

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

|   |   |                               |
|---|---|-------------------------------|
| In re Applications of                           | ) |                               |
|   | ) |                               |
| <b>Baton Rouge Progressive Network</b>          | ) | Facility I.D. No. 123985      |
|   | ) | NAL/Acct. No. MB-200941410027 |
| For Minor Modification and License to Cover for | ) | FRN: 0014200414               |
| Station WHYR-LP                                 | ) | File No. BMPL-20051101AAC     |
| Baton Rouge, Louisiana                          | ) | File No. BMPL-20060208AMJ     |
|   | ) | File No. BLL-20060313AAE      |
|   | ) | File No. BPL-20081006ABL      |
|   | ) | File No. BPL-20090803AGN      |

**FORFEITURE ORDER**

**Adopted: February 16, 2011**

**Released: February 17, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Ethics, Inc. (“Ethics”), former operator of low-power FM (“LPFM”) station WHYR-LP, Baton Rouge, Louisiana (“Station”), for willfully and repeatedly violating Section 310(d) of the Communications Act of 1934, as amended (“Act”), and Section 73.3540 of the Commission’s Rules (“Rules”) by engaging in an unauthorized transfer of control of the Station beginning in November of 2005.<sup>1</sup>

**II. BACKGROUND**

2. On January 26, 2010, the Bureau issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of twenty thousand dollars (\$20,000) to Ethics for these violations.<sup>2</sup> On April 26, 2010, Elaine C. Rougeau, the president of Ethics, filed a “Response to Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture” (“Response”). In her Response, Rougeau states that payment of the proposed forfeiture will cause her financial hardship.

**III. DISCUSSION**

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,<sup>3</sup> Section 1.80(b)(4) of the Rules,<sup>4</sup> and the Commission’s *Forfeiture Policy*

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<sup>1</sup> 47 U.S.C. § 310(d); 47 C.F.R. § 73.3540.

<sup>2</sup> *Baton Rouge Progressive Network*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 905 (MB 2010).

<sup>3</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

*Statement.*<sup>5</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>6</sup> In the NAL, we applied a significant upward adjustment to the base forfeiture amount “due to the continuing, intentional, and egregious nature of Ethics’ conduct.”<sup>7</sup>

4. Rougeau argues that payment of the proposed forfeiture would cause her financial hardship.<sup>8</sup> The Commission will not consider reducing or canceling a forfeiture in response to financial hardship unless the petitioner 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 petitioner’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.<sup>9</sup>

5. Here, Rougeau did not submit Ethics’ federal tax returns, financial statements or any other reliable and objective documentation setting forth its finances. Instead, she claims that Ethics “has not produced income of over \$10,000 in the almost 10 years” of its existence, and provides her personal federal tax returns for 2009, as well as a copy of a hardship letter sent in support of a request to modify her home mortgage.<sup>10</sup> We find that this documentation fails to meet the standard of “other reliable and objective documentation” sufficient to establish Ethics’ current financial status.<sup>11</sup> Because Ethics has a three-person board, we cannot consider only Rougeau’s personal tax returns.<sup>12</sup> Moreover, even if we were to consider Rougeau’s submissions, we would find them insufficient.<sup>13</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.

6. We have considered the Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Ethics willfully and

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<sup>5</sup> *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>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> NAL, 25 FCC Rcd at 912, ¶ 19.

<sup>8</sup> See Response.

<sup>9</sup> See NAL, 25 FCC Rcd at 913, ¶ 25.

<sup>10</sup> See Response.

<sup>11</sup> 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).

<sup>12</sup> See, e.g., *Mark Nierman and Kakadu Productions, Inc.*, Forfeiture Order, 25 FCC Rcd 7411 (MB 2010) (granting a forfeiture reduction to sole shareholder of radio station based on submissions of three years worth of individual and corporate tax returns). Non-profit corporations do not issue shares of stock and are controlled by directors such as Rougeau and her co-directors. Rougeau’s failure to provide any financial information about her co-directors would be fatal to her argument even if we were to overlook the lack of corporate financial statements.

<sup>13</sup> *Gallatin Valley Witness, Inc.*, Forfeiture Order, 2010 WL 3697473 (MB 2010) (rejecting licensee’s financial hardship argument, finding that two nonconsecutive years worth of tax returns does not allow for an accurate assessment of its financial status).

repeatedly violated Section 310(d) of the Act and Section 73.3540 of the Rules, and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.

#### IV. CONCLUSION

7. 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>14</sup> that Ethics, Inc., SHALL FORFEIT to the United States the sum of twenty thousand dollars (\$20,000) for willfully and repeatedly violating Section 310(d) of the Communications Act of 1934, as amended,<sup>15</sup> and Section 73.3540 of the Commission's Rules.<sup>16</sup>

8. 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>17</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>18</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Jack.Komperda@fcc.gov. Requests for payment of the full amount of this Forfeiture Order 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.<sup>19</sup>

9. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail, Return Receipt Requested, to Ms. Elaine C. Rougeau, Ethics, Inc., 9064 Highland Road, Baton Rouge, Louisiana 70808.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>14</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>15</sup> 47 U.S.C. § 310(d).

<sup>16</sup> 47 C.F.R. § 73.3540.

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</sup> See 47 C.F.R. § 1.1914.

<sup>19</sup> *Id.*