

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

In the Matter of
University of South Carolina
Licensee of WUSC-FM
Columbia, South Carolina
Facility I.D. No. 66603
NAL/Acct. No. MB20041810016
FRN: 00045878481
File No. BRED-20030801CXZ

FORFEITURE ORDER

Adopted: August 3, 2011

Released: August 4, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of nine thousand dollars (\$9,000) to the University of South Carolina ("Licensee"), licensee of station WUSC-FM, Columbia, South Carolina ("Station"), for its willful and repeated violation of Section 73.3527 of the Commission's Rules ("Rules")<sup>1</sup> by failing to retain all required documentation in the Station's public inspection file.

II. BACKGROUND

2. On August 1, 2003, 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" to that Item, explaining in an exhibit to the application that quarterly issues/programs lists for 1996, the first quarter of 1997, and the second quarter of 1998 through the second quarter of 1999, were not in the public inspection file. Additionally, Licensee admits that it had failed to file its Biennial Ownership reports required by Section 73.3615.

3. On June 25, 2004, the Media Bureau ("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 Cancellation or Reduction of Forfeiture" ("Request") on July 27, 2004.

4. In its Request, Licensee argues that a reduction or cancellation of the forfeiture is warranted because: (1) the forfeiture would impose a substantial financial hardship upon the Station; and (2) the forfeiture amount is excessive.<sup>3</sup>

<sup>1</sup> See 47 C.F.R. § 73.3527.

<sup>2</sup> See Letter to Lauren Lynch Flick, Esq., reference 1800B3-MH (MB 2004).

<sup>3</sup> See Response at 4-5.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“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 the forfeiture should be reduced or cancelled because payment of the forfeiture would cause financial hardship.<sup>8</sup> The Commission will not consider reducing or cancelling 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.<sup>9</sup> Here, Licensee has provided us with a summary of the Station’s budget and expenses from 2001 to 2004,<sup>10</sup> but no information regarding its own finances. We have consistently held that information regarding the station’s (as opposed to the licensee’s) budget is an insufficient basis upon which to evaluate a licensee’s ability to pay, as it fails to meet the standard of “other reliable and objective documentation.”<sup>11</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to reduce the proposed forfeiture on the basis of financial hardship.

7. Licensee also argues that the Bureau’s proposed forfeiture is excessive and inconsistent with precedent for similar or more egregious violations.<sup>12</sup> Licensee specifically cites two cases where the staff assessed initial forfeitures of \$3,000<sup>13</sup> and \$7,000<sup>14</sup> for public file violations. Insofar as Licensee relies on the \$3,000 forfeiture in *Faith Christian* to support its contention that the \$9,000 forfeiture is excessive, the Bureau has previously disavowed *Faith Christian* to the extent that it is inconsistent with other, more

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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> Response at 4.

<sup>9</sup> See NAL at 4.

<sup>10</sup> Licensee has asked for confidential treatment of its budget information pursuant to 47 C.F.R. § 0.459. We grant its request.

<sup>11</sup> See *Wayne Sate College*, Forfeiture Order, 24 FCC Rcd 2484, 2484 (MB 2009) (emphasizing that a one-page document stating the stations’ operating budget was insufficient basis on which to assess the licensee’s inability to pay); see also *Manchester College*, Forfeiture Order, 25 FCC Rcd 3638, 3640 (MB 2010) (same).

<sup>12</sup> Response at 5.

<sup>13</sup> See *Faith Christian Music Broadcast Ministries, Inc.*, Forfeiture Order, 20 FCC Rcd 19051 (MB 2005) (“*Faith Christian*”) (imposing a forfeiture of \$3,000 for an unspecified number of issues/programs lists missing from its public inspection file).

<sup>14</sup> See *Tralyn Broadcasting, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4709 (EB 2004) (imposing a forfeiture of \$7,000 for Tralyn’s failure to conduct weekly tests of the Emergency Alert System and failure to maintain all required documentation in the station’s public file, including, “the station authorization, the Public and Broadcasting manual, letters from the public, and quarterly issues/programs lists for 2001 and 2002”).

recent, forfeitures issued for similar violations.<sup>15</sup> Furthermore, the \$7,000 forfeiture imposed in *Tralyn Broadcasting* was an Enforcement Bureau decision, and the Bureau is not bound by Enforcement Bureau decisions.<sup>16</sup> Overall, we find the \$9,000 forfeiture issued to the Licensee for 10 missing issues/programs lists consistent with prior forfeitures issued for similar violations.<sup>17</sup>

8. We have considered Licensee's response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>18</sup> and repeatedly<sup>19</sup> violated Section 73.3527 of the Rules.<sup>20</sup> Furthermore, we find that the 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,<sup>21</sup> that the University of South Carolina SHALL FORFEIT to the United States the sum of nine thousand hundred dollars (\$9,000) for willfully and repeatedly violating Section 73.3527 of the Rules.<sup>22</sup>

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

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<sup>15</sup> See *Boone Biblical Ministries*, Forfeiture Order, 24 FCC Rcd 14293 (MB 2009); see also *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (MB 2011).

<sup>16</sup> See *Colquitt Community Radio, Inc.*, Letter, DA 11-1245, 26 FCC Rcd \_\_\_\_ (MB rel. Jul. 26, 2011) (Bureau not bound by a Wireless Telecommunications Bureau decision where Bureau case law on the relevant legal standard was well-developed); cf. *Gaston College*, Forfeiture Order, 25 FCC Rcd 982 (EB 2010) (Enforcement Bureau not bound by prior Bureau decisions).

<sup>17</sup> See *Tri-State University*, Forfeiture Order, 24 FCC Rcd 4961, (MB 2009) (stating that a \$9,000 forfeiture for the station's Section 73.3527 violation was not excessive, even for a noncommercial educational station); see also *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) (issuing a \$10,000 forfeiture 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). Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3527 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. See, e.g., *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10935, 10937 n.16 (MB 2008); *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007).

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

<sup>19</sup> Section 312(f)(2) 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)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>20</sup> 47 C.F.R. § 73.3527.

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 C.F.R. § 73.3527.

to Section 504(a) of the Act.<sup>23</sup> Payment of the 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> 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, DC 20554.<sup>25</sup>

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to the University of South Carolina, c/o Student Media-Russell House University Union, 1400 Greene Street, Columbia, SC 29208, and to its counsel, Lauren Lynch Flick, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> 47 U.S.C. § 504(a).

<sup>24</sup> See 47 C.F.R. § 1.1914.

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