

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

In the Matter of	)	
	)	
<b>Gaston College</b>	)	File No. EB-05-IH-0219
	)	NAL Account No. 200732080021
Licensee of Noncommercial Educational	)	FRN No. 0009387226
Station WSGE(FM), Dallas, North Carolina	)	
Facility I.D. No. 23324	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 7, 2007**

**Released: March 7, 2007**

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Gaston College, licensee of Noncommercial Educational Station WSGE(FM), Dallas, North Carolina (the "Station"), willfully and repeatedly violated Section 73.3527 of the Commission's rules relating to a noncommercial licensee's obligation to properly maintain and make available a public inspection file.<sup>1</sup> For the following reasons, we conclude that Gaston College is apparently liable for the base forfeiture amount of \$10,000.

**II. BACKGROUND**

2. On March 7, 2005, the Commission received a complaint (the "Complaint") from J. Davidson Morrison (the "Complainant"), who alleges that licensee Gaston College prohibited him from viewing the Station's public inspection file consistent with Commission rules on two separate visits made to the Station's main studio.<sup>2</sup> According to the Complainant, during his first visit on March 3, 2005, he asked to review the public inspection file, but was told by a Station employee to come back another day.<sup>3</sup> He states that after he informed the Station employee that FCC rules require that the file must be made available on request during regular business hours, the employee directed him to a drawer containing some Station documents, but that the drawer did not contain the public inspection file.<sup>4</sup> Meanwhile, the Station employee contacted the Station's General Manager, Stephanie Michael-Pickett, who, upon arrival, also directed the Complainant to the same drawer.<sup>5</sup> Shortly thereafter, the College's Vice President for Finance and Operations, Ralph Huddin, arrived and told the Complainant that he could not look through the files

<sup>1</sup> See 47 C.F.R. § 73.3527.

<sup>2</sup> See Letter from J. Davidson Morrison to Enforcement Bureau, Federal Communications Commission (the "FCC" or "Commission"), dated March 4, 2005 (the "Complaint") (transmitted by letter from Robert J. Rini, Esq., Rini Coran P.C. to FCC, Enforcement Bureau dated March 7, 2005).

<sup>3</sup> See *id.* at 1.

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

without first making an appointment with Gaston College's attorney.<sup>6</sup> While still at the Station, he was asked to take a call from Gaston College's attorney, Carl Stewart, who directed him to leave the Station and the college's campus or he would be arrested.<sup>7</sup> The Complainant states that he left without viewing the public inspection file.<sup>8</sup>

3. The Complainant further alleges that, on advice from his legal counsel, he gave Station management time to review the FCC rules regarding public inspection files before returning to the Station the next day, on March 4, 2005.<sup>9</sup> He states that he visited the Station again and was told by the Station's General Manager that he first needed an appointment with Gaston College's attorney to view the public inspection file. After informing the General Manager that such a policy was illegal, he was permitted to review a public inspection file binder and a hanging folder.<sup>10</sup> Upon review of the binder and hanging folder, he states that he noticed that the FCC publication, "The Public and Broadcasting," a copy of which is required under the rules to be maintained, was omitted from the public inspection file.<sup>11</sup> When he inquired about the absence of the publication, he was provided with a copy.<sup>12</sup> He states that he also discovered that the required issues/programs list and equal employment opportunity ("EEO") report were also missing from the public inspection file, but were later provided after he inquired about them.<sup>13</sup> He asserts that the issues/programs list was incomplete.

4. The Enforcement Bureau (the "Bureau") issued a letter of inquiry (the "LOI") to the licensee, which directed the licensee to respond to, *inter alia*, the allegations in the Complaint.<sup>14</sup> The licensee, through its counsel, responded to the allegations.<sup>15</sup> Although the licensee generally does not dispute the allegations in the Complaint, the licensee characterizes the Complainant's behavior during the first visit as "hostile," and asks the Bureau to view the Complaint in the context of its past dealings with the Complainant's employer, Columbia Bible College.<sup>16</sup> In this regard, the licensee contends that Columbia Bible College has been engaged in a "pattern of harassment and intimidation" by pursuing FCC proceedings against it, and that Columbia Bible College's actions, through the Complainant, are motivated by its prior unsuccessful efforts to acquire the Station.<sup>17</sup> The licensee alleges that Columbia Bible College is attempting to misuse the Commission's processes to force Gaston College to sell the Station.<sup>18</sup>

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<sup>6</sup> *See id.*

<sup>7</sup> *See id.*

<sup>8</sup> *See id.*

<sup>9</sup> *See id.*

<sup>10</sup> *See id.* at 2.

<sup>11</sup> *See id.*

<sup>12</sup> *See id.*

<sup>13</sup> *See id.*

<sup>14</sup> *See* Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Gaston College, dated January 20, 2006.

<sup>15</sup> *See* Letter from Stephen Hartzell, Esq., counsel for Gaston College, to Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated March 6, 2006, (the "Response Cover Letter") transmitting Gaston College Response and attached exhibits (the "LOI Response"). J. Davidson Morrison responded to the College's LOI Response by letter from J. Davidson Morrison, to Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated March 22, 2006 (transmitted by letter from Robert J. Rini, Esq., Rini Coran P.C. to Tom Hutton, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated March 23, 2006) ("Complainant's Reply").

<sup>16</sup> *See* Response Cover Letter at 2.

<sup>17</sup> *See id.* at 2-3.

<sup>18</sup> *See id.*

### III. DISCUSSION

5. Under Section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”), 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 monetary forfeiture penalty. In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed. The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule. As we set forth in greater detail below, we conclude under this standard that the Station is apparently liable for a forfeiture for its apparent willful violation of Section 73.3527 of the Commission's rules.

6. Section 73.3527 of the Commission’s rules requires noncommercial educational stations to maintain a public inspection file containing specific types of information related to station operations.<sup>19</sup> Specifically, subsection (b) of the rule provides that “[t]he public inspection file shall be maintained at the main studio of the station,” and subsection (c) requires that “[t]he file shall be available for public inspection at any time during regular business hours.”<sup>20</sup> Some examples of specific materials required for inclusion in the file are the station’s quarterly issues/programs lists, equal employment opportunity file, and a copy of the most recent version of the manual entitled “The Public and Broadcasting.”<sup>21</sup> All broadcast stations have an obligation to serve their local community’s needs and interests and to comply with certain programming and other rules. Because we do not monitor a station’s programming, viewers and listeners are a vital source of information about the programming and possible rule violations. The documents in each station’s public inspection file have information about the station that can assist the public in this important role.

7. Based on our review of the record, we find that licensee Gaston College apparently violated Section 73.3527 when it failed to provide access to its public inspection file to a member of the public upon request and in a manner consistent with the rule. Gaston College discourages us from making such a finding, contending that the underlying basis for the Complaint is to harass and intimidate the licensee.<sup>22</sup> In our overall evaluation of the facts of the case, however, we find no basis for excusing Gaston College from fully complying with the requirements of Section 73.3527. Significantly, Gaston College, in its LOI response, acknowledges that it initially refused to grant the Complainant access to the Station’s public inspection file; the Station’s General Manager later made attempts to show the Complainant the file, but that the file could not be located; the Complainant was instructed to return at a later time and to make sure to make an appointment with Gaston College’s attorney first before returning to the Station; and that the attorney spoke with the Complainant by telephone that day and asked the Complainant to leave the facility.<sup>23</sup> These admissions make clear that the licensee willfully failed to comply with the public inspection file requirements.

8. As stated above, the FCC’s public inspection file rule provides that this file must be available for inspection during a station’s normal business hours. This rule has been interpreted to mean that the public inspection file should “be available for immediate inspection by members of the public,”

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<sup>19</sup> See 47 C.F.R. § 73.3527. Comparable requirements also apply to commercial stations. See 47 C.F.R. § 73.3526.

<sup>20</sup> 47 C.F.R. § 73.3527(b) & (c).

<sup>21</sup> See 47 C.F.R. § 73.3527(e).

<sup>22</sup> See Response Cover Letter at 2.

<sup>23</sup> See LOI Response at 5-6.

which the Station, in this case, failed to do during the Complainant's visits on March 3 and 4, 2005.<sup>24</sup> Although the Complainant was eventually permitted to review the Station's public inspection file on March 4<sup>th</sup>, the record shows that the file, upon initial review, did not contain all the materials required under Section 73.3527(e), and that the Complainant had to specifically request to see the missing materials (e.g., a recent copy of the "The Public and Broadcasting"). On this point, the licensee acknowledges that "the public file was generally organized, though it may have been less organized than usual since [then-Station Manager Jeff Powell] was in the midst of reviewing it and updating it."<sup>25</sup> We remind the licensee that the Commission has held that "a simple request to see the file should be sufficient to elicit the complete file" without further necessity of asking for documents piecemeal.<sup>26</sup> The Commission, moreover, has stated that "[m]embers of the public cannot be required to inspect that file only through prior appointments or at times most convenient to the licensee . . . ."<sup>27</sup> Here, Station employees instructed the Complainant during two separate visits to first make an appointment before coming to the Station to view the public inspection file.

9. Gaston College argues that its failure to comply with the rule was the result of a misunderstanding about the whereabouts of the file because the file was in the process of being updated.<sup>28</sup> Notwithstanding Gaston College's admissions (as recited above) which, alone, serve as a sufficient basis for a finding of a rule violation, the record does not show that the licensee and its employees explained to the Complainant why the file was unavailable. Furthermore, we do not find this to be a reasonable excuse for the Station's failure to provide access to the public inspection file. To condone excuses such as this one would render the public inspection process meaningless.

10. Based upon the evidence before us, we find that the Station apparently willfully and repeatedly violated Section 73.3527 of the Commission's rules. Section 1.80 of the Commission's Rules sets a base forfeiture amount of \$10,000 for public file violations.<sup>29</sup> In its LOI Response, Gaston College requests that if the Bureau determines that a violation occurred, it impose an admonishment rather than a forfeiture.<sup>30</sup> In support of this request, Gaston College cites *Tabback Broadcasting*<sup>31</sup> and *American Family Association*,<sup>32</sup> each an admonishment against a radio station for a public file violation. In *Tabback Broadcasting*, the Audio Services Division considered a petition to deny the licensee's renewal application. According to that petition, the petitioners visited the licensee's studio three times over a six week period, and requested to see the public file during each visit. They were denied access the public file twice, and

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<sup>24</sup> *Thomas P. Brunnock*, Letter Ruling, 50 RR.2d 1313, 1314 (1982). *Accord Riverside Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 18322, 18323 ¶ 5 (Enf. Bur., Investigations & Hearings Div. 2000).

<sup>25</sup> LOI Response at 6.

<sup>26</sup> *See, e.g., Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15700-06 ¶¶ 18 and 32 (1998) (explaining that, because the public may not be aware of the required contents of public inspection files, the rule specifically requires that the file contain the most recent version of the manual, "The Public and Broadcasting," which details the required contents of the public inspection file and describes the public's role in monitoring a "station's operations and public interest performance. . . .").

<sup>27</sup> *License Renewal Applications of Certain Commercial Television Stations Service Philadelphia*, Memorandum Opinion and Order, 67 RR.2d 1567, 1573 (1990).

<sup>28</sup> *See* LOI Response at 3.

<sup>29</sup> *See* 47 C.F.R. § 1.80.

<sup>30</sup> *See* LOI Response at 4.

<sup>31</sup> *See Application of Tabback Broadcasting Co. for Renewal of License of Station KAZM(AM), Sedona, Arizona*, Letter Ruling, File No. 1800B3-JR (Mass Media Bur., Audio Services Div. 1999) ("*Tabback Broadcasting*"), *aff'd on review*, Memorandum Opinion and Order, 15 FCC Rcd 11899 (2000).

<sup>32</sup> *See American Family Association, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (Enf. Bur. 2003).

viewed the public file once. After the petitioners' third visit, the licensee contacted the Audio Services Division for clarification of its public file obligations. Once the licensee was told that it must make the public file accessible during normal weekly business hours, the licensee did so. The Audio Services Division concluded that these facts did not indicate a pattern of abuse sufficient to deny the renewal application, and admonished the licensee for twice failing to make the public file available.<sup>33</sup>

11. In *American Family Association*, the Enforcement Bureau canceled a proposed forfeiture against a noncommercial station whose public file was found to be incomplete during an FCC inspection.<sup>34</sup> The licensee argued that, although the physical file was incomplete, the missing materials were on-site and simply had not yet been placed in the file. The Bureau concluded that, although the licensee had failed to maintain a complete public file in violation of Section 73.3527(e) of the Commission's rules, cancellation of the proposed forfeiture was appropriate because the licensee had made a good faith attempt to comply with the public file rules.<sup>35</sup>

12. Contrary to Gaston College's contention, neither case controls here. As noted above, the *Tabback Broadcasting* decision focused on the choice between admonishment and license non-renewal, and did not discuss whether the licensee willfully or repeatedly violated the public file rule – the standard for issuing a forfeiture penalty.<sup>36</sup> *American Family Association* is also not on point because that case concerned a station that – unlike here – immediately produced its public file upon request. While the public file itself was incomplete, the Enforcement Bureau concluded that an admonishment was appropriate because the licensee had made a good faith effort to maintain a complete file.<sup>37</sup> The licensee here does not claim to have made such a good faith effort to comply with the public file rules. Rather, the undisputed facts are that the licensee explicitly refused to make the public file available upon request, and ordered the Complainant to leave the station without viewing the file.

13. Compliance with the public file rule is vitally important because the rule “safeguards the public's ability to assess the station's service and to meaningfully participate at the station's renewal process.”<sup>38</sup> In the *Forfeiture Policy Statement*, the Commission found that omission of even a single item from the public file is a serious violation because it “diminishes the public's ability to determine and comment on whether the station is serving the community.”<sup>39</sup> Accordingly, the Commission set the base forfeiture amount for public file violations at \$10,000 – for broadcasters, only misrepresentation carries a higher base forfeiture amount.<sup>40</sup>

14. If omission of a single document from the public file is a serious violation, the outright refusal to produce the public file is even more egregious. In this case, we believe the violation was sufficiently serious that we will propose a forfeiture at the base amount of \$10,000, due to the Station's

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<sup>33</sup> *Tabback Broadcasting* at 6.

<sup>34</sup> See *American Family Association*, 18 FCC Rcd at 16532 ¶ 9.

<sup>35</sup> *Id.*

<sup>36</sup> 47 U.S.C. § 503(b).

<sup>37</sup> *American Family Association*, 18 FCC Rcd at 16532 ¶ 9.

<sup>38</sup> *New Life Broadcasting, Inc.*, Forfeiture Order, 21 FCC Rcd 8641 ¶10 (Enf. Bur., South Central Region 2006). See also *Faith Christian Music Broadcast Industries, Inc.*, Forfeiture Order, 20 FCC Rcd 19051 (Media Bur. 2005).

<sup>39</sup> *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, 17104-05 ¶39 (1999) (subsequent history omitted) (“*Forfeiture Policy Statement*”).

<sup>40</sup> Misrepresentation has the statutory maximum amount (currently \$32,500 for broadcasters) as its base forfeiture amount. 47 C.F.R. § 1.80(b)(4)(note).

outright refusal to make the file available to a member of the public on more than one occasion, and the fact that the file was incomplete when it was finally made available. This amount is supported by our precedent.<sup>41</sup> To the extent Gaston College wishes to provide evidence of its history of compliance with FCC rules, or its inability to pay the proposed forfeiture, it may do so in its response to this Order.

#### IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's Rules, Gaston College is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$10,000 for willfully violating Section 73.3527 of the Commission's rules.

16. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's rules, within 30 days of the release date of this *Notice of Apparent Liability for Forfeiture*, Gaston College SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the 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. 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 9116229.

18. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to Deputy Chief Financial Officer, Room 1-A637, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.<sup>42</sup>

19. The response, if any, to this Notice of Apparent Liability for Forfeiture shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Suite 4-C330, Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

20. 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; 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.

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<sup>41</sup> See, e.g., *Blountstown Communications, Inc.*, Memorandum Opinion and Order, DA 07-230 (Enf. Bur. rel. Jan. 29, 2007) (denying reconsideration of \$10,000 forfeiture for failure to make public file available to requesting FCC agent; ultimately reducing forfeiture due to history of compliance); *M&R Enterprises, Inc.*, Forfeiture Order, 17 FCC Rcd 14608 (Enf. Bur. 2002) (finding a \$10,000 forfeiture for failure to provide access to public inspection file on two occasions, but ultimately reducing to \$5,000 due to licensee's inability to pay); *Riverside Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 18322 (Enf. Bur. 2000) (finding licensee apparently liable for \$10,000 forfeiture for denying access to station's public inspection file on two different dates) (NAL paid).

<sup>42</sup> See 47 C.F.R. § 1.1914.

21. IT IS FURTHER ORDERED that the complaint filed by J. Davidson Morrison IS GRANTED to the extent indicated herein and IS OTHERWISE DENIED, and the complaint proceeding IS HEREBY TERMINATED.<sup>43</sup>

22. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail - Return Receipt Requested, and regular mail, to the Licensee at its address of record and to counsel for the complainant, Robert J. Rini, Esquire, Rini Coran, PC, 1501 M Street, N.W. Suite 1150, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro  
Chief, Investigations and Hearings Division  
Enforcement Bureau

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<sup>43</sup> For purposes of the forfeiture proceeding initiated by this NAL, Gaston College shall be the only party to this proceeding.