

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

In the Matter of	)	Facility ID No. 48825
	)	NAL/Acct. No. MB-200741410129
<b>Nicholls State University</b>	)	FRN: 0001704410
	)	File No. BRED-20040818ABP
Licensee of KNSU(FM)	)	
Thibodaux, Louisiana	)	
	)	

**FORFEITURE ORDER**

**Adopted: April 20, 2010**

**Released: April 21, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Nicholls State University (“Nicholls”), licensee of radio station KNSU(FM), Thibodaux, Louisiana (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by engaging in unauthorized operation of the Station after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On February 7, 2007, the Media Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Nicholls for failure to timely file the Station’s renewal application and for unauthorized operation of the Station.<sup>2</sup> As noted in the NAL, the Station’s license term should have been filed by February 1, 2004, four months prior to the Station’s June 1, 2004, license expiration date. The application, as well as a request for special temporary authority (“STA”) to operate, was not filed until August 18, 2004, two months after the Station’s license had expired.<sup>3</sup>

3. In its Response to the NAL (“Response”), filed on March 5, 2007, Nicholls seeks reduction or cancellation of the proposed forfeiture based on its inability to pay. As evidence of financial hardship, Nicholls submitted financial statements (“Statements”) compiled according to generally accepted accounting practices (“GAAP”) for 2002-2006.

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Nicholls State University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2339 (MB 2007). The Station’s renewal application was granted on February 7, 2007. The Commission fined Nicholls \$3,000 for failure to file a required form and \$4,000 for operating without authorization.

<sup>3</sup> The staff granted the STA application August 31, 2004, and it expired on March 1, 2005. *Letter to Mr. Lance Arnold*, Ref. 1800B3-MFW (MB Aug. 31, 2004). The Station did not seek an additional STA until October 3, 2005. The staff granted this request on October 14, 2005, and the STA expired on April 14, 2006. *Letter to Mr. Lance Arnold*, Ref. 1800B3-MFW (MB Oct. 14, 2005). The Station again failed to file a timely request for extension of the STA and did not file a request for further STA until April 24, 2006. This request for STA was granted on April 25, 2006, and expired on October 25, 2006. *Letter to Mr. Lance Arnold*, Ref. 1800B3-MFW (MB Apr. 25, 2006).

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,<sup>4</sup> Section 1.80(b)(4) of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</sup> 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.<sup>7</sup>

5. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to GAAP; or (3) some other reliable and objective documentation that accurately reflects the petitioner'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.<sup>8</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>9</sup> We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>10</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>11</sup>

6. Here, Nicholls has provided us with financial statements prepared according to GAAP for the years 2003, 2004, 2005, and 2006.<sup>12</sup> These returns show Nicholls' gross revenues of approximately \$29,289,443, \$33,949,590, \$39,281,589, and \$40,681,884, respectively. The \$7,000 forfeiture in this case would represent less than one percent of Nicholls' average gross revenue over the four years for which information was provided.<sup>13</sup> In considering claims of financial hardship, we have previously found forfeiture amounts as high as 4 percent of gross revenues to be reasonable,<sup>14</sup> and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial hardship.<sup>15</sup> We are unwilling to cancel or reduce the forfeiture in this case because the forfeiture represents such a small percentage of Nicholls' gross revenue.

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<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> *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).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

<sup>9</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Nicholls' fiscal year begins July 1 and ends June 30. *See* Letter from Linda T. Peltier, Nicholls State University Budget Officer, to Dr. James Stewart, Nicholls State University Department Head, Mass Communication, Feb. 22, 2007.

<sup>13</sup> When assessing financial hardship claims, we look at the licensee's revenues, as opposed to those of the station. *See College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (2009) (finding that a one-page document regarding the station's finances was insufficient information upon which to evaluate an inability to pay argument).

<sup>14</sup> *See Bowie County Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 9539 (2009).

<sup>15</sup> *See Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

7. We have considered the Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Nicholls willfully<sup>16</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>17</sup> violated Section 301 of the Act and, for the reasons set forth above, decline to reduce or cancel the forfeiture amount based on Nicholls' claim of inability to pay.

#### IV. CONCLUSION.

8. 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,<sup>18</sup> that Nicholls State University SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

9. 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.<sup>19</sup> 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).<sup>20</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Maureen.McCarthy@fcc.gov. Requests for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>21</sup>

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<sup>16</sup> 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*").

<sup>17</sup> 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).

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

<sup>19</sup> 47 U.S.C. § 504(a).

<sup>20</sup> See 47 C.F.R. § 1.1914.

<sup>21</sup> *Id.*

10. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Nicholls State University, P.O. Box 2664, c/o Lance Arnold, Thibodaux, Louisiana 70310 and Nicholls State University, P.O. Box 2003, c/o Dr. James Stewart, Thibodaux, LA 70301.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau