

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

In the Matter of	)	
	)	Facility ID No. 12423
<b>Columbia City Joint High School</b>	)	NAL/Acct. No. MB-200741410014
	)	FRN: 0012891339
Licensee of Station WJHS(FM)	)	File No. BRED-20050228ABN
Columbia City, Indiana	)	

**FORFEITURE ORDER**

**Adopted: September 16, 2009**

**Released: September 17, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000), to Columbia City Joint High School (“Columbia City”), licensee of Station WJHS(FM), Columbia City, Indiana (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (the “Act”) by failing to timely file a license renewal application and engaging in unauthorized operation of the Station.<sup>1</sup>

**II. BACKGROUND**

2. On January 31, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Columbia City for these violations.<sup>2</sup> In response to the NAL, Columbia City submitted a Petition for Reconsideration (“Petition”) on March 2, 2007.<sup>3</sup>

3. As noted in the NAL, Columbia City’s renewal application for the Station’s current license term was due on April 1, 2004, four months prior to the August 1, 2004, expiration date.<sup>4</sup> Columbia City did not file the application until February 28, 2005, and provided no explanation for the untimely filing of the renewal application. Columbia City did not file a request for special temporary authorization (“STA”) for authority to continue station operations pending consideration of the late-filed renewal application until November 2, 2005. The staff granted that STA request on November 10, 2005. By the terms of the STA letter, that authority expired on May 10, 2006. Columbia City failed to timely file for an extension of the STA for further authority to continue WJHS(FM)’s operations.

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Columbia City Joint High School*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1572 (MB 2007).

<sup>3</sup> Because a Petition for Reconsideration is not appropriate at this juncture as there has been no final Commission action, we shall treat the Petition as a request for cancellation or reduction of proposed forfeiture. See 47 C.F.R. § 1.106(a)(1).

<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

4. On January 31, 2007, the staff advised Columbia City of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station's renewal application and for unauthorized operation of the Station.<sup>5</sup> In response, Columbia City filed the subject Petition.

5. In its Petition, Columbia City states that its failure to timely file the renewal application was unintentional and that it would be a financial hardship for it to pay the forfeiture. It also argues that the staff should consider Columbia City's status as a non-profit governmental entity. Therefore, it argues, the forfeiture should be cancelled.

### III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission's *Forfeiture Policy Statement*.<sup>8</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, the record of compliance, ability to pay, and such other matters as justice may require.<sup>9</sup>

7. Columbia City does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. Specifically, it states that "the person responsible for handling FCC licensing left the school, and there was an unfortunate, temporary gap in supervision of certain important matters such as renewing the Station WJHS (FM) license."<sup>10</sup> 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 (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>12</sup> Columbia City's personnel issues do not excuse its conduct, as the licensee is ultimately

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<sup>5</sup> The Commission granted the license renewal application on January 31, 2007.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</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>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> Petition at 3.

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (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).

responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.<sup>13</sup>

8. Columbia City also charges that “[n]o effort was made by the Bureaus involved and by Commission staff to make the slightest factual distinction among the responses of the targeted licensees and their stations; everyone received a \$7,000 NAL. . . . [t]his local government school board operation deserves better . . . .”<sup>14</sup> As noted above and in the NAL, the fine issued to Columbia City was made in accordance with the Commission's Forfeiture Policy Statement. We also note that it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.<sup>15</sup> We therefore decline to reduce the forfeiture amount on the basis of Columbia City's status as a noncommercial educational governmental operation.

9. Columbia City also argues that it would be a financial hardship for it to pay the forfeiture amount. The school states that it would place “an inordinate burden on the budget of its Consolidated Schools. . . .”<sup>16</sup> Moreover, Columbia City notes that the Commission recently reduced an \$11,000 forfeiture amount to \$2,500 due to financial hardship.<sup>17</sup> 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.<sup>18</sup> Thus, in *Daniel Granda*, where the licensee provided adequate documentation, a reduction of the forfeiture amount was warranted. However, in the present case, Columbia City has not provided any such documentation and we therefore will not reduce the forfeiture based on alleged financial hardship.

10. We have considered Columbia City's Petition and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Columbia City willfully<sup>19</sup> and repeatedly<sup>20</sup> violated Section 73.3539 of the Rules, and Section 301 of the Act,<sup>21</sup> and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

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<sup>13</sup> See, e.g., *Educational Media Foundation*, Letter, 2008 WL 4693171 (MB 2008), citing *Request for Waiver by Center City Schools*, Order, 17 FCC Rcd 22424 (2003) (“it is the applicant who has responsibility ultimately for the timely submission of the application.”).

<sup>14</sup> Petition at 2.

<sup>15</sup> See *Des Moines Independent Community School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869 (MB 2009), citing *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743 (MB 2008) (rejecting licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) (“Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station.”).

<sup>16</sup> Petition at 1.

<sup>17</sup> *Id.* at 2, citing *Daniel Granda*, Memorandum Opinion and Order, 22 FCC Rcd 3966 (EB 2007) (“*Daniel Granda*”).

<sup>18</sup> *Radio Free Georgia Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 3336 (MB 2009).

<sup>19</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*, 6 FCC Rcd at 4387-88.

#### IV. ORDERING CLAUSES

11. 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>22</sup> that Columbia City Joint High School SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

12. 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>23</sup> 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 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>

13. 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 Columbia City Joint High School, 107 N. Walnut Street, Columbia City, Indiana 46725 and its counsel, Lewis H. Goldman, 45 Dudley Court, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>20</sup> Section 312(f)(2) 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>21</sup> 47 U.S.C. § 301.

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>23</sup> 47 U.S.C. § 504(a).

<sup>24</sup> *See* 47 C.F.R. § 1.1914.