

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

In the Matter of	)	
	)	Facility ID No. 67461
Towson University	)	NAL/Acct. No. MB20031810080
	)	FRN: 0009034877
Licensee of Station WTMD(FM)	)	File No. BRED-20030530DYF
Towson, Maryland	)	

FORFEITURE ORDER

Adopted: June 5, 2008

Released: June 6, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Towson University (“Towson”), licensee of Station WTMD(FM), Towson, Maryland (the “Station”), for its willful and repeated violation of Section 73.3527 of the Commission’s Rules (the “Rules”).¹ The violations involve Towson’s failure to properly maintain the Station’s public inspection file.

II. BACKGROUND

2. On May 30, 2003, Towson filed the above-referenced application to renew the license of WTMD(FM) (the “Application”). Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3527 of the Rules has been placed in the station’s public inspection file at the appropriate times. Towson indicated “No” to that certification, indicating that the “WTMD Quarterly Issue report [sic] has not been updated in the timely manner required by FCC regulation” and explaining that it had “researched and updated its lists and programs and community issues from 2000-2003 and the resulting report was placed in the public file on May 10, 2003.”²

3. On October 8, 2003, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Towson in the amount of three thousand dollars (\$3,000) for willfully and repeatedly³

¹ 47 C.F.R. § 73.3527.

² See Application, Exhibit 1. Towson subsequently clarified that issues-programs lists from the first quarter of 2000 through the second quarter of 2002 were missing and were recreated and later placed in the WTMD(FM) public file (a total of 10 missing issues-programs lists). See *Letter from Michael A. Anselmi* (rec’d Aug. 23, 2006).

³ For purposes of Section 503(b) of the Communications Act of 1934, as amended, (the “Act”) the term “willful” means that the violator knew it was taking the action or failing to take the required action, irrespective of any intent to violate the Rules. A continuing violation is “repeated” if it lasts for more than one day. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

violating Section 73.3527 of the Rules.⁴ Towson filed a response to the NAL on October 30, 2003, requesting cancellation of the proposed forfeiture (“Request”).⁵

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission’s *Forfeiture Policy Statement*.⁸ In examining Towson’s Request, Section 503(b) of the Act⁹ and the other cited authority require 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 other such matters as justice may require. Section 73.3527 of the Rules requires that AM and FM broadcast stations maintain for public inspection a public file containing certain items, including quarterly issues/programs lists. Here, Towson by its own admission was not in compliance with the public inspection rule.

5. In its Request, Towson raises two arguments challenging the proposed forfeiture. First, Towson asserts that in a allegedly case, *Isothermal Community College*,¹⁰ the licensee received only an admonishment for its failure to maintain its public inspection file. Hence, Towson contends that it too should receive an admonishment rather than a forfeiture. In *Isothermal*, however, the Enforcement Bureau simply noted the licensee’s admission that the “station’s public file was deficient . . . with respect to its quarterly issues/programs and donors lists.” Thus, there was no indication that the deficiency in *Isothermal* equaled the two-year-plus time period acknowledged by Towson. A brief review of violations similar to those Towson admitted to in its renewal application provides extensive Commission precedent for issuing a forfeiture under these circumstances.¹¹

6. Next we turn to Towson’s arguments concerning its ability to pay the proposed forfeiture. Towson argues that the proposed forfeiture should be cancelled because the Station “is a public, non-profit radio station that operates entirely on public funding and listener support”¹² In particular,

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. MB-AD 20031810080 (MB Oct. 8, 2003).

⁵ Towson supplemented its Request with submissions dated October 27, 2004, February 3, 2005, December 14, 2005, and April 5, 2007, respectively.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (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.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ *Isothermal Community College*, Memorandum Opinion and Order, 16 FCC Rcd 21360 (EB 2001), *recon. dismissed*, 17 FCC Rcd 22666 (EB 2001). (“*Isothermal*”).

¹¹ In fact, our review of recent Media Bureau decisions suggests that the proposed sanction against WTMD(FM) is lenient. In other similar circumstances, *i.e.*, where the renewal applicant disclosed that the Station’s public file was missing 10 issues-programs lists, a \$10,000 forfeiture was issued. See *e.g.* *CC Licenses, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12,711 (MB 2007); *Cumberland Communications Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5553 (MB 2007); and *Radio One Licenses, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13,675 (MB 2006). Although we do not believe it appropriate to increase the forfeiture for WTMD(FM), neither do we believe it appropriate to reduce the forfeiture amount in light of these recent decisions.

¹² Request at 3.

Towson argues that while its then-projected 2004 budget was estimated to be \$417,913,¹³ the Station's anticipated surplus was a mere \$319.¹⁴ Moreover, in fiscal year 2003 the Station's expenses exceeded revenues by \$6,508.¹⁵ Therefore, Towson contends, because its "revenues" are "used almost exclusively for essential operations, there is a substantial risk that WTMD will be forced to cut back on essential services . . ."¹⁶ unless the penalty is cancelled.

7. The Commission will not consider reducing or canceling 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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁷ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. Based on Towson's financial documentation, which consists of a sworn affidavit from its General Manager along with a 2004 budget, we note that a \$3,000 forfeiture is approximately .72 percent, or a little less than three fourths of one percent of the Station's 2004 projected gross revenues of \$417,913.¹⁸ Therefore, we do not find that Towson is unable to pay such a forfeiture amount.

8. In light of the foregoing, we have examined Towson's Request pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Towson willfully and repeatedly violated Section 73.3527(e)(8) of the Rules,¹⁹ and we find no basis for canceling the forfeiture proposed in the NAL for the violation.

IV. ORDERING CLAUSES

9. 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,²⁰ that Towson University, SHALL FORFEIT to the United States the sum of three thousand dollars (\$3,000) for willfully and repeatedly violating Section 73.3527 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the 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.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order

¹³ Request at 2. According to Towson this amount is derived as follows: \$109,216 from public funding and \$308,697 from private fundraising.

¹⁴ Request at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

¹⁸ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹⁹ 47 C.F.R. § 73.3527(e)(8).

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

²¹ 47 U.S.C. § 504(a).

of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1-A625, Washington, DC 20554.²²

11. 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 Towson University, c/o Michael A. Anselmi, Esquire, 8000 York Road, Towson, MD, 21252-0001.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² See 47 C.F.R. § 1.1914.