

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

In the Matter of	)	
	)	Facility ID No. 908
<b>Alderson-Broadus College, Inc.</b>	)	NAL/Acct. No. MB20041810047
	)	FRN: 0002008704
Licensee of Station WQAB(FM)	)	File No. BRED-20030903ACN
Philippi, West Virginia	)	

**FORFEITURE ORDER**

**Adopted: June 13, 2008**

**Released: June 16, 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 one thousand five hundred dollars (\$1,500), to Alderson-Broadus College, Inc. (“Licensee”), licensee of Station WQAB(FM), Philippi, West Virginia (“Station”), for its willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to timely file a license renewal application for the Station.

**II. BACKGROUND**

2. On August 3, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for this violation.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on September 2, 2004.

3. As noted in the NAL, Licensee’s renewal application for the current WQAB(FM) license term was due on June 1, 2003, four months prior to the October 1, 2003, expiration date.<sup>3</sup> Licensee did not file the application until September 3, 2003, which included an exhibit explaining the reason for the untimely filing of the renewal application. On August 3, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Licensee failed to timely file the WQAB(FM) renewal application.<sup>4</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that its failure to timely file the renewal application was unintentional. It explains that it attempted to prepare the application for electronic submission before the June 1, 2003, deadline, but network computer problems and staff error prevented it from submitting it in a timely fashion.

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<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *Letter to Dr. Jim Wilkie from Peter Doyle*, reference 1800B3-MH (MB August 3, 2004).

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> The Commission granted the above-referenced license renewal application on August 3, 2004.

5. Licensee also claims that payment of the forfeiture will cause it financial hardship. In support of its claim, it submits its financial statements for the 2002 and 2003 fiscal years, and specifically points to the fact that it had a negative cash flow and a decrease in its net assets during that time period.<sup>5</sup> It further notes that the Station's operating budget is \$4,000, a substantial portion of which was used to repair a remote transmitter that was hit by lightning.<sup>6</sup> Licensee asserts these reasons 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,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission's *Forfeiture Policy Statement*.<sup>9</sup> 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.<sup>10</sup>

7. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, Licensee asserts that because of technical difficulties and staff error, it was unable to electronically file the renewal form in a timely fashion. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>11</sup> 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.<sup>12</sup> Moreover, the Commission has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"<sup>13</sup> and has consistently "refused to excuse licensees from

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<sup>5</sup> Request at 1. Specifically, Licensee states that "there have been decreases in the college's unrestricted net assets of \$1,880,114 and a negative cash flow of \$333,673 in the past year." *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</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 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*"); *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"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>12</sup> 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).

<sup>13</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”<sup>14</sup>

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.<sup>15</sup> In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.<sup>16</sup> We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>17</sup> 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.<sup>18</sup> While Licensee claims that it operated with a “negative cash flow” for the fiscal years 2002 and 2003, Licensee’s financial documentation also indicates that its 2003 total gross revenues totaled \$12,414,921.<sup>19</sup> A \$1,500 forfeiture is 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.<sup>20</sup>

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 willfully<sup>21</sup> and repeatedly<sup>22</sup> violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

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<sup>14</sup> See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

<sup>15</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441(Apr. 16, 2004).

<sup>16</sup> *PJB Communications*, 7 FCC Rcd at 2089.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Request, Attachment at 4.

<sup>20</sup> 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).

<sup>21</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. 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>22</sup> 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).

**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,<sup>23</sup> that Alderson-Broadus College, Inc., SHALL FORFEIT to the United States the sum of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules.

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).<sup>24</sup>

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to Dr. Jim Wilkie, Alderson-Broadus College, Inc., 205 Withers-Brandon Hall, Philippi, West Virginia 26416.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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

<sup>24</sup> See 47 C.F.R. § 1.1914.