file violations was voluntary. Although Licensee 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

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<sup>4</sup> Request at 2.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>10</sup> *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*"). *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

encourages companies to voluntarily disclose violations and promptly correct violations.<sup>11</sup> Indeed, the Bureau previously reduced Licensee's forfeiture amount by \$1,000 in light of its voluntary disclosure.<sup>12</sup>

8. Licensee next argues that a cancellation or reduction of its forfeiture is warranted because it took corrective action following the discovery of the Station's deficiencies and implemented new measures at the Station to ensure future compliance. We reject these arguments. While we recognize Licensee'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.<sup>13</sup>

9. Regarding Licensee's claim of financial hardship, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay 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 ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Here, Licensee has failed to provide us with any documentation regarding Licensee's finances beyond the unsubstantiated claim that payment of the forfeiture would be "devastating." We find this information alone is an insufficient basis on which to assess Licensee's inability to pay.<sup>14</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

10. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>15</sup> and

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<sup>11</sup> 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 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).

<sup>12</sup> 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).

<sup>13</sup> *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)).

<sup>14</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

<sup>15</sup> 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 (1991).

repeatedly<sup>16</sup> violated Section 73.3526 of the Rules. Furthermore, we find that Licensee's arguments do not support cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

11. 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,<sup>17</sup> that Chesterman Communications of Jamestown, Inc., SHALL FORFEIT to the United States the sum of \$9,000 for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.

12. 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.<sup>18</sup> 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).<sup>19</sup>

13. 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: Chesterman Communications of Jamestown, Inc., c/o Patrick R. Pfeiffer, 2400 8<sup>th</sup> Avenue Southwest, P.O. Box 5180, Jamestown, North Dakota.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>16</sup> 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).

<sup>17</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> *See* 47 C.F.R. § 1.1914.