

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

In the Matter of)	
)	Facility ID No. 18184
East Baton Rouge Parish School Board)	NAL/Acct. No. AD20041810081
)	File No. BR-20040128AQJ
Licensee of Stations KBRH(AM))	
Baton Rouge, Louisiana)	Facility ID No. 18185
and)	NAL/Acct. No. AD20041810080
WBRH(FM))	File No. BRED-20040128AQE
Baton Rouge, Louisiana)	
)	FRN: 0005739263

FORFEITURE ORDER

Adopted: July 14, 2008

Released: July 15, 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 fourteen thousand, four hundred dollars (\$14,400), to East Baton Rouge Parish School Board (“Licensee”), licensee of Stations KBRH(AM), Baton Rouge, Louisiana, and WBRH(FM), Baton Rouge, Louisiana (collectively, the “Stations”), 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 each Station.

II. BACKGROUND

2. On September 10, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture (“NAL”), each in the amount of nine thousand dollars (\$9,000) to Licensee for these violations, for a total of \$18,000.² Licensee filed a Request for Reduction or Cancellation of Proposed Forfeiture (“Request”) on October 12, 2004.

3. On January 28, 2004, Licensee filed an application to renew the licenses of the Stations. 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, attaching an amended Exhibit³ explaining that the issues/programs lists from the second half of 1996 and all issues/programs lists from the years 1997 through 2001 were not in the Stations’ public files. On September 10, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$18,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its

¹ 47 C.F.R. § 73.3539.

² *Letters to East Baton Rouge Parish School Board from Peter Doyle*, reference 1800B3-KV (MB Sept. 10, 2004) (“September 10th Letters”).

³ Licensee’s applications were amended on August 20, 2004.

admission, twenty two issues/programs lists - from the third quarter of 1996 through 2001 - were missing from each Station's public inspection file.⁴ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because if its (1) longstanding history of overall compliance with the Rules; (2) voluntary disclosure of its public file deficiencies; (3) implementation of new measures at the Stations to ensure future compliance; and (4) its severely limited financial resources.

5. In support of its financial hardship argument, Licensee submits its 2003 Annual Financial Report, which reflects gross revenues of over \$400 million.⁵ Licensee notes that it receives much of its funding from the State's Minimum Foundation Program and that it has lost approximately \$35 million in appropriations from this program due to a decline in student enrollment. It further notes that it recently settled a lawsuit for approximately \$10 million. Finally, it points to the fact that Licensee has a "perilously thin undesignated fund balanced of only approximately one percent (1%) of total expenses ... leaving essentially no room for error."⁶ Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeitures.

III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ 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.¹⁰

7. Licensee argues that we should cancel or reduce the forfeiture because it voluntarily disclosed its public file deficiencies. However, Licensee's disclosure was not voluntary, but rather was information required in the license renewal application form.¹¹ We further reject Licensee's argument that its implementation of new measures at the Stations to ensure future compliance is a basis for reduction or cancellation of the forfeitures. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹²

⁴ The Commission granted the above-referenced license renewal applications on September 10, 2004.

⁵ Request, Attachment at xxxiv.

⁶ Request at 3.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *See Ramar Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 20490, 20497 (MB 1997).

¹² *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). *See also Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

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.¹³ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁴ We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁵ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁶ While Licensee claims that it has experienced a reduction in funding and an increase in expenditures in recent years, Licensee's financial documentation also indicates that its 2003 total gross revenues totaled \$430,800,000.¹⁷ An \$18,000 forfeiture is far less than one percent of Licensee's total gross revenues. We therefore believe that the gross revenues are sufficiently great when compared to the forfeiture amount such that the mere fact that Licensee may be experiencing an operating loss does not demonstrate that it cannot afford to pay the forfeiture amount.¹⁸

9. 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 willfully¹⁹ and repeatedly²⁰ violated Section 73.3527 of the Rules at each Station. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$14,400.²¹

IV. ORDERING CLAUSES

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,²² that East Baton Rouge

¹³ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

¹⁴ *PJB Communications*, 7 FCC Rcd at 2089.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Request, Attachment at xxxiv.

¹⁸ See, e.g., *PJB Communications*, 7 FCC Rcd at 2089 (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 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*, 6 FCC Rcd at 4387-88.

²⁰ 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).

²¹ 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.

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

Parish School Board SHALL FORFEIT to the United States the sum of \$14,400 for willfully and repeatedly violating Section 73.3527 of the Commission's Rules at the Stations.

11. 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).²³

12. 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 East Baton Rouge Parish School Board, 1050 South Foster Drive, Baton Rouge, Louisiana 70806, and to its counsel, Charles L. Spencer, Esq., Herbert, Spencer, Cusimano & Fry, LLP, 701 Laurel St., Baton Rouge, Louisiana 70802-5692.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²³ See 47 C.F.R. § 1.1914.