

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

In the Matter of	)	
	)	Facility ID No. 65560
<b>College of the Holy Cross</b>	)	NAL/Acct. No. MB-200641410043
	)	FRN: 0009947573
Licensee of Station WCHC(FM),	)	File No. BR-20051130AVR
Worcester, Massachusetts	)	

**FORFEITURE ORDER**

**Adopted: May 12, 2009**

**Released: May 13, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000), to College of the Holy Cross (“Licensee”), licensee of Station WCHC(FM), Worcester, Massachusetts (“Station”), for its willful and repeated violation of Section 73.3527 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to properly maintain a public file for the Station.

**II. BACKGROUND**

2. On July 27, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Licensee for this violation.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on August 28, 2006.

3. On November 30, 2005, Licensee filed an application to renew the license of the Station. 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 exhibit explaining that issues/programs lists prior to July 2001 were missing from the Station’s public files. On July 27, 2006, the staff advised Licensee of its apparent liability for a forfeiture of \$10,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its admission, at least twelve issues/programs lists were missing from the Station's public inspection file between 1998 and 2001.<sup>3</sup> 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: (1) Licensee voluntarily disclosed the violation; (2) the forfeiture amount is excessive; and (3) payment of the proposed forfeiture would cause it financial hardship. Finally, Licensee asserts that a forfeiture reduction is warranted because of its history of compliance with the Commission’s Rules. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

<sup>1</sup> 47 C.F.R. § 73.3527.

<sup>2</sup> *College of the Holy Cross*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8484 (MB 2006).

<sup>3</sup> The Commission granted the above-referenced license renewal application on July 27, 2006.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</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>7</sup>

6. Licensee first argues that the Commission should reduce the proposed forfeiture given its voluntary disclosure of its violations. We disagree with the assertion that its disclosure of the public file violations was voluntary. Although Licensee admitted to violating Section 73.3527, it did so only in the context of the question contained in its license renewal application that compelled such disclosure.<sup>8</sup> We note that our decision is consistent with the Rules and the Commission's *Forfeiture Policy Statement* and encourages companies to voluntarily disclose violations and promptly correct violations.<sup>9</sup>

7. Licensee next argues that the forfeiture amount is "excessive" and inconsistent with Commission precedent for similar violations. Specifically, Licensee argues that its case is "different from those warranting the \$10,000 fines because in those cases the length of the violation was more than half the time in which the license was issued."<sup>10</sup> Again, we disagree. We find that a \$10,000 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of the Commission's Rules regarding public files.<sup>11</sup>

8. Finally, Licensee claims that payment of the proposed forfeiture would cause the Station 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)

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</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>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3527 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

<sup>9</sup> See 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Guidelines for Assessing Forfeitures. See also *Local Phone Services, Inc.*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (finding that the issuance of a forfeiture despite petitioner's voluntary disclosure of its Rule violations was appropriate and would not discourage other parties from voluntarily disclosing violations of the Act or Rules).

<sup>10</sup> Request at 5.

<sup>11</sup> See, e.g., *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128 (MB 2009) (noting initial \$9,000 forfeiture issued for twelve missing issues/programs lists, but reducing the forfeiture amount to \$7,200 based on licensee's history of compliance with the Rules); *ROA Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 11326 (MB 2008) (same). In each case, the underlying NAL initially found the licensee apparently liable for \$10,000 for these violations but reduced the forfeiture amount by \$1,000 based on the licensee's voluntary disclosure of its public file deficiencies. However, as noted in note 8 *supra*, since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure of its public file violations in its license renewal application.

some other reliable and objective documentation that accurately reflect the licensee's current financial status. Here, Licensee has provided us with a one-page document setting forth the Station's income and expenditures for 2005, and no documentation regarding Licensee's finances. We find this information alone is an insufficient basis on which to assess Licensee's inability to pay.<sup>12</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

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>13</sup> and repeatedly<sup>14</sup> violated Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.<sup>15</sup>

#### 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>16</sup> that College of the Holy Cross, SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>17</sup> 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,

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<sup>12</sup> See *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (rejecting licensee's financial hardship argument, finding that a one-page document summarizing its station budget and no information about licensee's finances was an insufficient basis on which to assess the licensee's inability to pay); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821 (MB 2008) (same).

<sup>13</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>14</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).

<sup>15</sup> See, e.g., *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (issuing forfeiture for licensee's public file violations, but reducing forfeiture amount based on licensee's history of compliance); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>17</sup> 47 U.S.C. § 504(a).

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>18</sup>

12. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to: College of the Holy Cross, c/o Jaqueline D. Peterson, Vice President for Student Affairs and Dean of Students, One College Street, Worcester, Massachusetts 01610, and to its counsel, Cynthia J. Larose, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts 02111.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>18</sup> See 47 C.F.R. § 1.1914.