

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

In the Matter of)	
)	Facility ID No. 19482
Emerson College)	NAL/Acct. No. MB-200641410044
)	FRN: 0003632627
Licensee of Station WERS(FM),)	File No. BRED-20051130BEJ
Boston, Massachusetts)	

FORFEITURE ORDER

Adopted: May 19, 2009

Released: May 20, 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 eight thousand dollars (\$8,000), to Emerson College (“Licensee”), licensee of Station WERS(FM), Boston, Massachusetts (“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 July 27, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Licensee for this violation.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on August 28, 2006.

3. On November 30, 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 fourteen issues/programs lists were missing from the Station’s public inspection file. Specifically, Licensee reported the following quarterly lists as missing: in 1998, the first through the third quarters; in 1999, the second through the fourth quarters; in 2000, all four quarters; in 2001, the first through the third quarters; and in 2002, the first and second quarters. Licensee also claimed that it had reconstructed all but three of the missing issues/programs lists. On July 27, 2006, the staff advised Licensee of its apparent liability for a forfeiture of \$10,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its admission, fourteen issues/programs lists were missing from the Station’s public inspection file between 1998 and 2002.³ In response, Licensee filed the subject Request.

¹ 47 C.F.R. § 73.3527.

² *Emerson College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8488 (MB 2006).

³ The Commission granted the above-referenced license renewal application on July 27, 2006.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because: (1) 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; (2) Licensee voluntarily disclosed the violation; and (3) the forfeiture amount is "excessive." 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,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. Licensee first 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.⁸

7. Licensee next argues that the Commission should reduce the proposed forfeiture given its voluntary disclosure of its violations. We disagree with the assertion that its disclosure of the public file violations was voluntary. Although Licensee admitted to violating Section 73.3527, it did so only in the context of the question contained in its license renewal application that compelled such disclosure.⁹ We note that our decision is consistent with the Rules and the Commission's *Forfeiture Policy Statement* and encourages companies to voluntarily disclose violations and promptly correct violations.¹⁰

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 *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)).

⁹ Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3527 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *See, e.g., Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10935, 10937 n.16 (MB 2008); *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007).

¹⁰ *See* 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. *See also Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (finding that the issuance of a forfeiture despite petitioner's voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules).

8. Licensee next argues that the forfeiture amount is “excessive” and inconsistent with Commission precedent for similar violations. Again, we disagree. It is undisputed that Licensee was missing at least 14 issues/programs lists during the pertinent license term. We find that a \$10,000 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of the Commission’s Rules regarding public files.¹¹

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 willfully¹² and repeatedly¹³ violated Section 73.3527 of the Rules. However, given Licensee’s history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.¹⁴

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,¹⁵ that Emerson College, SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000) 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.¹⁶ 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

¹¹ See, e.g., *Colby-Sawyer College*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 21682 (MB 2007) (\$10,000 Notice of Apparent Liability issued for 14 missing issues-programs lists); *Capstar TX Limited Partnership*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12715, 12715 (MB 2007) (same).

¹² 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*”).

¹³ 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).

¹⁴ See, e.g., *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (issuing forfeiture for licensee’s public file violations, but reducing forfeiture amount based on licensee’s history of compliance); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

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

¹⁶ 47 U.S.C. § 504(a).

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).¹⁷

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: Emerson College, 120 Boylston Street, Boston, Massachusetts 02116, and to its counsel, Howard M. Liberman, Esq., Drinker Biddle & Reath LLP, 1500 K Street, NW, Suite 1100, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.