

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

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| In the Matter of |) | |
| |) | |
| New World, L.L.C. |) | File Numbers: EB-07-OR-061 |
| |) | |
| Licensee of KZTD-AM |) | NAL/Acct. No.: 200832620001 |
| Cabot, Arkansas |) | |
| |) | FRN: 0015736143 |
| Facility ID # 25861 |) | |

FORFEITURE ORDER

Adopted: September 11, 2008

Released: September 15, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to New World, L.L.C. (“New World”), licensee of station KZTD-AM serving Cabot, Arkansas, for willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”).¹ The noted violation involves New World’s failure to maintain and make available a public inspection file.

II. BACKGROUND

2. On July 17, 2007, in response to a complaint, agents from the Commission’s New Orleans Office of the Enforcement Bureau (“New Orleans Office”) inspected station KZTD-AM at its main studio in Cabot, Arkansas.² Station KZTD-AM’s General Manager, was present during the inspection. In response to a request made during normal business hours, the general manager was unable to produce any part of the station’s public inspection file. On August 8, 2007, an agent from the New Orleans Office spoke to the station’s owner, who was unsure of the status or location of the station’s public inspection file and who stated that the general manager was in the process of compiling the required documents.

3. On October 6, 2007, the New Orleans Office issued a *Notice of Apparent Liability for Forfeiture* to New World in the amount of ten thousand dollars (\$10,000) for the apparent willful and repeated violation of Section 73.3526 of the Rules.³ New World submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

¹ 47 C.F.R. § 73.3526.

² On June 11, 2007, an agent from the New Orleans Office informed station KZTD-AM’s owner that the Office had received a complaint of several violations at the station, including a public inspection file violation.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832620001 (Enf. Bur., New Orleans Office, October 6, 2007) (“*NAL*”).

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining New World’s response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.⁶

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.⁷ 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.⁸ Section 73.3526(e) of the Rules specifies the material to be retained in the public inspection file.⁹ In response to a request made during regular business hours, station KZTD-AM’s general manager was unable to locate or make available any part of the station’s public inspection file. He was unable to find any evidence that the public inspection file had ever existed at the main studio. Subsequent to the inspection, the station’s owner was unable to provide information regarding the status or location of the station’s public inspection file.

6. Thus, based on the evidence before us, we find that New World willfully¹⁰ and repeatedly¹¹ violated Section 73.3526 of the Rules by failing to maintain a public inspection file and willfully violated Section 73.2526 of the Rules by failing to make available a public inspection file.

7. New World requests reduction or cancellation of the forfeiture because it claims it only became the licensee for the station on February 2, 2007. However, New World was the licensee of the station for over five months before the agents’ inspection and had ample time in which to assemble its public inspection file.¹² Accordingly, we deny New World’s request to cancel or reduce its forfeiture on

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 C.F.R. § 73.3526(a)(2).

⁸ 47 C.F.R. § 73.3526(c)(1).

⁹ 47 C.F.R. § 73.3526(e).

¹⁰ 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,’ ... 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).

¹¹ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹² See *WGUL-FM, Inc.*, Forfeiture Order, 14 FCC Rcd 6106 (Compl. & Inf. Bur. 1999), recon. denied 15 FCC Rcd 11163 (Enf. Bur., 2000), *app. for rev. denied in part, granted in part*, 15 FCC Rcd 24366 (2000) (holding licensee of two months responsible for public inspection file violation); *Joy Public Broadcasting Corporation, Inc.*, Forfeiture Order, 14 FCC Rcd 11326 (Compl. & Inf. Bur., 1999), recon. denied, 15 FCC Rcd 8575 (Enf. Bur.,

these grounds.

8. Finally, New World requests reduction or cancellation of its forfeiture, because it asserts imposition of the forfeiture would pose a financial hardship. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ After examining the financial documentation submitted by New World, we agree and reduce the forfeiture to \$1,000 based on its demonstrated inability to pay.

9. We have examined New World's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that New World willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain and make available a public inspection file. However, we reduce the forfeiture for this violation to \$1,000, based on New World's demonstrated inability to pay.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, New World, L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for violation of Section 73.3526 of the Rules.¹⁴

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this 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.¹⁵ 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/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[s] 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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. New World will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

2000), *recon. denied*, 15 FCC Rcd 18255 (Enf. Bur., 2000), *recon. granted in part*, 16 FCC Rcd 2283 (Enf. Bur., 2001), *recon. denied*, 16 FCC Rcd 8415 (Enf. Bur., 2001), *recon dismissed* 16 FCC Rcd 11971(Enf. Bur., 2001) (holding licensee of two months responsible for rule violations).

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁴ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.3526.

¹⁵ 47 U.S.C. § 504(a).

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to New World, L.L.C. at its address of record and to its counsel, Lee Petro, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau