

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

In the Matter of	)	
	)	
<b>Southern Adventist University</b>	)	Facility ID No. 61269
	)	NAL/Acct. No. MB200641410324
Licensee of WSMC-FM	)	FRN: 0001773431
Collegedale, Tennessee	)	File No. BRED-20040329AKC
	)	

**FORFEITURE ORDER**

**Adopted: August 10, 2011**

**Released: August 11, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Southern Adventist University (“Licensee”), licensee of radio station WSMC-FM, Collegedale, Tennessee (“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 the required documentation in the Station’s public file.

**II. BACKGROUND**

2. On May 3, 2007, the Media Bureau (“Bureau”) released a Notice of Apparent Liability for Forfeiture in the amount of ten thousand dollars (\$10,000) to Licensee for this violation.<sup>2</sup> As noted in the NAL, Section III, Item 3 of the Station’s license renewal application form, FCC Form 303-S, requests that Licensee certify that the documentation required by Section 73.3527 has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that Item and, in response to a letter of inquiry from the Bureau,<sup>3</sup> filed an amended Exhibit 11 to the application,<sup>4</sup> acknowledging that, as of the renewal application filing date, several of the quarterly issues/program reports were missing. It noted that the current manager, who began working on July 1, 2001, reconstructed and reformatted the missing files and maintained the issues/program files appropriately. Accordingly, it asserted that as of

<sup>1</sup> 47 C.F.R. § 73.3527.

<sup>2</sup> *Southern Adventist University*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 8478 (MB 2007) (“NAL”) (adopted May 1, 2007). Section 73.3527 of the Rules requires a noncommercial educational broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period. See *WEZB(FM), New Orleans, LA*, Letter, 13 FCC Rcd 4102, 4105 (MMB 1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993) (discussing the reason for this rule).

<sup>3</sup> *Letter to David N. Brooks, Jr. from Peter H. Doyle, Chief, Audio Division, Media Bureau*, ref. 1800B3-JWR (Aug. 20, 2004) (“LOI”).

<sup>4</sup> The Licensee amended its renewal application on September 16, 2004. The Bureau granted the renewal application on May 3, 2007.

September 16, 2004, the public inspection file for the Station contained all documentation required by Section 73.3527 of the Rules.

3. On June 4, 2007, Licensee filed a response requesting that the forfeiture be cancelled or reduced (“Response”). In its Response, Licensee does not dispute that it failed to place at least 22 missing issues/programs lists in the Station’s public inspection file, but it seeks reduction or cancellation of the proposed forfeiture because it was allegedly not imposed within the time limits set by Section 503(b)(6) of the Communications Act of 1934, as amended (“Act”).<sup>5</sup> Alternatively, it requests reduction on the grounds that: (1) it operated in good faith; (2) the violation occurred during a period of frequent turnover; (3) Licensee voluntarily disclosed its violations; (4) upon recognition of the violation, Licensee immediately and voluntarily complied with the Rules; and (5) Licensee has a history of overall compliance with the Rules.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules<sup>7</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>8</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>9</sup>

5. We decline to reduce the forfeiture based on the claim that it was allegedly not imposed within the time limits set by Section 503(b)(6) of the Act.<sup>10</sup> Section 503(b)(6) of the Act provides that a forfeiture cannot be imposed on a person holding a broadcast license if the violation charged occurred: (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of such license, whichever is earlier. Here, Licensee incorrectly states that the new license term commenced on May 1, 2007; rather, it commenced on May 3, 2007, the date on which the Bureau granted the license renewal application. Until the Bureau granted that renewal--and issued the NAL--on that date, Licensee continued to lawfully operate the Station on an expired license while the Commission reviewed its pending application, as provided in Section 307(c)(3) of the Act.<sup>11</sup> As a result, no new license term commenced until the May 3, 2009, grant of Licensee’s renewal application, and the statute of limitations provisions of Section 503(b)(6)(A) were not triggered.<sup>12</sup> Accordingly, the NAL was properly issued during the renewal cycle in which the violation occurred.<sup>13</sup>

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<sup>5</sup> 47 U.S.C. § 503(b)(6).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</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>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> 47 U.S.C. § 503(b)(6).

<sup>11</sup> 47 U.S.C. § 307(c)(3).

<sup>12</sup> This finding is consistent with *Emmis Broadcasting Corporation of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541 (1996) (“*Emmis*”). There, the Commission held that the simultaneous issuance of an NAL and the grant of a renewal application in a single document would not trigger the restrictive one-year statute of limitations provisions, and the NAL could properly address conduct during the license term under review. *See Emmis*, 11 FCC Rcd at 8543. We disavow the Bureau’s holdings in *Escalante City*, Forfeiture Order, 26 FCC Rcd 5961, ¶8 (MB 2011) (finding that the grant of a renewal application and issuance of a NAL in the same

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6. Next, Licensee claims the forfeiture should be reduced because it operated in good faith. We decline to reduce the forfeiture amount on this basis. Reductions of proposed forfeitures based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to the Commission's involvement.<sup>14</sup> Here, Licensee did not take corrective action until after receiving the LOI. Accordingly, we will not reduce the forfeiture amount on this basis.

7. Licensee also asserts that a reduction of forfeiture is warranted because of frequent management turn-over. We disagree. As stated in the NAL, where lapses occur in maintaining the public file, the negligent acts or omissions of station employees or agents do not excuse or nullify a licensee's rule violation.<sup>15</sup> We further reject Licensee's claim that voluntary disclosure of its violations merits forfeiture reduction or cancellation. Licensee's disclosure was not voluntary, but rather was information required in the license renewal application form.<sup>16</sup>

8. We have considered the Response in light of the above statutory factors, our Rules, and the Forfeiture Policy Statement. We conclude that at least 22 issues/programs lists were missing from the Station's public inspection file during the license term, and Licensee willfully<sup>17</sup> and repeatedly<sup>18</sup> violated

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document had the effect of placing the NAL in a new license term and triggering the one-year statute of limitations provisions of Section 503(b)(6) and *Paul Smith's College*, Forfeiture Order, 26 FCC Rcd 5946, ¶8 (MB 2011) (same), to the extent that they are inconsistent with *Emmis*, the controlling Commission precedent.

<sup>13</sup> See 47 U.S.C. 503(b)(6)(A). The cases cited by Licensee (Response at 3; *Sun Over Jupiter Broadcasting, Inc.*, Order, 8 FCC Rcd 8733 (Rev. Bd. 1993) ("*Jupiter*"); *Gerard A. Turro*, Initial Decision, 15 FCC Rcd 560, 631 (ALJ 1999) *aff'd* 15 FCC Rcd 14649 (2000) ("*Turro*") are inapposite. The facts in *Jupiter* are inapposite because they involve Section 503(b)(6)(B) of the Act (47 U.S.C. §503(b)(6)(B)), relevant only to stations with authorizations other than a license, such as a construction permit. Here, the relevant subsection would have been Section 503(b)(6)(A)(ii) of the Act, which pertains to licensed stations. *Turro* is inapposite because, there, the licensee had surrendered its intercity relay station license in July of 1995. By the time the Administrative Law Judge issued his ruling in 1999, Section 503(b)(6) of the Act prohibited issuance of a forfeiture because more than one year had passed since licensee had surrendered the license. Here, Licensee held its broadcast license at the time we issued the NAL, so *Turro* is inapplicable.

<sup>14</sup> See, e.g., *KOOP(FM), Hornsby, Texas*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13038, 13042 (MB 2007) (reducing forfeiture because "Licensee spotted its error and took corrective action *sua sponte*" prior to Commission action).

<sup>15</sup> See *Big Sky Owners Association, Inc.*, Forfeiture Order, 24 FCC Rcd 12215, 12216 (MB 2009) (rejecting staff turnover as an acceptable excuse for Rule violations); *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) (same)).

<sup>16</sup> See NAL, 22 FCC Rcd at 8480. 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 public file violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. See *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

<sup>17</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*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992) ("*Southern California*").

Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.<sup>19</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Southern Adventist University SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000) 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.<sup>20</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/Act. 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>21</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Maureen.McCarthy@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>22</sup>

11. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. David N. Brooks, Jr., Southern Adventist University, 5055 Hickman Drive, P.O. Box 870, Collegedale, TN 37315, and to its counsel, Donald E. Martin, Esq., Donald E. Martin, P.C., P.O. Box 8433, Falls Church, VA 22041.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>18</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>19</sup> *See Truman State University*, Forfeiture Order, 25 FCC Rcd 956 (MB 2010) (reducing proposed forfeiture by 20 percent based on licensee's history of compliance with the Rules).

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> *See* 47 C.F.R. § 1.1914.

<sup>22</sup> *Id.*