

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	NAL/Acct. No. MB20041810022
)	FRN: 0006865695
THE TRUSTEES OF DAVIDSON COLLEGE)	
)	
Licensee of Noncommercial Educational Station)	Facility ID No. 66503
WDAV(FM), Davidson, North Carolina)	File No. BRED-20030801ANK

FORFEITURE ORDER

Adopted: November 2, 2005

Released: November 4, 2005

By the Chief, Audio Division, Media Bureau:

1. The Chief, Audio Division has before him the July 22, 2004 “Request for Cancellation of Proposed Forfeiture” (“Request”) filed by The Trustees of Davidson College (“TDC”), licensee of noncommercial educational station WDAV(FM), Davidson, North Carolina, directed to the June 21, 2004 staff action issuing a Notice Of Apparent Liability For A Forfeiture (“NAL”) to TDC for violation of the Commission’s rule regarding a broadcast station’s public inspection file, 47 C.F.R Section 73.3527. For the reasons set forth below, we grant TDC’s alternative request and reduce the forfeiture.

2. *Background.* On August 1, 2003, TDC filed an application to renew the license of WDAV(FM). 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 has been placed in the station’s public inspection file at the appropriate times. TDC indicated “No” to that certification, attaching an Exhibit explaining that while preparing for WDAV(FM)’s license renewal the “staff discovered” that the issues/programs lists for 1996, 1997 and 1998 “were missing,” and that “to the best of [a staff member’s] knowledge” the lists were placed in the file as required. TDC asserted that the staff “knows of no reasonable means” to reconstruct all the missing lists and that it cannot verify the timely filing of any of the public file’s contents. TDC stated that it now has a remedy to both prevent the problem of missing lists and to verify the timely filing of any public file document. On June 21, 2004 the staff advised TDC of its apparent liability for a forfeiture of \$ 9,000 for willfully and repeatedly violating Section 73.3527. In response, TDC filed its request for cancellation.

3. In support of its request, TDC states that that the issues/programs lists for 1996, 1997 and 1998 were, in fact, prepared and timely placed in the station’s public file,¹ but that “during a move to a new building in December 2002” the lists were “misplaced.” TDC submits that the violation occurred for “only a brief period of no more than eight months,” rather than the three years cited in the NAL; hence, TDC requests cancellation or reduction of the assessed forfeiture.

¹ Sharrin Edwards declares that preparation of the issues/programs lists was one of her responsibilities, and that she prepared and timely filed the lists “for all quarters” of 1996-1998 (except the first quarter of 1997 which was not timely filed “because of the increased work surrounding our membership campaign at that time”). Request, Declaration Under Penalty of Perjury of Sharrin Edwards. TDC attempts to corroborate this claim by submitting Ms. Edwards’ performance appraisals for the years 1996-1998, each of which indicates that she satisfactorily and timely performed her duties with regard to the quarterly issues/programs lists.

4. *Discussion.* Section 73.3526(3) of the Commission's rules clearly requires that certain items be retained in the public file, including quarterly issues/programs lists. We determine that TDC willfully violated Section 73.35236(e)(12) based on the licensee's admission that, while the lists for 1996-1998 apparently were completed and timely placed in the station's public inspection file, they were misplaced during a studio move in late 2002 and could not be recreated. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"), Section 1.80 of the Rules, and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining TDC's response, Section 503(b) of the Act requires that the Commission 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.

5. We have examined TDC's response to the NAL pursuant to the statutory factors above, and in conjunction with the Policy Statement as well. As a result of our review, we conclude that TDC's violation occurred for at least an eight month period, from December, 2002 to August 1, 2003, rather than the previously specified three years. We also credit that licensee's representation that the requisite issues/programs lists were generated and timely placed in the WDAV(FM) public inspection file, although they were later misplaced and could not be located or reconstructed. Therefore, the \$9,000 forfeiture assessed to TDC will be reduced to \$1,000.²

6. Accordingly, IT IS ORDERED that, pursuant to Section 503 of the Act, and Sections 0.61, 0.283 and 1.80(f)(4) of the Rules,³ The Trustees of Davidson College IS LIABLE FOR A MONETARY FORFEITURE in the amount of one thousand dollars (\$1,000) for willful violation of Section 73.3527 of the Rules.

7. Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the FCC Registration Number ("FRN") (0006865695) and the NAL/Acct. No. (MB20041810022) referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251. 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 911-6106.⁴

² Staff practice in cases where the Section 73.3526 violation has lasted less than one year (i.e., involved fewer than four missing issues/programs lists) has generally been to admonish the licensee rather than issue an NAL. *See, e.g., Letter to Eure Communications, Inc., WWWV(FM), Charlottesville, Virginia*, Reference 1800B3-KV (MB Oct. 8, 2003). However, although the violation in this case may have lasted only eight months, more than three issues/programs lists were misplaced and missing from the WDAV(FM) public inspection file. An NAL, albeit reduced from that originally proposed, therefore is appropriate in this case.

³ 47 C.F.R. §§ 0.61, 0.283, 1.80(f)(4).

⁴ *See* 47 C.F.R. § 1.1914.

8. IT IS FURTHER ORDERED that, a copy of this Order shall be sent by First Class Mail and Certified Mail - Return Receipt Requested to:

The Trustees of Davidson College
Box 7178
Davidson, North Carolina 28035-7178

Susan A. Marshall, Esquire
Fletcher, Heald & Hildreth P.L.C.
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Arlington, Virginia 22209

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau