

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

In re Application of)	Facility ID No. 37731
)	NAL/Acct. No. MB-200941410015
Linfield College)	FRN: 0005752100
)	File No. BRED-20050930BQI
Licensee of)	
Station KSLC(FM))	
McMinnville, Oregon)	

FORFEITURE ORDER

Adopted: June 6, 2011

Released: June 7, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Linfield College (“Linfield”), licensee of radio station KSLC(FM), McMinnville, Oregon (“Station”), for willfully and repeatedly violating Section 73.3527¹ of the Commission’s Rules (“Rules”).

II. BACKGROUND

2. Section 73.3527 of the Rules requires a noncommercial educational 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 throughout the license period. Among the materials required for inclusion in the file are the station’s quarterly issues/programs lists, which must be retained until final Commission action on the station’s next license renewal application,² and the Station’s most recent ownership report.

3. Section III, Item 3 of Linfield’s license renewal application form, FCC Form 303-S, requested that the licensee certify that the documentation required by Section 73.3527 had been available in the Station’s public inspection file at the appropriate times. Linfield indicated “No” to that certification and attached an Exhibit explaining that issues/programs lists from 1999, 2000, and 2001 were missing from the Station’s local public file. In the Exhibit, Linfield stated that the 1999-2001 period coincided with the resignation of the faculty advisor to the Station. Linfield noted that the hiring of a new faculty advisor had remedied the Station’s problems and that its public file had been complete since 2002.

4. On October 7, 2009, the Media Bureau (“Bureau”) granted the above-referenced application for license renewal and issued a Notice of Apparent Liability for Forfeiture (“NAL”)³ in the amount of ten thousand dollars (\$10,000) to Linfield for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that it was responsible for the fact that 12 issues/programs lists

¹ 47 C.F.R. § 73.3527.

² See 47 C.F.R. 73.3527(e)(8).

³ *Linfield College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 12429 (MB 2009).

were missing from the Station's public inspection file during the license period. On November 6, 2009, Linfield filed a "Response to Notice of Apparent Liability and Request for Cancellation or Reduction of Proposed Forfeiture" ("Response").

5. In its Response, Linfield argues that the *NAL* should be canceled or reduced because: 1) proposed forfeiture is barred by the statute of limitations; and 2) it has a history of compliance with the Rules.

III. DISCUSSION

6. 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 determining the appropriate forfeiture amount, 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

7. Linfield does not dispute that it failed to maintain its public inspection files as required by the Commission's Rules. However, it argues that the proposed forfeiture is barred by the statute of limitations pursuant to Section 503(b)(6)(A) of the Communications Act of 1934, as amended ("Act"),⁸ which prohibits the Commission from issuing *NALs* for violations of its rules that occurred "prior to the date of commencement of the current term of such license"⁹ or, if a new term has commenced, "more than 1 year prior to the date of issuance"¹⁰ of the *NAL*. Linfield reasons that, because its license has a stated "grant date" of August 19, 2008,¹¹ a new license term commenced on that date. Because of the commencement of a new license term, Linfield argues, the October 7, 2009, *NAL* could only address violations that occurred within one year of its issuance, and Linfield's last violation occurred several years before the issuance of the *NAL*. As a result, Linfield contends that Section 503(b)(6) requires cancellation of the *NAL*.

8. As Linfield notes, the Bureau issued a renewed license bearing an August 19, 2008, grant date. However, Linfield fails to cite case law or any other authority to support its novel assertion that as a result, the application was retroactively granted as of that date. As noted in the *NAL* and as reflected in the Commission's database, Linfield's license renewal application was granted on October 7, 2009.¹² Until the Bureau granted that renewal—and issued the *NAL*—on that date, Linfield continued to lawfully operate the Station on an expired license while the Commission reviewed its pending application, as provided in Section 307(c)(3) of the Act.¹³ As a result, no new license term commenced until the October

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 47 U.S.C. § 503(b)(6)(A).

⁹ 47 U.S.C. § 503(b)(6)(A)(ii).

¹⁰ 47 U.S.C. § 503(b)(6)(A)(i).

¹¹ *See* Response, Exhibit A.

¹² *See Linfield College*, 24 FCC Rcd 12429.

¹³ 47 U.S.C. § 307(c)(3).

7, 2009, grant of Linfield's renewal application, and the statute of limitations provisions of Section 503(b)(6)(A) were not triggered.¹⁴

9. We have considered Linfield's response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Linfield willfully¹⁵ and repeatedly¹⁶ violated Section 73.3527 of the Rules. However, Commission records confirm Linfield's contention that its history of compliance with the Rules merits a reduction of the forfeiture amount, and we will reduce the forfeiture on this basis from \$10,000 to \$8,000.¹⁷

IV. CONCLUSION

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 Linfield 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.¹⁹ 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

¹⁴ This finding is consistent with *Emmis Broadcasting Corporation of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541 (1996) ("*Emmis*"). There, the Commission held that the simultaneous issuance of an *NAL* and the grant of a renewal application in a single document would not trigger the restrictive one-year statute of limitations provisions, and the *NAL* could properly address conduct during the license term under review. See *Emmis*, 11 FCC Rcd at 8543. We disavow the Audio Division's holdings in *Escalante City*, Forfeiture Order, 2011 WL 1455454, DA 11-694, ¶8 (MB 2011) (finding that the grant of a renewal application and issuance of a *NAL* in the same document had the effect of placing the *NAL* in a new license term and triggering the one-year statute of limitations provisions of Section 503(b)(6)) and *Paul Smith's College*, Forfeiture Order, 2011 WL 1455450, DA 11-690, ¶8 (MB 2011) (same), to the extent that they are inconsistent with *Emmis*, the controlling Commission precedent.

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. *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 *Truman State University*, Forfeiture Order, 25 FCC Rcd 956 (MB 2010) (reducing proposed forfeiture by 20 percent based on licensee's history of compliance with the Rules).

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

¹⁹ 47 U.S.C. § 504(a).

code).²⁰ Linfield will also send electronic notification on the date said payment is made to kelly.donohue@fcc.gov and steve.rowings@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²¹

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: Linfield College, 900 S.E. Baker Street, McMinnville, OR 97128, and to its counsel, Stephen T. Lovelady, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.

²¹ *Id.*