

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

In the Matter of)	
)	Facility ID No. 12228
COLBY-SAWYER COLLEGE)	NAL/Acct. No. MB-200741410454
)	FRN: 0003665965
Licensee of Station WSCS(FM),)	File No. BRED-20051129AFP
New London, New Hampshire)	
)	

FORFEITURE ORDER

Adopted: June 28, 2011

Released: June 29, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000), to Colby-Sawyer College (“Licensee”), licensee of noncommercial educational station WSCS(FM), New London, New Hampshire (“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 WSCS(FM).

II. BACKGROUND

2. On November 29, 2005, Licensee filed an application to renew the Station’s license. Section III, Item 3 of Licensee’s renewal application form, FCC Form 303-S, required the licensee to certify whether the documentation required by Section 73.3527 of the Rules had been placed in the Station’s public inspection file at the appropriate times. Licensee indicated “No,” and attached an Exhibit explaining that issues/programs lists for the years 2000-2002 were missing, and two quarterly issues/programs lists from 2005 had been reconstructed from Station logs.²

3. On December 19, 2007, the Bureau issued the NAL in the amount of ten thousand dollars (\$10,000) to Licensee, based on the fact that it was responsible for at least 14 missing issues/programs lists.³ Licensee filed a Request for Cancellation or Reduction of Liability of Proposed Forfeiture (“Request”) on January 18, 2008.

4. In its Request, Licensee argues that a reduction or cancellation of the forfeiture is warranted because: (1) the Station serves an educational and community-related purpose; (2) the student-run nature of the Station warrants a measure of leniency when assessing the penalty; and (3) it will take steps to prevent future violations by designating a non-student supervisor to oversee its public file.⁴

¹ 47 C.F.R. § 73.3527.

² See *Colby-Sawyer College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21682 (MB 2007) (“NAL”).

³ NAL, 22 FCC Rcd at 21684.

⁴ Request at 4.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

6. Licensee first argues that the Commission should have taken into account the non-commercial and educational nature of the Station when it assessed the forfeiture penalty. However, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.⁹ We therefore decline to reduce the forfeiture amount due to Licensee's noncommercial educational status.

7. Second, Licensee argues that the Commission should reduce the forfeiture amount because the Station is run by undergraduate students and will assign a faculty member to ensure compliance in the future. We reject these arguments. The fact that undergraduate students run and manage the Station does not excuse the Station's Rule violations.¹⁰ Where lapses occur, neither the negligent acts or omissions of a station's personnel or agents, nor the subsequent remedial actions undertaken by the licensee, excuse a Rule violation.¹¹ Corrective action taken to come into compliance with the Rules is expected, and does not mitigate, much less negate, any prior forfeitures or violations.¹²

8. 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

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 3851, 3853 (MB 2010); *see also Des Moines Independent Community School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869, 3871 (2009) (rejecting licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status).

¹⁰ *See John Brown University*, Forfeiture Order, 24 FCC Rcd 1536 (MB 2009) (holding that licensee's decision to delegate public file compliance responsibilities to several faculty and students did not excuse its Rule violation).

¹¹ *See, e.g., Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MB 1999) (*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)).

¹² *Chesterman Communications of Jamestown, Inc.*, Forfeiture Order, 24 FCC Rcd 2931 (MB 2009).

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*, 6 FCC Rcd at 4387-88 (1991).

repeatedly¹⁴ 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.

IV. ORDERING CLAUSES

9. 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 Colby-Sawyer College SHALL FORFEIT to the United States the sum of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

10. 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.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 Licensee will also send electronic notification on the date said payment is made to Kelly. Donohue@fcc.gov and Monica.Estrada@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

11. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Ms. Hester Fuller, Colby-Sawyer College, 100 Main Street, New London, New Hampshire 03257, and to its counsel, David Allen, Esq., Sheehan Phinney Pass + Green, PA, 1000 Elm Street, Manchester, New Hampshire 03101.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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.

¹⁸ *Id.*