

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

In the Matter of)	
)	Facility ID No. 54585
Radio Free Georgia Broadcasting Foundation, Inc.)	NAL/Acct. No. MB-20051810087
)	FRN: 0006147144
)	File No. BRED-20031208BVA
Licensee of Station WFRG(FM),)	
Atlanta, Georgia)	

FORFEITURE ORDER

Adopted: March 19, 2009

Released: March 20, 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 three thousand dollars (\$3,000), to Radio Free Georgia Broadcasting Foundation, Inc. (“Licensee”), licensee of Station WFRG(FM), Atlanta, Georgia (“Station”), for its willful and repeated violation of Section 73.3527 of the Commission’s Rules (“Rules”)¹ by failing to properly maintain a public file for the Station.

II. BACKGROUND

2. On August 25, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of three thousand dollars (\$3,000) to Licensee for this violation.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on October 11, 2005.

3. On December 8, 2003, 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 it had misplaced the quarterly issues and programs lists for the first quarter of 1996, all four quarters of 1998, and the first and third quarters of 1999. It stated that it had recreated these lists, placed in them Station’s public file, and taken steps to assure that the lists would be prepared and filed in a timely fashion in the future. On August 25, 2005, the staff granted the WFRG(FM) license renewal application and advised Licensee of its apparent liability for a forfeiture of \$3,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its admission, seven quarters’ worth of issues/programs lists were missing from the Station’s public inspection file between 1996 and 2001. In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction of the forfeiture to \$1,000 or an opportunity to pay in installments over the course of one year is warranted because the Station is unable to pay the entire forfeiture at once. Specifically, it claims that it is a noncommercial station that is

¹ 47 C.F.R. § 73.3527.

² Letter to John Crigler, Esq. from Peter Doyle, reference 1800B3-SS (MB August 25, 2005).

supported by listener contributions, and from federal grants. It notes that the listener contributions are raised in the spring and fall, and at other times of the year funds are extremely limited. As further evidence of its financial hardship, it also notes that it has begun the expensive process of relocating its antenna and transmitter and purchasing a directional antenna at a very high cost, in the hopes of attracting more listeners. It states that its annual costs exceed its revenues, and as an example, refers to its 2004 federal tax return, which shows that its total revenue was \$279,041, and that it operated at a deficit of \$26,271.

III. DISCUSSION

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

6. First, we reject Licensee's argument that its implementation of new measures at the Stations to ensure future compliance is a basis for reduction of the forfeiture. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁷

7. Second, Licensee contends that payment of the proposed forfeiture in full or all at once would cause it a financial hardship. 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.⁸ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.⁹ We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁰ 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.¹¹

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ *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).

⁶ 47 U.S.C. § 503(b)(2)(E).

⁷ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

⁸ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

⁹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

¹⁰ *Id.*

¹¹ 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, despite the fact that licensee was operating at a loss); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002)

8. Licensee submitted one tax return and one financial statement. Those documents show that its 2004 total gross revenues were \$279,041. Operating losses are also documented, but because the \$3,000 forfeiture is approximately 1 percent of Licensee's total gross revenues, a reduction based on financial hardship is not warranted. However, pursuant to Section 1.1914 of the Rules, the Commission will consider allowing Licensee to pay its obligation in installments pursuant to an installment payment plan note.¹² See Paragraph 12, *infra*.

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 willfully¹³ and repeatedly¹⁴ violated Section 73.3527 of the Rules. We deny Licensee's request for reduction of the proposed monetary forfeiture.

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,¹⁵ that Radio Free Georgia Broadcasting Foundation, Inc., SHALL FORFEIT to the United States the sum of \$3,000 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. 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.¹⁶ 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).¹⁷

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(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).

¹² See 47 C.F.R. §1.1914.

¹³ 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").

¹⁴ 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).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.

12. Licensee's request 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. 20554.¹⁸

13. 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: Radio Free Georgia Broadcasting Foundation, Inc., 1083 Austin Ave., Atlanta, Georgia 39307, and to its counsel, John Crigler, Esq., Garvey Shubert Barer, 1000 Potomac Street, NW, 5th Floor, Flour Mill Building, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁸ *Id.*