

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

In the Matter of)	
)	Facility ID No. 41316
Metropolitan School District of Washington Township)	NAL/Acct. No. MB20041810076
)	FRN: 0008107112
)	File No. BRED-20040323ATQ
Licensee of Station WJEL(FM))	
Indianapolis, Indiana)	

FORFEITURE ORDER

Adopted: June 24, 2008

Released: June 25, 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 seven thousand two hundred dollars (\$7,200), to the Metropolitan School District of Washington Township (“Licensee”), licensee of Station WJEL(FM), Indianapolis, Indiana (“Station”), for its willful and repeated violation of Section 73.3537 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On August 10, 2004, 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.² Licensee filed a Request for Cancellation of Proposed Forfeiture (“Request”) on September 9, 2004.

3. On March 23, 2004, Licensee filed an application to renew the license of the Station. 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 73.3526 or 73.3527 of the Rules, as applicable, has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, filing an Exhibit and an amendment explaining that the issues/programs lists for almost the entire term of its license, from August 1996 until early January 2003, were not completed. On August 10, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its admission, all issues/programs lists from August 1996 through January 2003 were missing from the Station's public inspection file.³ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that its failure to maintain its public files was unintentional. Specifically, Licensee asserts that it mistakenly believed that it that the Class D exemption

¹ 47 C.F.R. § 73.3539.

² *Letter to Kathryn Schmeltzer, Esq. from Peter Doyle*, reference 1800B3-SS (MB August 10, 2004).

³ The Commission granted the above-referenced license renewal application on August 10, 2004.

from reporting obligations also applied to the Station, even though it is a 1,000-watt, Class A FM station.⁴ Licensee further argues that its violations were not “repeated” because it took immediate corrective action upon learning that it was not in compliance with the Commission’s public file Rules.

5. Licensee also claims that payment of the forfeiture will cause it financial hardship. Licensee asserts that, as a public school district, it is not required to file federal or state income tax returns. It further asserts that it is unable to provide audited financial statements prepared in accordance with generally accepted accounting practices because Indiana law prescribes the accounting system that is to be used by Indiana public school districts. However, in lieu of these documents and in support of its claim of financial hardship, it submits financial reports for the Licensee’s “Radio/TV vocational education program” for fiscal years ended June 30, 2002, June 30, 2003, June 30, 2004, and a partial report for 2004-2005. It notes that the portion of the Licensee’s annual budget allotted to the operation of the Station is approximately \$20,000.⁵ It claims that if the forfeiture is borne by the Station, it will be forced to cut some of its public programming.⁶ Licensee cites to *Cornell College*⁷ in support its request for cancellation of forfeiture. In that case, after reviewing information provided by the licensee regarding the school’s financial condition and the station’s budget, the Commission canceled the licensee’s forfeiture based on financial hardship. Licensee asserts these reasons, in addition to its history of compliance with the Commission’s Rules, warrant a cancellation of the assessed forfeiture.

III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission’s *Forfeiture Policy Statement*.¹⁰ 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.¹¹

7. Licensee does not dispute that it failed to maintain a complete public file for the Station, but states that these violations were unintentional. Specifically, Licensee asserts that it mistakenly believed that it was exempt from the Commission’s public file requirements. It is, however, a well established and long-standing principle that mistaken belief or ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.¹² Violations resulting from

⁴ According to Licensee, the Station was initially licensed as a 10-watt, Class D FM station when it went on the air in 1975.

⁵ See Request at 7.

⁶ Licensee states that the Station provides local, state and national news coverage, as well as numerous feature programs geared toward the local community. See Request at 5-6.

⁷ See *Cornell College*, Memorandum Opinion and Order, 19 FCC Rcd 14586 (EB 2004) (“*Cornell College*”).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² See *Richard Mann d/b/a The Antique Radio Collector Toledo, Ohio*, Memorandum Opinion and Order, 2008 WL 1914220 (EB 2008) (denying request to reduce forfeiture based on petitioner’s claim that it was unaware that its actions constituted a violation of the Commission’s Rules); *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating

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inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹³ In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.¹⁴ Moreover, the term “repeated” merely means that the act was committed or omitted more than once, or lasts more than one day.¹⁵ In this case, Licensee’s violations of Section 73.3527 of the Rules lasted several years. Accordingly, we reject Licensee’s arguments that its violations were neither willful nor repeated.

8. Regarding Licensee’s claim of financial hardship, 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.¹⁶ In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹⁷

9. While Licensee has provided us with financial reports for the Licensee’s radio vocational program, which includes the operation of the Station, this information alone is not a sufficient basis on which to assess Licensee’s inability to pay.¹⁸ The holding in *Cornell College* does not support its request for cancellation of forfeiture. There, the licensee provided information regarding both the school’s financial condition *and* the station’s budget to support its claim that the forfeiture would cause financial hardship.¹⁹ Here, Licensee has only provided us with a limited snapshot of the Station’s budget and has provided us with no information regarding Licensee’s finances. Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

10. We have considered Licensee’s response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²⁰ and

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factor”); *see also Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹³ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

¹⁴ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

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

¹⁷ *PJB Communications*, 7 FCC Rcd at 2089.

¹⁸ *See A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

¹⁹ *See Cornell College*, 19 FCC Rcd at 14587.

²⁰ 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)

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repeatedly²¹ violated Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.²²

IV. ORDERING CLAUSES

11. 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,²³ that the Metropolitan School District of Washington Township, SHALL FORFEIT to the United States the sum of \$7,200 for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

12. 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).²⁴

13. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to John R. King, 1901 East 86th Street, Radio Station WJEL, Indianapolis, Indiana 46240, and to its counsel, Kathryn R. Schmeltzer, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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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*, 6 FCC Rcd at 4387-88.

²¹ 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).

²² *See, e.g., Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). *See also* 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

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

²⁴ *See* 47 C.F.R. § 1.1914.