

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

| | | |
|------------------------------------|---|------------------------------|
| In the Matter of |) | |
| |) | |
| FRANKLIN COLLEGE OF INDIANA |) | Facility ID No. 22336 |
| |) | NAL/Acct. No. MB-20051810119 |
| Licensee of Station WFCI(FM), |) | FRN 0002900025 |
| Franklin, Indiana |) | File No. BR-20040415AEU |

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 three thousand two hundred dollars (\$3,200) to Franklin College of Indiana (“Franklin College”), licensee of Station WFCI(FM), Franklin, Indiana (the “Station”), for its willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On December 1, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”), in the amount of nine thousand dollars (\$9,000) to Franklin College for the violation.² Franklin College filed a Response to the Notice of Apparent Liability (“Response”) on January 3, 2006, and supplemental correspondence (“Supplement”), clarifying certain factual issues, on February 24, 2006.

3. On April 15, 2005, Franklin College 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. Franklin College indicated “No” to that certification, attaching as Exhibit 11 a statement that there were gaps in the Issues and Programs lists. On February 7, 2005, Franklin College filed an amended application to renew the license of the Station, attaching a revised Exhibit 11, identifying six missing Issues and Programs lists and a further three lists which were improperly formatted and which “would be of little use to a member of the public attempting to discern what issues were dealt with by WFCI’s programming.” Franklin College indicated that it was unable to recreate the missing reports or correct the defective ones. On December 1, 2005, the staff advised Franklin College of its apparent liability for a forfeiture of \$9,000 for

¹ 47 C.F.R. § 73.3526

² Letter to Lee W. Shubert from Peter H. Doyle, Chief, Audio Division, Media Bureau, reference 1800B3-CLR (MB December 1, 2005).

willfully and repeatedly violating Section 73.3526 of the Rules. In response, Franklin College filed the subject Response and Supplement.

4. In its Response, Franklin College states that the forfeiture amount should be reduced to take into account its history of overall compliance with the Commission's Rules; that the forfeiture amount assessed against it is in excess of those imposed on other licensees for violations similar to or more serious in nature;³ and that a reduction in the forfeiture amount is warranted based on its voluntary disclosure of the public file deficiencies.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ 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.⁷

6. Franklin College first suggests that the forfeiture should be reduced because it is a non-commercial licensee and an institution of higher learning.⁸ We reject this argument. It is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.⁹ Nothing in our precedent supports such a reduction, and Franklin College has not identified any instance where we have reduced a forfeiture amount on the grounds that a licensee is a noncommercial educational entity.

7. We also reject Franklin College's suggestion that a further reduction is warranted based on its "voluntary disclosure" of the WFCI(FM) deficiencies. Although the 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.¹⁰

³ *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Response at 3-4.

⁹ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743 (MB 2008) (staff rejects Licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation*, 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").

¹⁰ Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, 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).

8. Franklin College further argues that we should reduce the forfeiture because the forfeiture amount is inconsistent with that issued to licensees in similar situations. Franklin College's amended application and Supplement identified six Issues and Programs lists as missing. The NAL forfeiture amount was calculated under the belief that eighteen reports were missing.¹¹ Upon review of the amended application and Supplement, the staff has determined that six reports were missing. Therefore a base forfeiture of \$4,000 is appropriate for the six missing reports.¹²

9. Franklin College finally argues its history of compliance with the rules warrants a reduction of the forfeiture amount. Our precedent indicates that a reduction is warranted in the subject case.¹³ We therefore reduce the forfeiture amount from \$4,000 to \$3,200.

10. We have considered Franklin College's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that six Issues and Programs lists were missing and Franklin College willfully¹⁴ and repeatedly¹⁵ violated Section 73.3526 of the Rules. However, given Franklin College's history of compliance with the Rules, we reduce the forfeiture amount to \$3,200.

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,¹⁶ that Franklin College of Indiana SHALL FORFEIT to the United States the sum of three thousand two hundred dollars (\$3,200) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules at the Station.

12. 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

¹¹ NAL at 4.

¹² See, e.g., *Radio One Licenses, LLC*, Memorandum Opinion an Order and Notice of Apparent Liability, 22 FCC Rcd 5562 (MB 2007) (issuing \$4,000 forfeiture order for six missing Issues and Programs lists); *Charles River Broadcasting WFCC License, LLC*, Memorandum Opinion an Order and Notice of Apparent Liability, 22 FCC Rcd 9228 (MB 2007) (same); *AMFM Radio Licenses, LLC*, Memorandum Opinion an Order and Notice of Apparent Liability, 22 FCC Rcd 12707 (MB 2007) (issuing \$4,000 forfeiture order for four missing Issues and Programs lists).

¹³ See, e.g., *ROA Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 11333 (MB 2008) (reducing forfeiture amount from \$9,000 to \$7,200 for history of compliance); *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.

¹⁴ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

¹⁵ 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).

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

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).

13. 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 Franklin College of Indiana, 101 Branisan Blvd., Franklin, IN 46131 and to its counsel, Lee W. Shubert, Esq., Katten Muchin Zavis Rosenman, 1025 Thomas Jefferson Street, NW, East Lobby, 7th Floor, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau