

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

In the Matter of)	
)	
Wayne State College)	Facility ID No. 71191
)	NAL/Acct. No. MB-20051810076
)	FRN: 0006223762
Licensee of Station KWSC(FM),)	File No. BRED-20050121AGB
Wayne, Nebraska)	

FORFEITURE ORDER

Adopted: February 25, 2009

Released: February 26, 2009

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 Wayne State College (“Licensee”), licensee of Station KWSC(FM), Wayne, Nebraska (“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 August 10, 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 Request for Reduction of Proposed Forfeiture (“Request”) on September 14, 2005.

3. On January 21, 2005, 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, attaching an exhibit explaining that from the third quarter of 2001 through the fourth quarter of 2004, no quarterly issues/programs lists were placed in the Station’s public file. On December 22, 2004, 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, several years’ worth of issues/programs lists were missing from the Station’s public inspection file between 2001 and 2004.³ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because: (1) Licensee maintained records of the issue-oriented programming broadcast by the Station during the previous license term but failed to document it in the form of issues/programs lists; (2) Licensee took immediate corrective action upon learning that it was not in compliance with the Commission’s public file Rules and implemented new measures to ensure future compliance; and (3) as a

¹ 47 C.F.R. § 73.3527.

² *Letter to Michael Marek from Peter Doyle*, reference 1800B3-SS (MB Aug. 10, 2005).

³ The Commission granted the above-referenced license renewal application on August 10, 2005.

noncommercial broadcast station, the Station has a modest budget and payment of the proposed forfeiture will have a “chilling effect on [its] ability to continue full-time operations.”⁴ Finally, Licensee asserts that a forfeiture reduction is warranted because of its history of compliance with the Commission’s Rules. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

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

6. Licensee first argues that it is entitled to a cancellation or reduction of its forfeiture on the basis that it did in fact maintain records reflecting the Station’s issue-responsive programming during the subject license term, even though they were not in the proper format or in the Station’s public file. This argument lacks merit. Section 73.3527 of the Rules clearly states that issues/programs lists are to be kept *in* a station’s public file.⁹ The intent behind this Rule is to facilitate public access to such documents.¹⁰ To require an individual member of the public to examine the public file and to then identify for station personnel what is missing from it clearly is inconsistent with the intent of the Rule.¹¹ Accordingly, the fact that information regarding the Station’s issue-responsive programming was kept elsewhere at the Station is not a mitigating factor.

7. Licensee next argues that a cancellation or reduction of its forfeiture is warranted because it took corrective action following the discovery of the Station’s deficiencies and implemented new measures at the Station to ensure future compliance. We reject these arguments. While we recognize Licensee’s efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹²

8. 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

⁴ Request at 2.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See 47 C.F.R. § 73.3527(e)(8). See also *Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 1768, 1776-77 (2004) (rejecting licensee’s argument that its public file was complete, despite the fact that several documents missing from the file were located elsewhere at the station); *Wilson Broadcasting, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 15963, 15965 (EB 2007) (same).

¹⁰ *Clear Channel Broadcasting Licenses, Inc.*, 19 FCC Rcd at 1776.

¹¹ *Id.* at 1776-77.

¹² *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (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)).

accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status. Here, Licensee has provided us with a one-page document stating the Station’s operating budget for the year 2005 and has provided us with no documentation regarding Licensee’s finances. We find this information alone is an insufficient basis on which to assess Licensee’s inability to pay.¹³ Moreover, while Licensee argues that its noncommercial status limits its ability to generate revenue, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.¹⁴ 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.

9. 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 willfully¹⁵ and repeatedly¹⁶ violated Section 73.3527 of the Rules. However, given Licensee’s history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.¹⁷

IV. ORDERING CLAUSES

10. 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,¹⁸ that Wayne State College, SHALL FORFEIT to the United States the sum of \$7,200 for willfully and repeatedly violating Section 73.3527 of the Commission’s Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules within 30 days of the release of this Forfeiture 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.¹⁹ Payment of the proposed forfeiture must be made by check or similar

¹³ 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).

¹⁴ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, -- FCC Rcd --, Released June 6, 2008 (MB 2008) (rejecting 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”).

¹⁵ 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, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁶ 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).

¹⁷ 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.

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

¹⁹ 47 U.S.C. § 504(a).

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).²⁰

12. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to: Wayne State College, c/o Mr. Michael Marke, KWSC(FM), 1111 Main Street, Wayne, NE 68787, and to its counsel, Cary S. Tepper, Esq., Booth, Freret, Imlay & Tepper, P.C., 7900 Wisconsin Ave., Suite 304, Bethesda, MD 20814-3628.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.