

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

In the Matter of	)	
	)	
Washington and Lee University	)	Facility ID No. 70943
	)	NAL/Acct. No. MB20041810017
	)	FRN: 0006706329
	)	File No. BRED-20030602CBY
Licensee of Station WLUR(FM)	)	
Lexington, Virginia	)	

FORFEITURE ORDER

Adopted: October 30, 2008

Released: October 31, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand two hundred dollars (\$7,200), to the Washington and Lee University (“Licensee”), licensee of Station WLUR(FM), Lexington, Virginia (“Station”), for its willful and repeated violation of Section 73.3527 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On June 6, 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.² Licensee filed a Response to Notice of Apparent Liability (“Response”) on July 6, 2005.

3. On June 2, 2003, 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, filing an Exhibit explaining that the issues-programs lists prepared prior to the hiring of the current full-time manager could not be located. Thus, the required issues-program lists were missing from WLUR(FM)’s public inspection file from the first quarter of 1996 through the second quarter of 2002. The exhibit stated that corrective measures were taken, but that the missing lists could not be reconstructed. On June 6, 2005, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its admission, all issues/programs lists from March 1996 (first quarter of 1996) through June 2002 (second quarter of 2002) were missing from the Station’s public inspection file.³

4. In its Response, Licensee argues that the public file violations were unintentional and that the forfeiture should be cancelled or reduced. Specifically, Licensee asserts that the forfeiture is “wholly

¹ 47 C.F.R. § 73.3527.

² *Letter to John J. McVeigh, Esq. from Peter H. Doyle*, reference 1800B3-SS (MB June 6, 2005).

³ The Commission granted the above-referenced license renewal application on June 6, 2005.

unwarranted, given the Station's nature, the size of its operating budget, the violations' nature and lack of adverse consequences, the treatment of other, similarly situated licensees, the licensee's voluntary corrective actions . . . and the Station's overall history of compliance."⁴ Moreover, Licensee asserts that until late 2001, when it hired a General Manager, its only full-time employee, the Station was run entirely by student volunteers. Licensee notes that its remedial efforts to locate or reconstruct the missing issues-programs lists were unsuccessful because the student volunteers had graduated and left the campus. Lastly, in support of its financial hardship arguments, Licensee submits an Exhibit stating its operating budget for years 2002-2005, along with the salaries of its General Managers during this time period.⁵

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ 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.⁹

6. Licensee does not dispute that it failed to maintain a complete public file for the Station, but argues that these violations were "minor, of a paperwork nature, and did not cause actual prejudice to any party."¹⁰ In particular, Licensee opines that it is unaware of any attempt by a member of the public to examine the Station's issues/programs lists. We disagree with Licensee's assertions, attempting to undermine the importance of the issues/programs lists. The "issues-programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community."¹¹ The Commission's public information file rule also safeguards the public's ability to assess the station's service and to meaningfully participate at the station's renewal process, and helps ensure the station's accessibility to and nexus with its community, and the station's service to the community and responsiveness to community programming needs.¹² As such, the public information requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations.¹³ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the public's ability to determine and comment on whether the station is serving the community."¹⁴ Therefore, the violation is not mitigated by Licensee's perception that no harm

⁴ Response at 3.

⁵ See Exhibit A, Response.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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). ("Forfeiture Policy Statement").

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ Response at 5.

¹¹ See *Normandy Broadcasting Corp. and Lawrence N. Brandt*, Initial Decision, 8 FCC Rcd 1, 14 (ALJ 1992)(citing *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365 (1989)).

¹² See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹³ See 47 U.S.C. § 307(a).

¹⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

was committed by its failure to timely place into the public file twenty six issues-programs lists over a period of more than six years.

7. Next, Licensee argues that we should cancel or reduce the forfeiture because the forfeiture amount is inconsistent with that issued to licensees in similar situations. Licensee notes that its forfeiture is treble the \$3,000 fines assessed against two other non-commercial educational stations, *Eastern Mennonite University*,¹⁵ and *James Madison University*.¹⁶ However, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the non-commercial status of a station.¹⁷ Moreover, in the cited cases, the violations encompassed a far smaller number of missing issues-programs lists and were of shorter duration than the violations presented here.¹⁸ It is undisputed that Licensee's public file was incomplete for 6 years and 6 months, missing twenty six issues-programs lists. The \$9,000 forfeiture amount here is consistent with prior forfeitures for similar violations.¹⁹

8. We also reject Licensee's assertions, that its forfeiture should be cancelled because of its good faith in identifying its public file deficiencies and attempted remedial action. As precedent, Licensee cites *East Tennessee Radio Group L.P.*,²⁰ in which the Enforcement Bureau cancelled a \$2000 forfeiture, because the licensee took corrective action (ordering a replacement sign containing the tower's Antenna Structure Registration number) prior to the Commission's inspection of the station.²¹ In granting the partial cancellation, the Enforcement Bureau noted that remedial actions do not normally warrant a reduction of forfeiture, but that the licensee's "corrective action stemmed from its own voluntary and timely efforts, not just a hasty attempt to comply due to the FCC's inspection."²² Here, however, Licensee admitted to the violations only in the context of the question contained in its captioned license renewal application that compelled such disclosure, and its attempted remedial actions were in response to its mandated disclosure on the Station's renewal application. Therefore, under the circumstances

¹⁵ 18 FCC Rcd 20155 (MB 2003) (\$3,000 notice of apparent liability for public file violations in 2001-2003 and possibly prior to 1998).

¹⁶ 18 FCC Rcd 20784 (MB 2003) (\$3,000 notice of apparent liability for public file violations in 2000-2002).

¹⁷ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd. 8743 (MB 2008) (rejecting argument that forfeiture should be cancelled or reduced because of noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station").

¹⁸ We also find not relevant Licensee's citations to forfeitures issued for violations other than the public file violations presented here. See Response at 5 note 4.

¹⁹ See *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, DA 08-1655, Released July 15, 2008 (MB 2008) citing footnote 14, *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) (\$10,000 forfeiture issued for eleven missing issues-programs lists); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 (MB 2006) (same).

²⁰ 18 FCC Rcd 27084 (EB 2003) *recon denied* 19 FCC Rcd 13297 (EB 2004).

²¹ Although the sign displaying the ASR number was not posted on the date of the inspection, the Enforcement Bureau credited the sworn declaration of the tower owner's contract engineer, who stated that he noticed that the sign was missing approximately one week before the inspection, had ordered a replacement sign, and was preparing to post the new sign when the Commission agent discovered the violation. Accordingly, it cancelled the forfeiture for this violation.

²² *Id.* at 27085-86. (footnote omitted).

presented here, we will apply the Commission's general policy that corrective action taken to come into compliance with the Rules is expected and does not nullify or mitigate any prior violations.²³

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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.²⁵

10. With respect to its claim regarding its ability to pay the \$9,000 forfeiture, Licensee has provided us with a one-page document stating its operating budget for years 2002-2005 and a separate page stating the salaries of its General Managers during this time period. We find this information alone is an insufficient basis on which to assess Licensee's inability to pay.²⁶ Licensee also cites to *Cornell College*²⁷ in support its request for cancellation or reduction of forfeiture. There, however, the licensee provided information regarding both the school's financial condition *and* the station's budget to support its claim that the forfeiture would cause financial hardship.²⁸ Here, Licensee has only provided us with a limited snapshot of the Station's budget and has provided us with no information regarding Licensee's finances. Indeed it is noteworthy that the salaries of the Station's apparently only paid employees were not listed in its operating budget, but rather were separately accounted for by Licensee's payroll staff. 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.²⁹

11. 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 willfully³⁰ and

²³ See *Pittman Broadcasting, LLC*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (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).

²⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

²⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

²⁶ 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).

²⁷ See *Cornell College*, Memorandum Opinion and Order, 19 FCC Rcd 14586 (EB 2004) ("*Cornell College*").

²⁸ See *Cornell College*, 19 FCC Rcd at 14587.

²⁹ See, e.g., *Alderson-Broadbudd College, Inc.*, Forfeiture Order, 23 FCC Rcd 9385 (MB 2008) (forfeiture amount not reduced because it amounted to less than one percent of the Licensee's, i.e., the College's, gross revenues).

³⁰ 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.

repeatedly³¹ violated Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.³²

IV. ORDERING CLAUSES

12. 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,³³ that the Washington and Lee University, SHALL FORFEIT to the United States the sum of \$7,200 for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

13. 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).³⁴

14. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Washington and Lee University, P.O. BOX 1153, Lexington, Virginia, 24450, and to its counsel, John J. McVeigh, Esq., 16230 Falls Road, P.O. Box 128, Butler, Maryland 21023-0128.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

³¹ 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).

³² *See, e.g., Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). *See also* 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

³³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

³⁴ *See* 47 C.F.R. § 1.1914.