

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

In re Application of)	
)	
BRYANT UNIVERSITY)	NAL/Acct. No. MB201641410006
)	FRN: 0014324164
For Renewal of License for)	Facility ID No. 7650
Station WJMF(FM))	File No. BRED-20131127AMD
Smithfield, Rhode Island)	
)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 20, 2016

Released: April 20, 2016

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Bryant University (Licensee), for renewal of license for noncommercial educational (NCE) FM Station WJMF(FM), Smithfield, Rhode Island (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that Licensee apparently willfully and repeatedly violated Section 73.3527³ of the FCC's rules by failing to retain all required documentation in the Station's public inspection file. Based upon review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) and that the captioned license renewal application should be granted for a period of four (4) years instead of a full term of eight years.⁴

¹ File No. BRED-20131127AMD.

² This *NAL* is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and Section 1.80 of the FCC's rules. See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the FCC's rules. See 47 CFR § 0.283.

³ See 47 CFR § 73.3527.

⁴ Licensee disclosed in the Application that until August 2011 the Station was operated by students. Application, Exhibit 12. In circumstances involving student-run NCE radio stations that committed first-time violations of certain documentation requirements of the FCC's rules the Bureau affords the licensee an opportunity to negotiate a consent decree with a compliance program and a reduced payment amount. See *William Penn Univ.*, Policy Statement and Order, 28 FCC Rcd 6932, para. 2 (MB 2013) (*Policy Statement*). See also *American Int'l Coll.*, Consent Decree, 30 FCC Rcd 13080, para. 3 (MB 2015) (applying *Policy Statement* for public file violations that occurred while the station was operated by students, but subsequently, at the time of the renewal filing, operated by paid professional staff). Accordingly, a Bureau staff member contacted Licensee to inquire if it wished to negotiate a consent decree pursuant to the *Policy Statement*; Licensee, however, declined. See *email from Patricia M. Chuh, Esq. to Kim Varner*, (dated Apr. 11, 2016).

II. BACKGROUND

2. Section 73.3527 of the FCC's rules requires NCE licensees to maintain a public inspection file containing specific types of information related to station operations. Among the materials required for inclusion in the file are the station's quarterly issues and programs lists, which must be retained until final Commission action on the station's next license renewal application.⁵

3. Section III, Item 3 of the license renewal application form requests that the 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 answered "No" to that certification and attached an exhibit explaining, in pertinent part that:

WJMF(FM) . . . had been a student run station during the license term until August 2011. A review of the public file contents revealed that a copy of upon review of the public file contents revealed that a copy of the 2011 biennial ownership report and the current contour map were missing from the file. The ownership report and contour map were placed in the file on November 20, 2013. . . . In addition, it was discovered in early 2012 that the issues/programs lists for quarters prior to 2Q 2011 (when the station was run by students) were missing from the file. Although two students were hired the summer of 2012 to prepare the missing lists, and the lists were prepared, the University's attempts to locate these lists have not been successful.⁶

III. DISCUSSION

4. *Proposed Forfeiture.* As Licensee has acknowledged, issues and programs lists were not placed in the Station's public inspection file when due as required by Section 73.3527 of the FCC's rules. In particular, it appears that Licensee failed to place in the Station's public file 20 issues and programs lists during the license term, and as such the public file was not in compliance with Section 73.3527(e)(8). In this regard, where such lapses occur, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁷

5. Under Section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁸ 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.⁹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or

⁵ See 47 CFR § 73.3527(e)(8).

⁶ Application, Exhibit 12.

⁷ See *Padre Serra Commc'ns, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999).

⁸ 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para.5 (1991).

omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹²

6. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(5) of the FCC’s rules establish a base forfeiture amount of \$10,000 for a violation of Section 73.3527.¹³ In determining the appropriate forfeiture amount, we may adjust the amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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.”¹⁴

7. In this case, although Licensee admitted to violating Section 73.3527, it did so only in the context of the question contained in the Application that compelled such disclosure. Moreover, the violations were extensive, occurring over a six-year period and involving 20 issues and programs lists. Licensee has also admitted that the Station’s public file is still deficient as it was unable to re-create the missing issues and programs lists. Accordingly, we find that, considering the record as a whole, a \$12,000 forfeiture is appropriate for the violations in this case.¹⁵

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the FCC’s rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application — after notice and opportunity for a hearing under Section 309(e) of the Act — or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁸

9. It is clear to us that Licensee’s conduct has fallen far short of the standard of compliance with the Act and the FCC’s rules that would warrant a routine license renewal. Licensee apparently failed to timely prepare and file 20 issues and programs lists over a six-year period during the license term. The issues and programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.¹⁹ Section 73.3527 of the FCC’s rules also safeguards the public’s ability to assess the station’s service and to meaningfully participate in the station’s renewal process, and ensure the station’s accessibility to and nexus with its community, to serve

¹² 47 U.S.C. § 312(f)(2).

¹³ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15, Appendix A, Section I (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁴ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-17101, para. 27; 47 CFR § 1.80(b)(4).

¹⁵ See, e.g., *Icicle Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 28 FCC Rcd 13847 (MB 2014) (*Icicle*) (*NAL* issued for \$12,000 forfeiture and a four-year renewal term for failure to prepare 20 issues-programs lists during the license term).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ See *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365, para. 17 (1989).

and respond to community programming needs.²⁰ As such, the public information requirements are integral components of a licensee's obligation to serve the public interest and meet its community service obligations.

10. We believe that Licensee's violations of Section 73.3527 were "serious" violations,²¹ as they denied both the public and the Commission any opportunity to review and comment on the Station's programming during the past license term. The record here further indicates that Licensee's willful and repeated violations of Section 73.3527 at the Station, when considered together, constitutes a pattern of abuse over a period of years by Licensee.²² However, although we are concerned with Licensee's failure to create and retain quarterly issues and programs lists, we find that Licensee's violations of the FCC's rules do not rise to such a level that designation for evidentiary hearing on the issue of whether to grant or deny license renewal for the Station.²³

11. On the facts presented here, we conclude that a short-term license renewal is warranted. We believe that such a sanction is necessary in order to ensure that Licensee endeavors in the future to provide the broadcast service it is licensed to provide and comply with its obligations as a licensee. Accordingly, pursuant to Section 309(k)(2) of the Act, we will grant the Station a short-term license renewal by separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than the apparent violations addressed herein that would preclude such a grant of the Application.²⁴ The new license term will be limited to a period of four years.²⁵ This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the FCC's rules and to take whatever corrective actions, if any, that may be warranted at that time.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the FCC's rules, that Bryant University is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violations of Section 73.3527 of the FCC's Rules.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the FCC's rules, that, within thirty (30) days of the release date of this *NAL*, Bryant University SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the *NAL*/Acct. No. and FRN No. referenced herein. Regardless of the form of payment, a completed FCC Form 159 must be submitted. When completing the FCC Form

²⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, para. 39.

²¹ See 47 U.S.C. § 309(k)(1)(b).

²² See 47 U.S.C. § 309(k)(1)(c).

²³ We do not find that Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, para. 10.

²⁴ See 47 U.S.C. § 309(k)(2).

²⁵ See *Icicle*, *supra*.

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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Kim.Varner@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 reflects the respondent’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.

17. Requests for full payment of the forfeiture proposed in this *NAL* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²⁶

18. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to the Licensee, Mr. Ronald K. Machtley, President, Bryant University, 1150 Douglas Pike, Smithfield, RI 02917, and to Licensee’s counsel, Patricia M. Chuh, Esq., Wilkinson Barker Knauer, LLP, 1800 M Street, N.W., Suite 800N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See 47 CFR § 1.1914.