

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

In re Application of
INDEPENDENT SCHOOL DISTRICT #283
For Renewal of License for
Station KDXL(FM)
St. Louis Park, Minnesota
NAL/Acct. No. MB-200741410082
FRN: 0007502636
Facility I.D. No. 28505
File No. BRED-20050218AAD

FORFEITURE ORDER

Adopted: December 1, 2009

Released: December 2, 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 two hundred and fifty dollars (\$250) to Independent School District # 283 ("Licensee"), licensee of Class D noncommercial educational Station KDXL (FM), St. Louis Park, Minnesota ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application for the Station.

II. BACKGROUND

2. On February 21, 2007, the Bureau issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("NAL") in the amount of one thousand five hundred dollars (\$1,500) to Licensee for this violation. Licensee filed a Response requesting that the forfeiture be waived or reduced ("Response") on March 13, 2007.

3. As noted in the NAL, Licensee's renewal application for the Station's current license term should have been filed by December 1, 2004, four months prior to the Station's April 1, 2005, expiration date, but was not. In fact, Licensee did not file the renewal application until February 18, 2005, more than two months after the required filing date.

4. In its Response, Licensee states that it is a high school operated radio station, that has recently entered into a time-share agreement with the University of Minnesota's radio station, and is on the air only seven hours per day, only on days when school is in session. Licensee states that the Station

1 Independent School District #283, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3664 (MB 2007).

2 See 47 C.F.R. §§ 73.1020, 73.3539(a).

operates essentially as an extracurricular activity and it has a “very minimal budget.” Licensee also states that it has operated in the public interest for nearly 30 years and it has a history of compliance with the Commission’s Rules.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and the Commission's *Forfeiture Policy Statement*.<sup>5</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>6</sup>

6. Licensee does not dispute that it failed to file a timely renewal application for the Station. It does, however, argue the forfeiture should be reduced or cancelled because it is small, student-run station with a limited budget. We note that KDXL(FM) is a class D noncommercial educational station. Class D stations are “secondary” services, which “primary” stations are not required to protect.<sup>7</sup> Notwithstanding the secondary status of Class D stations, the Commission has stressed that, “as with *all* broadcast services,” the licensee is responsible for operation of the station and for its *full compliance with all Commission rules*.<sup>8</sup> Given the Commission's recent decision assessing a forfeiture against a licensee of a Class D station for violation of Section 73.3539 of the Rules,<sup>9</sup> we will reduce the forfeiture amount to \$250 based on the Station’s status as a provider of secondary Class D service.

7. 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. Here, Licensee has failed to provide us with any documentation regarding its finances. Licensee therefore has provided an insufficient basis on which to assess its ability to pay, and we reject that argument.<sup>10</sup>

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<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</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>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> 47 C.F.R. § 73.512(d).

<sup>8</sup> *See Creation of a Low Power Radio Service*, Notice of Proposed Rule Making, 14 FCC Rcd 2471, 2504 (1999) (emphasis added).

<sup>9</sup> *See, e.g., School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896 (MB 2008) (reduced proposed forfeiture for Class D noncommercial educational station to \$250 each, for the late filing and unauthorized operation).

<sup>10</sup> *See A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that

(continued....)

8. Finally, regarding Licensee's claim that the *NAL* should be cancelled or reduced because of its past adherence to the Rules, we note that a reduction of the proposed forfeiture based on Licensee's status as a Class D station exceeds that which would be accorded Licensee for a "history of compliance."<sup>11</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>12</sup> violated Section 73.3539 of the Rules, and we reduce the forfeiture amount to \$250.

#### 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>13</sup> that Independent School District # 283, SHALL FORFEIT to the United States the sum of two hundred and fifty dollars (\$250) for willfully violating Section 73.3539 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>14</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, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to

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licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

<sup>11</sup> See, e.g., *WLVV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (20 percent reduction accorded for "history of compliance"), citing *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (issuing forfeiture for licensee's public file violations, but reducing forfeiture amount by 20 percent based on licensee's history of compliance); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1228 (MB 2009) (same); *John Brown University*, Forfeiture Order, 214 FCC Rcd 1536 (MB 2009) (same).

<sup>12</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.

<sup>13</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>14</sup> 47 U.S.C. § 504(a).

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>15</sup>

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, to Independent School District # 283, ATTN: Tom Marble, 6425 West 33<sup>rd</sup> Street, St. Louis Park, Minnesota 55426.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.