

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

In the Matter of)	
)	
RIVERSIDE BROADCASTING, INC..)	File No. EB-00-IH-0145
)	NAL/Acct. No. X32080033
Licensee of Station WIMX(FM))	Facility No. 7730
Gibsonburg, Ohio)	JJS
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 21, 2000

Released: September 22, 2000

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Riverside Broadcasting, Inc. (“Riverside”), licensee of station WIMX(FM), Gibsonburg, Ohio, apparently violated Section 73.3526 of the Commission’s rules, 47 C.F.R. § 73.3526, by denying access to its public inspection file on June 13 and 14, 2000, and by not maintaining a complete public inspection file at that time. We conclude that Riverside is apparently liable for a ten thousand dollar (\$10,000) forfeiture.

II. BACKGROUND

2. On June 14, 2000, the Enforcement Bureau received a complaint from Mr. Eric L. Huffman stating that on June 13, 2000, Mr. Huffman had visited the offices of WIMX(FM) and asked to see the public inspection file. According to Mr. Huffman, he was first directed to the manager on site because nobody knew what a public inspection file was. The manager then allegedly told Mr. Huffman that he would have to talk to his boss to find out where the file was and whether Mr. Huffman could view the file. The manager then called his boss, who, according to Mr. Huffman, “drilled me with questions wanting to know who I was and why I wanted to view the file.” The boss then told Mr. Huffman that they would call him and let him know if he could view the file. On June 14, 2000, Mr. Huffman states that he “was again drilled for questions... and was hung up on – 3 times.” The manager allegedly told Mr. Huffman that if he called again, the station would call the local police and file harassment charges. As a result of that complaint, we sent Riverside a letter of inquiry on July 19, 2000.

3. Riverside responded to the Commission’s letter of inquiry on September 15, 2000. Riverside states that it has difficulty responding to the specifics of the incident because the individual who discussed the public inspection file with Mr. Huffman no longer works at the station. It admits, however, that Mr. Huffman was improperly denied access to the public inspection file. Riverside believes that station personnel erroneously believed they could require Mr. Huffman to make an appointment to view the public inspection file and that they could ask parties to identify themselves and the parties they represent. It then states, “Regrettably, a dispute appears to have arisen and Mr. Huffman was not provided access to the file.” Riverside also reports that while a public inspection file existed, that file was incomplete. For

example, the only EEO employment report contained in the public inspection file was the 1997 report, and the file did not contain issues/programs lists for the first three quarters of 1998, any portion of 1999, or the first quarter of 2000. Riverside accepts responsibility for the violations and apologizes to Mr. Huffman. Riverside states that it has instructed station personnel that the public inspection file is to be made available to anyone who requests it.

III. DISCUSSION

4. Section 73.3526(a) of the Commission's rules, 47 C.F.R. § 73.3526(a), requires all licensees of commercial broadcast stations to maintain a public inspection file containing certain designated information. Section 73.3526(c) of the Commission's rules, 47 C.F.R. § 73.3526(c), states in pertinent part, "The file shall be available for public inspection at any time during regular business hours." Section 73.3526(e) of the Commission's rules, 47 C.F.R. § 73.3526(e), lists the contents of the public inspection file. Among the materials required to be in the public inspection file are copies of every annual employment report filed by the station (47 C.F.R. § 73.3526(e)(7)), and issues/programs lists for each quarter describing the programs that represent "the station's most significant treatment of community issues during the preceding three month period." 47 C.F.R. § 73.3526(e)(12). Both the employment reports and the issues/programs lists are required to be maintained in the public inspection file until the Commission acts on the station's renewal application. 47 C.F.R. § 73.3526(e)(7) and (12).

5. Riverside violated Section 73.3526 of the Commission's rules by denying Mr. Huffman access to the public inspection file on June 13 and 14, 2000. In *Availability of Locally Maintained Records for Inspection By Members of the Public*, 13 FCC Rcd 17959 (MMB 1998), the Mass Media Bureau reminded licensees "of their duty to afford ready access to the public file. Thus, a station may not require that a member of the public make an appointment in advance or return at another time to inspect the public file, or that members of the public examine the public file only at times most convenient to the licensee or its staff." A station is also prohibited from requiring individuals who request access to the public inspection file to identify themselves or the organization they represent. *Id.* Station personnel violated the rule by denying Mr. Huffman access to the public file and by asking him why he wanted access to the file. Furthermore, Riverside also violated Section 73.3526 by failing to place certain materials in the public inspection file, including certain issues/programs lists and EEO Model Program Reports.

6. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b) and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991). Furthermore, a continuing violation is "repeated" if it lasts more than one day. *Id.*, 6 FCC Rcd at 4388.

7. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* FCC 99-407 (released December 28, 1999). In this case, we believe the violations were serious, particularly in light of the hostile reaction Mr. Huffman encountered from station personnel. While Riverside has taken remedial actions, those remedial efforts do not excuse prior violations. *See Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (Broadcast Bureau 1977), *citing Executive Broadcasting Corp.*, 3 FCC 2d 699 (1966). Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.111, 0.311 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, that Riverside Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3526 of the Commission's rules, 47 C.F.R. § 73.3526.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Riverside SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

11. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 3-8443, Washington DC 20554 and MUST INCLUDE the file number listed above.

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. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to Riverside's counsel, Kenneth E. Satten, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Kelley
Chief, Investigations and Hearings Division
Enforcement Bureau