

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

In the Matter of)	
)	Facility ID No. 17596
Drexel University)	NAL/Acct. No.MB-200741410456
)	FRN: 0004446100
Licensee of Station WKDU(FM))	File No.BRED-20060321ADV
Philadelphia, Pennsylvania)	

FORFEITURE ORDER

Adopted: February 9, 2011

Released: February 10, 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 eight thousand dollars (\$8,000), to Drexel University (“Licensee”), licensee of Station WKDU(FM), Philadelphia, Pennsylvania (“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 December 19, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Licensee for this violation.² As noted in the NAL, 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 and attached an exhibit explaining that the issues/programs lists were “accurate from the 1st quarter [of] 2001 forward,” but “[d]uring the term from August 1998 – August 2006, there are 8 quarters missing from the public file.”³ Licensee also indicated that lists for the last two quarters of 1998 were “incomplete” in that they listed the programs aired but not the specific issues discussed. The staff issued the NAL based on the fact that Licensee was responsible for eight issues/programs lists which were missing from the Station’s public inspection file during the license period.⁴ Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on January 18, 2008.

3. In its Request, Licensee states that a reduction of the forfeiture is warranted because: (1) it is financially unable to pay the proposed forfeiture; (2) Commission precedent does not support the forfeiture assessed in this case; (3) the Commission should confer the status of small business on the

¹ 47 C.F.R. § 73.3527.

² *Drexel University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21687 (2007).

³ See captioned application at Exhibit 1; see also Amendment filed Aug. 28, 2006. The missing lists are for all four quarters of 1999 and 2000. *Id.*

⁴ The Commission granted the above-referenced license renewal application on December 19, 2007.

Station and adjust the forfeiture amount downward according to the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”);⁵ (4) the forfeiture is unreasonable because no member of the public has made a request to see the Station’s public inspection file; and (5) Licensee has a history of compliance with the Commission’s Rules.

III. DISCUSSION

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

5. Licensee contends that it is not financially able to pay the forfeiture, which it claims would constitute seventy-eight percent of the Station’s total operating costs. 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.¹⁰

6. Here, Licensee did not submit federal tax returns, financial statements or any other reliable and objective documentation setting forth Licensee’s finances in support of its Request. Instead, Licensee submitted a statement of Joseph M. Gonzalez, Budget Coordinator for Campus Activities and student Activity Fee Allocation Committee.¹¹ Mr. Gonzalez explains that the Station is a student activity of the University which receives funding from the Student Activity Fee Allocation Committee based on the Station’s submitted annual budget. He further explains that all student activities share a pool of money collected from students and any increase in one activity’s funding will reduce the amount available for other activities. Mr. Gonzalez states that budgets for the Station were \$8,275 in 2006, \$14,425 in 2007, and \$15,904 in 2008. We find that this documentation fails to meet the standard of “other reliable and objective documentation” sufficient to establish the Licensee’s current financial status.¹² 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.

⁵ Pub. L. No. 104-121, 110 Stat. 847, 5 U.S.C. §601 Note, §223.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441(2004) , *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹¹ Request, Exhibit 1.

¹² See *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (finding that a one-page document setting forth station income and expenditures for one year, and no information regarding licensee’s finances, was an insufficient basis on which to assess a licensee’s ability to pay); *Metropolitan School District of Washington Township*, Forfeiture Order, 23 FCC Rcd 9995, 9997 (MB 2008) (finding that information regarding station budget and no information regarding licensee’s finances was an insufficient basis on which to assess a licensee’s ability to pay).

7. Licensee next argues that Commission precedent does not support the forfeiture in this case.¹³ We disagree. We find that the holding here is consistent with contemporaneous Media Bureau precedent.¹⁴

8. Next, Licensee argues that the SBREFA precludes the Commission from applying a “uniform standard forfeiture” for public file violations “when the result is to fine a large commercial TV station the same amount as a small student radio station.”¹⁵ Again, we disagree. When the Commission adopted the forfeiture guidelines, it expressly held that they comply with Section 223 of SBREFA because they provide for reduction or waiver of forfeitures imposed on small entities pursuant to its specified downward adjustment factors.¹⁶ Indeed, one of the downward criteria,¹⁷ “ability to pay,” was considered here and rejected because Licensee did not provide the required supporting documentation described in the NAL.

9. Licensee also argues that the forfeiture is unreasonable because no member of the public has ever requested to inspect its public file. We strongly disagree. We have frequently noted that 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.¹⁸ The omission of even a single item from the public file is considered to be a serious violation because it “diminishes the public’s ability to determine and comment at renewal time on whether the station is serving its community.”¹⁹ As such,

¹³ See Request at 3, citing *Radio Wise, Inc.*, Forfeiture Order, 22 FCC Rcd 16686 (EB 2007) (\$4,000 forfeiture issued to a station for failure to maintain and make public file available for inspection); *KITZ Radio, Inc.*, Forfeiture Order, 22 FCC Rcd 11083 (EB 2007) (\$2,400 forfeiture imposed for a missing authorization and five incomplete issues/programs lists discovered by a Field Office inspection).

¹⁴ *Urban Radio III, Inc., LLC*, Forfeiture Order, 24 FCC Rcd 8215 (MB 2009) (affirming 2006 NAL assessing a \$10,000 forfeiture for 8 missing issues/programs lists); *Citicasters Licenses, LP*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 900 (MB 2007) (assessing \$10,000 forfeiture for eight missing issues/programs lists); *South Atlanta Broadcasting, Inc.* Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8471 (MB 2006) (assessing \$10,000 forfeiture for nine missing issues/programs lists). To the extent that Licensee cites to Enforcement Bureau cases in which licensees were fined different amounts for similar violations, we note that the *Radio Wise* decision cited by Licensee does not indicate whether the violation was as serious as the prolonged series of missing issues/programs lists at issue here. The *KITZ Radio* decision cited by Licensee involved five incomplete lists rather than eight missing lists, as well as a reduction based on a history of compliance. Furthermore, the Media Bureau retains discretion to determine forfeiture amounts on a case-by-case basis. See 47 C.F.R. § 1.80(b)(4), Note (“The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute.”); see also *Gaston College*, Forfeiture Order, 25 FCC Rcd 982, 986 (EB 2010) (declining to follow Media Bureau precedent involving denial of access to station’s public file); *John Jason Bennett*, Letter, 20 FCC Rcd 17193, 17195, n.14 (MB 2005) (noting that Wireless Bureau precedent is not binding on Media Bureau).

¹⁵ Request at 3.

¹⁶ *Forfeiture Policy Statement*, at 17109, ¶¶ 51, 52.

¹⁷ See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); See also *Forfeiture Policy Statement*, ¶¶ 44, 52 Appendix A, Section II, downward adjustment criterion (4). The Commission also noted that the other upward and downward adjustment factors encompass many of the conditions and exclusions listed and Section 223 of SBREFA. See *Forfeiture Policy Statement*, at 17109, ¶ 52.

¹⁸ See *World Overcomers Outreach Ministries*, Forfeiture Order, 24 FCC Rcd 1133, 1135, at ¶ 9 (MB 2009) (“*World Overcomers*”); *Sun Valley Radio, Inc.*, Forfeiture Order, 23 FCC Rcd 15738, 15740 at ¶ 8 (MB 2008) (“*Sun Valley*”); *Faith Christian Music Broadcast Ministries*, 20 FCC Rcd 10951, 19052, at ¶ 8 (MB 2005) (“*Faith Christian*”).

¹⁹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-5, ¶ 39.

these requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations. The harm, inability to provide full information to the public, exists whether or not a member of the public requests to inspect the public inspection file.²⁰ Thus, the violations are not mitigated by the fact that no member of the public requested to see the public file during the renewal term.

10. Finally, Licensee requests that the Commission take into account its history of compliance with the Rules and reduce the forfeiture accordingly.²¹ Commission records confirm this and we will reduce the forfeiture from \$10,000 to \$8,000.

11. 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 willfully²² and repeatedly²³ violated Section 73.3527 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.

IV. ORDERING CLAUSES

12. 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,²⁴ that Drexel 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.

13. 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.²⁵ 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

²⁰See *World Overcomers*, 24 FCC Rcd at 1135; *Sun Valley*, 23 FCC Rcd at 15740; *Faith Christian*, 20 FCC Rcd at 19052.

²¹See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (reducing forfeiture amount based on licensee's history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536, 1537 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

²² 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.

²³ 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).

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

²⁵ 47 U.S.C. § 504(a).

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).²⁶ Licensee will also send electronic notification on the date said payment is made to Victoria.McCauley@FCC.gov and Kelly.Donohue@FCC.gov. Requests 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. 20554.²⁷

14. 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 Mr. Michael J. Wexler, Drexel University, 3141 Chestnut Street, Philadelphia, Pennsylvania, 19104, and Peter Tannenwald, Esq., Fletcher, Heald and Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA, 22209 (Counsel for Drexel University).

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See 47 C.F.R. § 1.1914.

²⁷ *Id.*