

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

In re Application of	)	
	)	
<b>Baker University</b>	)	Facility I.D. No. 3630
	)	NAL/Acct. No. MB-200641410039
For Renewal of License for	)	FRN: 0012746830
Station KNBU(FM)	)	File No. BRED-20050208AGR
Baldwin, Kansas	)	

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 25, 2006**

**Released: July 27, 2006**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned application of Baker University (the "Licensee") for renewal of its license for Station KNBU(FM), Baldwin City, Kansas (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),<sup>1</sup> by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully and repeatedly violated Section 73.3527 of the Rules<sup>3</sup> by failing to retain all required documentation in the KNBU(FM) public inspection file. Based upon our review of the facts and circumstances before us, we: (1) conclude that, for this violation, the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000); (2) admonish the Licensee for providing inaccurate and contradictory responses to staff inquiries; and (3) grant the captioned KNBU(FM) renewal application.

**II. BACKGROUND**

2. Section 73.3527 of the Rules requires a noncommercial broadcast licensee to maintain a public inspection file containing specific materials related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.<sup>4</sup>

3. Section III, Item 3 of the KNBU(FM) 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

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3527.

<sup>4</sup> Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993).

the Station's public inspection file at the appropriate times. The Licensee indicated "No" to that certification and attached an Exhibit 11 to the application, explaining that: "[t]he public files were not maintained during the previous General Manager's period of supervision. New Management is now using appropriate checklists to ensure that all documents are filed."<sup>5</sup>

4. On January 17, 2006, nearly eight months after an informal Commission staff request for further information regarding the state of the file during the license term,<sup>6</sup> the Licensee amended its application, in pertinent part, as follows: "[l]ocal public files have been located and are now centrally filed. Kansas Association of Broadcasters inspector validated that . . . [as of November 21, 2005, the public inspection file is] now in compliance with FCC requirements . . ."<sup>7</sup>

5. On February 17, 2006, again in response to an informal staff request, the Licensee explained in a further application amendment that, in October 2003, after the department chair, Dr. Richard Bayha, left Baker University, the Station operation was overseen by an interim chair until July 2004, when a new chair, Dr. Ann Rosenthal, was hired; Dr. Rosenthal left Baker University in early 2006.<sup>8</sup> Based on Dr. Bayha's reported statements, the Licensee declared that KNBU(FM)'s public file was properly maintained until his departure in 2003. The Licensee speculated that the Station's public file contents were thrown away sometime after his departure during the interim period, October 2003 - July 2004.<sup>9</sup> As to the state of KNBU(FM)'s public file at the time of the filing of the renewal application, the Licensee reported, in pertinent part:

At the time the application for renewal was filed . . . all of the required content of the public file was missing from the filing cabinet designated for the public file . . . It appeared that the public file had been set up and even maintained, but that the contents of some folders had been removed. The list of items previously missing from the file [included]: quarterly reports, the license, a copy of the renewal application, the ownership report, the donor's list, and the coverage map.

[S]ome information missing from the file was discovered [between January 15-20, 2005 and March 10-15, 2005] . . . Items discovered at other locations in the building were: the license, the renewal application, the ownership report, the coverage map, and transmitter logs and issues and programs logs for various time periods.<sup>10</sup>

6. Finally, on March 31, 2006, again in response to an informal Commission staff request for additional information, the Licensee submitted a third and final amendment, disavowing, in part, many of the statements in its previous amendments. Specifically, the Licensee now disavowed its statement in the KNBU(FM) renewal application that "the public files were not maintained during the previous General Manager's period of supervision."<sup>11</sup> Rather, the Licensee pointed to Dr. Bayha's statements as

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<sup>5</sup> Application at Exhibit 11 (Feb. 8, 2005).

<sup>6</sup> On May 24, 2005, Commission staff first orally contacted the Licensee, requesting additional clarifying information on the Station's public file.

<sup>7</sup> Jan. 17, 2006, Amendment, Exhibit 1.

<sup>8</sup> Dr. Rosenthal was listed as the Contact Representative in both the Licensee's renewal application and its January 17, 2006, amendment.

<sup>9</sup> Feb. 17, 2006, Amendment, Exhibit 11 at 1-2.

<sup>10</sup> *Id.* at 1. According to the Licensee's current Contact Representative, Gwyneth Mellinger, Dr. Rosenthal was the sole source regarding the dates of retrieval for some of the contents of the Station's public file.

<sup>11</sup> Mar. 31, 2006, Amendment, Exhibit 11 at 1.

evidence that the Station's public file had been maintained prior to October 2003. Additionally, the Licensee cautioned that since Dr. Rosenthal had left her position at Baker University, her purported discovery of the missing materials, which she claimed had occurred during "cleaning dates" from January 15-20, 2005 and from March 10-15, 2005, after the Application's filing date, "is by necessity without independent verification."<sup>12</sup> Finally, with respect to the contents of the KNBU(FM)'s public file, the Licensee reported, in pertinent part:

We have a gap in quarterly reports until the third and fourth quarters of 2005 . . . In short, [apart from the two reports in 2005] we cannot locate quarterly issues and programs logs . . . more recent than 1993 . . .

[R]ecords that disappeared from the public file would likely have been those collected during Dr. Bayha's tenure . . . [During the interim period, October 2003 – July 2004] complete issues and programming logs were not kept . . .

It also appears that issues and programs logs were not filed during the third and fourth quarters of 2004, after Dr. Rosenthal was hired as permanent chair of the department . . . [W]hen several of us [station personnel] met on August 1 2005 with the license inspector from the Kansas Association of Broadcasters, the student station manager was unaware that issues and programs logs had to be maintained . . . .

It is clear that the public file was in disarray when the KAB inspector arrived for the initial visit on August 1, 2005, and that our documentation procedures were inadequate. He gave direct instruction in organizing the materials that had been recovered, replacing some that were missing, and implementing a system of appropriate documentation. Previous deficiencies have been resolved and . . . [w]e now have structures in place for the diligent maintenance of the public file, and we are supplying direct faculty oversight.<sup>13</sup>

### III. DISCUSSION

7. *Proposed Forfeiture.* As the Licensee has acknowledged, at the time of filing of the KNBU(FM) license renewal application and during periods of the license term, the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3527 of the Rules. In this regard, where lapses occur in maintaining the public file, 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.<sup>14</sup>

8. In addition, we are also troubled by the Licensee's contradictory and inaccurate statements, in its renewal application, amendments, and in responses to Commission inquiries, which provided less than complete, factually sound information.<sup>15</sup> The Commission relies on licensees to provide truthful and accurate information in order to carry out its mission. When issuing a license, we

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<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 2-3.

<sup>14</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (MMB 1999)(citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

<sup>15</sup> Indeed, the Licensee's current Contact Representative, Gwyneth Mellinger, expressed doubt concerning the reliability of the information provided to the Commission by her predecessor, Dr. Rosenthal, stating: "I am unable to reconcile the contradiction between the application filing date and the dates on which Dr. Rosenthal said she was cleaning and discovered items from the public file." Mar. 31, 2006, Amendment, Exhibit 11 at 2. See *supra* ¶ 6.

must be assured of the accuracy of the licensee's representations. Recently, the Commission expanded the scope of Section 1.17,<sup>16</sup> with respect to investigations and adjudications, to prohibit "written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing the statement is correct and not misleading."<sup>17</sup> Misrepresentation involves false statements made with an intent to deceive.<sup>18</sup> Lack of candor involves concealment, evasion, or other failure to be fully forthcoming, accompanied by an intent to deceive.<sup>19</sup> Here, the Licensee provided information which, in light of its subsequent retractions, was factually inaccurate and appears to have been made without a reasonable factual basis. While, we do not find that the Licensee engaged in misrepresentations or otherwise lacked candor,<sup>20</sup> we will admonish it for its apparent lack of care in formulating the substance of its representations to the Commission, many of which, by its admission, were inaccurate. We caution the Licensee to exercise diligence in ascertaining the accuracy of its statements made to the Commission, because "a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules."<sup>21</sup>

9. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>22</sup> 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.<sup>23</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>24</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>25</sup> Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."<sup>26</sup>

10. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3527.<sup>27</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the

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<sup>16</sup> 47 C.F.R. § 1.17.

<sup>17</sup> *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd 4016 (2003).

<sup>18</sup> *See Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983).

<sup>19</sup> *Id.*

<sup>20</sup> *See e.g. Southern Skies Corporation*, 11 FCC Rcd 19176, 19182 (1996).

<sup>21</sup> *Letter to John Jason Bennett et al.* 20 FCC Rcd 17193 (MB 2005), *citing San Francisco Unified School District*, Memorandum Opinion and Order, 19 FCC Rcd 13326, 13337 (2002).

<sup>22</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. 1.80(a)(1).

<sup>23</sup> 47 U.S.C. § 312(f)(1).

<sup>24</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>25</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>26</sup> 47 U.S.C. § 312(f)(2).

<sup>27</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (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.

Act, 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 pay, and such other matters as justice may require.”<sup>28</sup>

11. In this case, although the Licensee has admitted to the public file violations, it did so only in the context of the question contained in its captioned license renewal application that compelled such disclosure. Moreover, the violations were extensive, occurring over at least a two-year period during the license term and involving at least seven missing issues/programs lists.<sup>29</sup> Considering the record as a whole, we believe that a proposed forfeiture of \$4,000 for the Section 73.3527 violations is appropriate in this case.<sup>30</sup> Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violation of Section 73.3527.

12. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>31</sup> That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>32</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>33</sup>

13. We find that the Licensee’s apparent violations of Section 73.3527 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>34</sup> Further, we find that Station KNBU(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

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<sup>28</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>29</sup> Based on the Licensee’s certification regarding KNBU(FM)’s public file during Dr. Bayha’s tenure, we have credited the public file as having all issues and programs reports up to and including the third quarter of 2003. The following quarterly issues and programs reports have been deemed missing: for 2003, the fourth quarter; for 2004, all four quarters; and for 2005, the first and second quarters.

<sup>30</sup> *See KLDI-TV 55, Inc.*, 10 FCC Rcd 3198 (1995); *see also Barry D. Wood, Esq.*, 7 FCC Rcd 6262 (FOB 1992).

<sup>31</sup> 47 U.S.C. § 309(k).

<sup>32</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>33</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>34</sup> For example, we do not find here that the Licensee’s Station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

#### IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Baker University is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$4,000 for its apparent willful and repeated violations of Section 73.3527 of the Commission's Rules.

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Baker University SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

17. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 reflects the respondent'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.

19. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>35</sup>

20. IT IS FURTHER ORDERED that Baker University, is hereby ADMONISHED for its violation of Section 1.17 of the Commission's Rules.

21. IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Baker University for Station KNBU(FM), Baldwin City, Kansas (File No. BRED-20050208AGR) IS GRANTED.

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<sup>35</sup> See 47 C.F.R. § 1.1914.

22. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Baker University, P.O. Box 65, Baldwin City, Kansas 66006-0065.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg  
Chief, Media Bureau