

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

In the Matter of	)	
	)	Facility ID No. 67795
<b>Tri-State University</b>	)	NAL/Acct. No. MB-200541410121
	)	FRN: 0005273230
Licensee of Station WEAX(FM),	)	File No. BRED-20040323ASY
Angola, Indiana	)	

**FORFEITURE ORDER**

**Adopted: April 27, 2009**

**Released: April 28, 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 seven thousand two hundred dollars (\$7,200), to Tri-State University (“Licensee”), licensee of Station WEAX(FM), Angola, Indiana (“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 February 22, 2006, 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 March 23, 2006.

3. On March 23, 2004, 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 “for a period of time during the previous license term, station WEAX did not properly maintain the public inspection file.” It noted that quarterly issues programs lists from January 2000 had been recreated and put in the file but that “lists for quarters prior to that date apparently were not prepared or [were] lost.” In subsequent amendments to the application, Licensee admitted that it could not locate any of the quarterly issues/programs lists for the previous license term except those for the second quarter of 2003 and the second and third quarters of 2004. On February 22, 2006, 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, by its admission, several years’ worth of issues/programs lists were missing from the Station’s public inspection file between 1996 and 2004.<sup>3</sup> In response, Licensee filed the subject Request.

<sup>1</sup> 47 C.F.R. § 73.3527.

<sup>2</sup> *Letter to Matthew H. McCormick, Esq. from Peter Doyle*, reference 1800B3-MAT (MB Feb. 22, 2006).

<sup>3</sup> The Commission granted the above-referenced license renewal application on February 22, 2006.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because: (1) Licensee took immediate corrective action upon learning that it was not in compliance with the Commission's public file Rules and implemented new measures to ensure future compliance; (2) the public was not harmed by its failure to maintain a complete public file; (3) the forfeiture amount is "excessive for a noncommercial education station;" and (4) payment of the proposed forfeiture would be a "blow" to the Station's budget and 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.

### 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 a cancellation or reduction of its forfeiture is warranted because it took corrective action following the discovery of the Station's deficiencies and implemented new measures at the Station to ensure future compliance. We reject these arguments. 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.<sup>8</sup>

7. Licensee next argues that we should reduce the forfeiture because the forfeiture amount is "excessive" for a noncommercial educational station and inconsistent with that issued to licensees in similar situations. We disagree. First, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.<sup>9</sup> Moreover, it is

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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> *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)).

<sup>9</sup> *See 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").

undisputed that Licensee was missing at least 18 issues/programs lists during the pertinent license term.<sup>10</sup> The \$9,000 forfeiture issued to the Station is consistent with prior forfeitures for similar violations.<sup>11</sup>

8. We likewise reject Licensee's argument that the forfeiture should be reduced or cancelled because there was no "public harm." As we discussed at length in *Faith Christian Music Broadcast Ministries*,<sup>12</sup> issues/programs lists provide both the Commission and the listening public with important information regarding the extent to which a station has met the needs and interests of its community during the prior license term, and therefore, whether license renewal is warranted.<sup>13</sup> The Rule also is designed to facilitate the airing of programming responsive to community needs.<sup>14</sup> As such, these requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations.<sup>15</sup> In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the public's ability to determine and comment on whether the station is serving the community."<sup>16</sup> Therefore, the violation is not mitigated by Licensee's perception that no harm was committed by the omission of the lists.

9. Licensee next claims that payment of the proposed forfeiture would cause the Station financial hardship and restrict its ability to make improvements to the Station's service and facilities. However, 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 provided us with a one-page document setting forth the Station's income and expenditures for 2004 and the first two quarters of 2005, and annual budgets for 2005 and 2006. It has provided us with no documentation regarding Licensee's finances.<sup>17</sup> We find this information alone is an insufficient

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<sup>10</sup> In the Request, Licensee states that, from February 1999 until August of 2001, the Station simulcast programming originating on Station WBOI, Fort Wayne, Indiana, and notes that "the file does contain quarterly issues/programs lists with respect to issue-responsive programming" simulcast during that time period. See Request at n. 1. It is unclear from Licensee's description whether these lists were timely placed in the public file during the relevant license period or subsequently added after Licensee's discovery of its public file deficiencies. However, even if we were to assume the former, the public file was still missing issues/programs lists for all of 1997 and 1998, the fourth quarter of 2001, all of 2002, the first, third and fourth quarters of 2003, and the first and fourth quarters of 2004.

<sup>11</sup> See *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10927 (MB 2008) citing *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 n.14 (MB 2007) (\$10,000 forfeiture issued for eleven missing issues/programs lists); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 (MB 2006) (same); *WGSO, L.L.C.*, Forfeiture Order, 2008 WL 4403051, (MB 2008) (\$10,000 forfeiture issued for 10 missing issues/programs lists).

<sup>12</sup> *Faith Christian Music Broadcast Ministries, Inc.*, Forfeiture Order, 20 FCC Rcd 19051, 19053 (2005).

<sup>13</sup> See *Normandy Broadcasting Corp. and Lawrence N. Brandt* 8 FCC Rcd 1, 14 (1992), citing *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice, 4 FCC Rcd 6363, 6365 (1989).

<sup>14</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05.

<sup>15</sup> See 47 U.S.C. § 307(a).

<sup>16</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05.

<sup>17</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).

basis on which to assess Licensee's inability to pay.<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.

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>19</sup> and repeatedly<sup>20</sup> violated Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.<sup>21</sup>

#### 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 Tri-State University, SHALL FORFEIT to the United States the sum of \$7,200 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 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 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>

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<sup>18</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>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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("Southern California").

<sup>20</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>21</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>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.

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: Tri-State University, c/o Mr. Michael Bock, One University Ave. (Stewart Hall), Angola, Indiana 46703, and to its counsel, Matthew H. McCormick, Esq., Fletcher, Heald & Hildreth, PLC, 1300 17<sup>th</sup> St., 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
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