

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

In the Matter of )
)
Metropolitan School District of Wayne ) Facility I.D. No. 41317
Township ) NAL/Acct. No. MB20051810007
) FRN: 0009694712
Licensee of WBDG(FM) ) File No. BRED-20040324ABY
Indianapolis, Indiana )
)

FORFEITURE ORDER

Adopted: August 2, 2011

Released: August 3, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of nine thousand dollars (\$9,000) to Metropolitan School District of Wayne Township ("Licensee") licensee of noncommercial educational station WBDG (FM), Indianapolis, Indiana ("Station"), for its willful and repeated violation of Section 73.3527 of the Commission's Rules ("Rules")<sup>1</sup> by failing to retain all required documentation in the Station's public inspection file.

II. BACKGROUND

2. On March 24, 2004, Licensee filed an application to renew the Station's license. Section III, Item 3 of Licensee's renewal application form, FCC Form 303-S, required the licensee to certify whether the documentation required by Section 73.3527 of the Rules had been placed in the Station's public inspection file at the appropriate times. Licensee indicated "No" to that Item, explaining in an exhibit to the application that twelve issues/programs lists were missing from the Station's public inspection file from September 1996 through June 1999.

3. On March 2, 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.<sup>2</sup> Licensee submitted a response to the NAL ("Response") on April 1, 2005.<sup>3</sup>

4. In its Response, Licensee argues that a cancellation of the forfeiture is warranted because: (1) an imposition of the forfeiture would not serve the public interest; and (2) the forfeiture would impose a substantial financial hardship upon the Metropolitan School District of Wayne Township and WBDG.<sup>4</sup>

<sup>1</sup> See 47 C.F.R. § 73.3527.

<sup>2</sup> See Letter to Kathryn R. Schmeltzer, Esq. and Mr. Martin L. Hensley from Peter Doyle, reference 1800 B3-CLR (MB 2005).

<sup>3</sup> The Response was styled as a petition for reconsideration. However, because a petition for reconsideration is not appropriate at this juncture as there has been no final Commission action, we shall treat it as a request for cancellation or reduction of proposed forfeiture. See 47 C.F.R. § 1.106(a)(1).

<sup>4</sup> See Response at 2-3.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>7</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>8</sup>

6. Licensee first argues that the Commission proposed an excessive forfeiture that “penalize[s] the very noncommercial educational stations [it] should be encouraging.”<sup>9</sup> Licensee contends that the \$9,000 forfeiture goes against the public interest, given the noncommercial and educational nature of its station. However, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.<sup>10</sup> Furthermore, the \$9,000 forfeiture issued to the Station is consistent with prior forfeitures issued for similar violations.<sup>11</sup> We therefore decline to reduce or cancel the forfeiture amount due to Licensee’s noncommercial educational status.

7. Licensee also argues that the forfeiture should be cancelled because it is unable to pay the forfeiture.<sup>12</sup> The Commission will not consider reducing or cancelling 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 accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status.<sup>13</sup> Here, Licensee has provided us with a summary of the Station’s budget and expenses from 2002 to 2005, but no information regarding its own finances. We have consistently held that information regarding the station’s (as opposed to the licensee’s) budget is an insufficient basis upon which to evaluate a licensee’s ability to pay, as it fails to meet the standard of “other reliable and objective documentation.”<sup>14</sup> Accordingly, in the absence of sufficient information to support a decision to the

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> Response at 2.

<sup>10</sup> *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 3851, 3853 (MB 2010); *see also Des Moines Independent Community School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869, 3871 (2009) (rejecting licensee’s argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status).

<sup>11</sup> *See Tri-State University*, Forfeiture Order, 24 FCC Rcd 4961, (MB 2009) (stating that a \$9,000 forfeiture for the station’s Section 73.3527 violation was not excessive given the licensee’s noncommercial status); *see also Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) (issuing a \$10,000 forfeiture for eleven missing issues/programs lists); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 (MB 2006) (same).

<sup>12</sup> Response at 3.

<sup>13</sup> *See* NAL at 6.

<sup>14</sup> *See Wayne Sate College*, Forfeiture Order, 24 FCC Rcd 2484, 2484 (MB 2009) (emphasizing that a one-page document stating the stations’ operating budget was insufficient basis on which to assess the licensee’s inability to pay); *see also Manchester College*, Forfeiture Order, 25 FCC Rcd 3638, 3640 (MB 2010) (same).

contrary, we decline to reduce the proposed forfeiture on the basis of financial hardship. We have considered Licensee's response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>15</sup> and repeatedly<sup>16</sup> violated Section 73.3527 of the Rules.<sup>17</sup> Furthermore, we find that the Licensee's arguments do not support cancellation or reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

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 Metropolitan School District of Wayne Township SHALL FORFEIT to the United States the sum of nine thousand hundred dollars (\$9,000) for willfully and repeatedly violating Section 73.3527 of the Rules.<sup>19</sup>

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>20</sup> Payment of the 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>21</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Monica.Estrada@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.<sup>22</sup>

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<sup>15</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.*, 6 FCC Rcd 4387, 4387-88 (1991) *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>16</sup> Section 312(f)(2) 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)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>17</sup> 47 C.F.R. § 73.3527.

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

<sup>19</sup> 47 C.F.R. § 73.3527.

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> *See* 47 C.F.R. § 1.1914.

<sup>22</sup> *Id.*

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Metropolitan School District of Wayne Township, 1200 N. Girls School Road, Indianapolis, IN 46214-3499 and to its counsel, Kathryn R. Schmelzer, Esq, Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau