

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

In the Matter of	)	
	)	Facility ID No. 58845
<b>San Jose State University</b>	)	NAL/Acct. No. MB-20051810125
	)	FRN: 0009748385
Licensee of Station KSJS(FM)	)	File No. BRED-20050822AAB
San Jose, California	)	

**FORFEITURE ORDER**

**Adopted: December 3, 2009**

**Released: December 4, 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 nine thousand dollars (\$9,000), to San Jose State University (“Licensee”), licensee of Station KSJS(FM), San Jose, California (“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 December 20, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to Licensee for this violation.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on January 18, 2006.

3. On August 22, 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 “[f]rom 2001 to the present ... no quarterly issues were placed in the file.” It stated that it would recreate these lists, place them in Station’s public file, and that it had taken steps to assure that the lists would be prepared and filed in a timely fashion in the future. On December 20, 2005, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that it was responsible for 16 issues/programs lists which were missing from the Station public inspection file during the license period.<sup>3</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction of the forfeiture is warranted because (1) its case is easily distinguishable from the cases cited in the NAL; (2) the Commission staff failed to explain the imposition of a higher forfeiture than was issued in recent cases citing similar rule violations, and (3) it is financially unable to pay the proposed forfeiture.

<sup>1</sup> 47 C.F.R. § 73.3527.

<sup>2</sup> *Letter to Frank R. Jazzo, Esq. from Peter H. Doyle*, reference 1800B3-SS (MB Dec. 20, 2005).

<sup>3</sup> The Commission granted the above-referenced license renewal application on December 20, 2005.

### 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 argues that neither the cases cited in the NAL nor Commission precedent support a \$9,000 NAL for its public file violations. Licensee asserts that the noncompliance in the cases cited in the NAL "was clearly far more egregious" than Licensee's violations, characterizing them as including: "(1) a commercial station that was fined for having no programs and issues reports over a four-year period;<sup>8</sup> (2) a station whose violations over a four-year period included a missing renewal application, as well as missing ownership reports, annual employment reports, as well as denial of access to its public file;<sup>9</sup> and (3) a licensee that was fined for not only having a public file incomplete on many counts but also denying access to the file to a member of the public."<sup>10</sup> Licensee also cites to a Media Bureau decision involving a "comparable" public file violation in which the licensee was assessed a \$3,000 forfeiture.<sup>11</sup> In light of this precedent, Licensee argues that the imposition of a \$9,000 forfeiture in the instant case is "excessive, inappropriate, and inequitable" and that the Commission is required to explain the reason for such discrepancies.<sup>12</sup>

7. We reject Licensee's claim that the forfeiture proposed is inconsistent with precedent. We acknowledge that the *Faith Christian* case involved a greater number of missing issues/programs lists and a lesser forfeiture than the instant case. However, the licensee in that case should in fact have been issued an NAL in the amount of \$10,000 for its public file violations.<sup>13</sup> Accordingly, we disavow the *Faith Christian* case to the extent that it is inconsistent with other forfeitures issued for similar public file

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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> *Dick Broadcasting Co. of Tennessee*, Letter, 19 FCC Rcd 6319 (MB 2004).

<sup>9</sup> *Pacific Spanish Network, Inc.*, Letter, 14 FCC Rcd 10021 (MB 1999).

<sup>10</sup> *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9702 (MB 1999).

<sup>11</sup> Request at 4 (*citing Faith Christian Music Broadcast Ministries, Inc.*, Forfeiture Order, 20 FCC Rcd 19051 (MB 2005) (noting initial \$3,000 forfeiture issued to a licensee whose public file contained no issues and programs lists over the entire license term, but reducing the forfeiture amount to \$500 based on the licensee's inability to pay) ("*Faith Christian*").

<sup>12</sup> Request at 3 (*citing Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965) (holding that the Commission must explain its disparate treatment of contemporaneous cases with similar underlying facts)).

<sup>13</sup> *See, e.g., South Atlanta Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8471 (MB 2006) (issuing \$10,000 forfeiture for nine missing issues/programs lists). *See also Saga Communications of Illinois, LLC*, Forfeiture Order, 24 FCC Rcd 2479 (MB 2009) (affirming \$9,000 forfeiture issued for eight missing issues/programs lists); *Manuel Huerta Licensee of Station WJHX(AM), Lexington, AL*, Forfeiture Order, 23 FCC Rcd 14647 (MB 2008) (same); *ROA Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 11333 (MB 2008) (noting initial \$9,000 forfeiture issued for eight missing issues/programs lists, but reducing the forfeiture amount to \$7,200 based on licensee's history of compliance with the Rules).

violations, and find that a \$9,000 forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3527 of the Rules.<sup>14</sup>

8. Licensee next contends that it is not financially able to pay a forfeiture which it claims would constitute fifteen percent of the Station's total operating costs. The Commission will not consider reducing 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>

9. Here, Licensee did not submit federal tax returns, financial statements or any documentation setting forth Licensee's finances in support of its Request. Instead, Licensee submitted Station "budgets" for the years 2004-05 and 2005-06 that show expenses and operating costs of \$57,380 and \$58,930, respectively.<sup>16</sup> Licensee also submitted a letter from Mike Adams, Chair of the Licensee's Department of Television-Radio-Film-Theatre, who states that the Station's annual income of \$58,000 per year comes from an independent telemarketing company and an activity fee charged to students in radio classes.<sup>17</sup> We find that this documentation fails to meet the standard of "other reliable and objective documentation" sufficient to establish the licensee's current financial status.<sup>18</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.<sup>19</sup>

10. 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>20</sup> and repeatedly<sup>21</sup> violated Section 73.3527 of the Rules. Furthermore, we find that Licensee's arguments do not support cancellation or reduction of the proposed forfeiture amount.

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<sup>14</sup> *Id.*

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

<sup>16</sup> Request, Exhibit A.

<sup>17</sup> Request, Exhibit B.

<sup>18</sup> See *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (finding that a one-page document setting forth station income and expenditures for one year, and no information regarding licensee's finances, was an insufficient basis on which to assess a licensee's ability to pay); *Metropolitan School District of Washington Township*, Forfeiture Order, 23 FCC Rcd 9995, 9997 (MB 2008) (finding that information regarding station budget and no information regarding licensee's finances was an insufficient basis on which to assess a licensee's ability to pay).

<sup>19</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that 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>20</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 3453 (1992) ("Southern California").

<sup>21</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**

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 San Jose State University, SHALL FORFEIT to the United States the sum of \$9,000 for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules. 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 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>

13. Licensee's requests for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>25</sup>

14. 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: San Jose State University, One Washington Square, San Jose, California, 95192-0098, and to its counsel, Frank R. Jazzo, Esq., Fletcher, Heald and Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<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.

<sup>25</sup> *Id.*