

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

In re Application of)	
)	
Louisiana State University)	Facility I.D. No. 38604
)	NAL/Acct. No. MB200741410255
For Renewal of License for)	FRN: 0008301236
Station KLSU(FM))	File No. BRED-20040202AFX
Baton Rouge, Louisiana)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 31, 2009

Released: August 7, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it (1) the captioned application of Louisiana State University (the "Licensee") for renewal of its license for noncommercial educational Station KLSU(FM), Baton Rouge, Louisiana (the "Station"), and (2) the Informal Objection ("Objection") to the application filed on March 29, 2004, by Mr. Raymond R. Bigalke ("Bigalke").¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("NAL")* issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),² by the Chief, Audio Division, Media Bureau by authority delegated under Section 0.283 of the Rules,³ we find that the Licensee apparently willfully and repeatedly violated Section 73.3527 of the Rules⁴ by failing to retain all required documentation in the Station's public inspection file. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000), and we grant Bigalke's Objection to the extent indicated below and grant the captioned KLSU(FM) renewal application.

II. BACKGROUND

2. Section 73.3527 of the Rules requires a non-commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.⁵ Among the materials required for inclusion in the file are the station's quarterly

¹ The Licensee did not respond to this pleading.

² 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

³ See 47 C.F.R. § 0.283.

⁴ See 47 C.F.R. § 73.3527.

⁵ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

issues/programs lists, which must be retained until final Commission action on the station's next license renewal application.⁶

3. Section III, Item 3 of the Station's license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3527 has been placed in its station's public inspection file at the appropriate times. The Licensee indicated "No" to that Item, explaining in an amendment to the application⁷ that the issues/programs lists from 1996, 1997, 1998, the second, third, and fourth quarters of 1999, the second, third, and fourth quarters of 2000, and all of 2001 were missing from the public inspection file.⁸ The Licensee notes that the lists were kept properly from the first quarter of 1999 to the end of the license period but were "misplaced during the renovation and relocation of the KLSU studio and the administrative offices."⁹ The Licensee also states that since the fourth quarter of 2002, all issues/programs lists have been properly placed in the public inspection file.¹⁰

4. In his Objection, Bigalke alleged violations by the Licensee of Section 73.3527(e)(8) of the Rules. These alleged violations included the failure to maintain the issues/programs lists "from the 3rd Quarter of 1996 through the Third Quarter of 2002."¹¹ Bigalke argues that the KSLU(FM) application for renewal of license "should be denied."¹²

III. DISCUSSION

5. *Proposed Forfeiture.* As the Licensee has acknowledged, during periods within the license term, the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3527 of the Rules. In this regard, where lapses occur in maintaining the public file, 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.¹³

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.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.¹⁵ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁶ and the Commission has so interpreted the term in the Section

⁶ See 47 C.F.R. 73.3527(e)(8).

⁷ The Licensee amended its application on October 8, 2004.

⁸ See captioned application, as amended, at Attachment 1.

⁹ See captioned application, as amended, at Exhibit 11.

¹⁰ *Id.* at Attachment 1. The Licensee is silent regarding the status of the lists for the first three quarters of 2002. *Id.*

¹¹ Bigalke Objection at 1.

¹² *Id.* at 2.

¹³ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Red 9709 (MMB 1999)(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)); *Surrey Front Range Limited Partnership*, Letter, 7 FCC Red 6361 (FOB 1992).

¹⁴ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

503(b) context.¹⁷ Section 312(f)(2) of the Act provides that "[t]he term 'repeated' . . . means the commission or omission of such act more than once or, if . . . continuous, for more than one day."¹⁸

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of the public file rule.¹⁹ In determining the appropriate forfeiture amount, we may adjust the amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "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."²⁰

8. In this case, although the Licensee has admitted to the violations, it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Moreover, the violations were extensive, occurring over a seven-year period and involving at least 22 missing issues/programs lists.²¹ Even if the lists from January 1999 "to the present" were completed but went missing, as the Licensee contends, the record is clear that at least 12 lists were never prepared.²² While these violations are serious, considering the record as a whole, we believe that a \$10,000 forfeiture, rather than designation of the KLSU(FM) application for evidentiary hearing, is appropriate for the violations in this case. Accordingly, we will grant Bigalke's objection in part and find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violation of Section 73.3527.

9. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²³ That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."²⁵

10. We find that the Licensee's violations of Section 73.3527 of the Rules do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover, we find no evidence of

¹⁷ See *Southern. California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁸ 47 U.S.C. § 312(f)(2).

¹⁹ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

²⁰ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

²¹ Bigalke claims that 25 lists were missing; see Bigalke Objection at 1.

²² See captioned application, as amended, at Exhibit 11.

²³ 47 U.S.C. § 309(k).

²⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

violations that, when considered together, evidence a pattern of abuse.²⁶ Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Louisiana State University is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Section 73.3527 of the Commission's Rules.

12. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Louisiana State University SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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).

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 reflects the respondent'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.

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁷

²⁶ For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁷ *See* 47 C.F.R. § 1.1914.

17. Accordingly, IT IS ORDERED that the March 29, 2004, informal objection filed by Mr. Raymond R. Bigalke against the captioned application of Louisiana State University IS HEREBY GRANTED to the extent indicated.

18. IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Louisiana State University for noncommercial educational Station KLSU(FM), Baton Rouge, Louisiana (File No. BRED-20040202AFX) IS GRANTED.

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Louisiana State University, c/o Student Media, B-39 Hodges Hall, Baton Rouge, Louisiana 70803 and to Mr. Raymond R. Bigalke, 11070 Mead Road (#1703), Baton Rouge, Louisiana 70816.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau