

Federal Communications Commission

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

In the Matter of)	
)	
Tuff-Star-Jam Communication, Inc.)	File Number: EB-06-TP-326
)	
Licensee of WWSD (AM))	NAL/Acct. No.: 200832700008
Quincy, Florida)	
Facility ID # 68319)	FRN: 0008425464

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: January 15, 2008

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Tuff-Star-Jam Communication, Inc. (“Tuff-Star-Jam”), licensee of station WWSD (AM), in Quincy, Florida, apparently willfully and repeatedly violated Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to maintain and make available a complete inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Tuff-Star-Jam is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On May 17, 2007, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) requested to inspect station WWSD (AM)’s public inspection file during normal business hours. The station manager produced the station’s public inspection file, but the file was not complete. The manager was unable to produce any issues/programs lists. The station manager admitted that she did not know the station was required to compile and maintain issues programs lists. In lieu of issues/programs lists, the station manager produced several documents describing local announcements that had been aired. However, these documents were not located in the public inspection file and did not briefly describe the announcements, and did not specify the dates or times when the announcements were aired or the duration of the announcements.

3. On November 19, 2007, in response to a letter of inquiry (“LOI”), Tuff-Star-Jam stated that the station manager had addressed the public inspection file concerns identified during the inspection and attached a copy of an issues/programs list compiled after the inspection.

III. DISCUSSION

4. Section 503(b) of the Act 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. The term “willful” as used in Section 503(b) of the Act has been

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

interpreted to mean simply that the acts or omissions are committed knowingly.³

5. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection, a file containing materials listed in that section.⁴ Section 73.3526(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.⁵ Section 73.3526(e)(12) of the Rules requires a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period ("issues/programs list") to be placed in the public inspection file.⁶ The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. On May 17, 2007, in response to a request to inspect the station's public inspection file during normal business hours, station WWSD was unable to produce any issues/programs lists, and there was no evidence that the station had ever compiled or maintained such lists in the public inspection file. The station manager admitted that she was unaware of the requirement to compile and maintain issues/programs lists. Based on the evidence before us, we find that Tuff-Star-Jam apparently willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file, and apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a complete public inspection file.

6. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for violation of public inspection file rules is \$10,000⁷. Because WWSD (AM)'s public inspection file contained a portion of the required items a downward adjustment of the base amount to \$4,000 is warranted. 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 the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Tuff-Star-Jam is apparently liable for a \$4,000 forfeiture.

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, Tuff-Star-Jam Communication, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 73.3526 of the Rules.⁹

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 73.3526(a)(2).

⁵ 47 C.F.R. § 73.3526(c)(1).

⁶ 47 C.F.R. § 73.3526(e)(12).

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

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

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within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Tuff-Star-Jam Communication, 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. Payment of the 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 above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 2203 N. Lois Avenue, Suite 1215, Tampa, Florida 33607 and must include the NAL/Acct. No. referenced in the caption.

11. 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.

12. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁰

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Tuff-Star-Jam Communication, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director,
Tampa Office
South Central Region
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.