

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
)  
**TOCCOA FALLS COLLEGE** ) Facility I.D. No. 77327  
) NAL/Acct. No. MB201241410025  
Noncommercial Educational Radio Station ) FRN: 0006338750  
WTXR(FM) ) [Related Case: BRED-20111201FOP]  
Toccoa Falls, Georgia )

To: Office of the Secretary  
Attention: Chief, Audio Division  
Media Bureau

FILED/ACCEPTED

AUG 27 2012

Federal Communications Commission  
Office of the Secretary

**PETITION FOR RECONSIDERATION**

Toccoa Falls College (“the College”) licensee of WTXR(FM), Toccoa Falls, Georgia, by its counsel, and pursuant to Section 1.106 of the Commission’s Rules, respectfully seeks reconsideration of the Media Bureau’s (“MB”) *Forfeiture Order*, DA 12-1205, released July 27, 2012, that imposed a \$10,000 forfeiture on the College for alleged violation of Section 73.3527 of the Rules by “failing to retain all required documentation in the WTXR(FM), public inspection file....”<sup>1</sup> Recent precedent indicates that the forfeiture should be reduced to \$1,000, if not remitted entirely.

On May 2, 2012, the MB issued a Notice of Apparent Liability for Forfeiture (“NAL”),<sup>2</sup> in the amount of \$10,000 for the apparent violations. On May 31, 2012, the College timely filed a Response to the NAL.

The *Forfeiture Order* was issued because, in its application for renewal of license of WTXR (BRED-20111201FOP) the College disclosed that, when it was preparing to

<sup>1</sup> As the thirtieth day following the date of the *Forfeiture Order* falls on a Commission holiday, a response to the NAL is due by August 27, 2012, so this response is timely filed.

<sup>2</sup> *Toccoa Falls College*, 27 FCC Rcd 4905 (MB 2012).

file its renewal application, it discovered that it was missing quarterly issues/programs lists from March 2006 through June 2010. The College argued that the NAL should be vacated because (a) the NAL was not supported by facts that establish a “willful or repeated” violation of the Rule; (b) the Commission’s policy of assessing forfeitures for voluntarily reported violations is not in the public interest; (c) the action is at variance with cases drawing an admonition or lower amount of penalty instead of a \$10,000 forfeiture for the apparent violation; and (d) the forfeiture, for a minor mistake, is greater than forfeitures assessed for truly serious violations.

While not waiving any of the preceding arguments, the College focuses herein on one point: Recent precedent requires the MB to reduce the forfeiture to \$1,000.

In *Ball State University* (WWHI), DA 12-1331, released August 13, 2012, the MB issued a NAL for \$1,000 for violating Section 73.3527 which was disclosed in the application for renewal of license of WWHI, Muncie, Indiana. The MB observed that “the violations were extensive and involved eight issues/programs lists.” The MB credited the licensee’s:

...representation that the requisite issues/programs lists for the last two quarters of 2004 and the first three quarters of 2007 were generated and timely placed in the Station’s public inspection file, although they were apparently later misplaced or discarded during the 2007 move and could not be located or reconstructed. We also credit Licensee’s representation that the issues/programs lists for the first, third, and fourth quarters of 2009 were timely prepared, but subsequently discarded by staff. Therefore, the proposed forfeiture will be reduced to \$1,000.

The fact that the licensee of WWHI placed the lists in the public file but could not locate or reconstruct them does not distinguish the *Ball State* case from the instant matter. If the Commission’s concern is that the lists weren’t in the public inspection

file, then the situation with student-run WWHI is congruent with that of WTXR where student turnover apparently resulted in the lists not being created or placed in the file at the proper time. The violation of Section 73.3527 is, in a nutshell, the failure “to retain all required documentation in the WTXR(FM), public inspection file....” Under the rule, the quantity of paperwork in the file does not matter. It is the failure to retain all required documentation in the file.

Under *Melody Music v. FCC*, 345 F. 2d 730 (D. C. Cir. 1965) the Commission must treat similar violations of its rules similarly.<sup>3</sup> The College disagrees with the MB’s conclusion that the “past cases referenced in the [College’s] Response where stations were not assessed the base forfeiture amount can be distinguished, as the amount of information missing from the public inspection file in those cases is much smaller than in the present case.” Thus, if WWHI violated the rule because eight issue/programs lists were missing from its public inspection file, the absence of any issues/programs lists in the WTXR public inspection file does not constitute an aggravating factor meriting a ten-fold increase in the amount of the forfeiture. The College submits that there is no difference in whether eight lists or 32 lists are missing from the file. One missing list triggers a violation of the rule requiring licensees to timely place documents in the public file.<sup>4</sup>

Finally, the College must take issue with the MB’s failure to concede the difference between student-run NCE stations and professionally-run NCE stations. As the College has argued, student-run stations, like WTXR, serve an important public

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<sup>3</sup> In *Saga Communications of Illinois, LLC*, 26 FCC Rcd 5954 (2011) (*Review Pending*), the Audio Division assessed a forfeiture of \$3,000 for missing issues/programs lists. Moreover, in the *Saga Communications* case.

<sup>4</sup> The College continues to disagree with the MB’s conclusion that the inadvertent failure of students to maintain issues/programs lists in the WTXR public file is a “willful” violation of the rule.

interest need. Institutions of higher learning, like the College, use them as part of their mission to educate their student body. Here, the MB should rescind the forfeiture, not only because WTXR is student-run, but also in view of the severe penalty exacted for missing issues/programs lists, which, experience teaches, are rarely, if ever, reviewed by the public and contain scant information. In contrast, a forfeiture of \$7,000 was assessed against a university for much more serious violations.<sup>5</sup>

The College is well-aware that the Commission's policy has been to reject arguments that student-run stations should not be held to the same standards as commercial broadcasters. The College does not reject the notion that its student-run station should be required to comply with all FCC rules and policies. It is the degree of sanction that is problematic. An admonition would serve the Commission's purpose better than forfeiture. In *Centreville City Schools Board of Education*, 25 FCC Rcd 3855 (2010), the Division reduced a \$7,000 forfeiture to \$500 because the station was a student-run Class D station. There, like WSBU, the College failed timely to file a license renewal application and operated without authorization for four months. While WTXR is not a Class D station, the principle is the same. The MB should temper justice with mercy and reduce the amount of the forfeiture to \$1,000.

The MB is obligated under Section 503(b)(2)(D) of the Act to consider various factors 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

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<sup>5</sup> Student-run station WSBU failed to file a timely renewal application and continued operations for more than four years after its license had expired before filing a renewal application and request for special temporary authority. There, the College argued that the failure to file a timely renewal application for the station was unintentional and resulted from staff turnover at the student-run station. *St. Bonaventure University*, 26 FCC Rcd 13355 (2011). The MB was not persuaded.

pay, and such other matters as justice may require.” Ordering the licensee of a student-run noncommercial educational station to pay a \$10,000 forfeiture for failing to maintain issues/programs lists that no member of the public will probably ever review violates this mandate as it ignores the lack of gravity of the violation and ignores the requirements of justice. In light of the foregoing, The College respectfully requests the MB to vacate the *Forfeiture Order* and terminate this proceeding, or at minimum, reduce the amount of the forfeiture to \$1,000 consistent with the NAL in *Ball State University, supra*.

Respectfully submitted,

**TOCCOA FALLS COLLEGE**

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', written over a horizontal line.

By: Gary S. Smithwick  
Its Counsel

**Smithwick & Belendiuk, P.C.**  
5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016  
202-363-4560

August 27, 2012