

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

In re Application of	)	
	)	
<b>Bowdoin College</b>	)	Facility I.D. No. 66276
	)	NAL/Acct. No. MB-200641410014
For Renewal of License for	)	FRN: 0003693199
Station WBOR(FM)	)	File No. BRED-20060217AAB
Brunswick, Maine	)	

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

**Adopted: January 19, 2007**

**Released: January 22, 2007**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned application of Bowdoin College (the "Licensee"), for renewal of its license for noncommercial educational Station WBOR(FM), Brunswick, Maine (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),<sup>1</sup> by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully violated Section 73.3539 of the Rules<sup>3</sup> by failing to timely file its license renewal application, and willfully and repeatedly violated Section 73.3527 of the Rules<sup>4</sup> by failing to retain all required documentation in the WBOR(FM) public inspection file. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of eleven thousand five hundred dollars (\$11,500), and we grant the captioned WBOR(FM) renewal application.

**II. BACKGROUND**

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."<sup>5</sup> An application for renewal of WBOR(FM)'s license should have been filed by December 1, 2005, four months prior to the Station's April 1, 2006, license expiration date,<sup>6</sup> but was not. The Licensee untimely filed the renewal application on February

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539.

<sup>4</sup> See 47 C.F.R. § 73.3527.

<sup>5</sup> 47 C.F.R. § 73.3539(a).

<sup>6</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

17, 2006, before the Station's license expired, but after the application was due. The Licensee explains that it incorrectly believed that the renewal application filing deadline coincided with the date of expiration of the Station's license.<sup>7</sup>

3. 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.<sup>8</sup>

4. Section III, Item 3 of the WBOR(FM) license renewal application form, FCC Form 303-S, 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. The Licensee indicated "No" to that certification and attached an exhibit to the application explaining that, in preparing its application, it had discovered that "the issues/programs lists for the relevant period were missing, and that the station had not filed its FCC Form 323-E biennial ownership reports as required."<sup>9</sup> The Licensee stated that it had reconstructed the missing ownership reports for the period January 1, 2000, to December 31, 2005, and placed those lists in the Station public file, but, "owing to staff turnover and the unavailability of records from 1998-1999. . . [it] knows of no reasonable means to reconstruct the missing issues/programs lists from that period and cannot verify the timely filing of its issues/programs lists."<sup>10</sup> On August 17, 2006, the staff requested further information regarding the missing lists.<sup>11</sup> On October 5, 2006, the Licensee responded, claiming that a "thorough investigation" had revealed that it had, in fact, timely filed issues/programs lists for the first, third and fourth quarters of 1998, as well as the second quarter of 1999. Thus, reports for the second quarter of 1998, and first, third and fourth quarters of 1999, were missing from the public file, and those and the reports from 2000 to 2005 were not timely included in the file.

### III. DISCUSSION

5. *Proposed Forfeiture. Section 73.3539 violation.* In light of the filing date of the Station's application for renewal, it is beyond dispute that the application was untimely filed. As noted above, the Licensee failed to provide an adequate explanation for its late filing. We will not excuse the violation, because licensees are responsible for the timely submission of required forms, and untimely renewal applications disrupt the orderly processing of renewal applications orchestrated by the staggering of license renewal terms in Section 73.1020 of the Rules.<sup>12</sup>

6. *Section 73.3527 Violation.* As the Licensee has acknowledged, at the time of filing of the WBOR(FM) license renewal application and throughout the license term, the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3527 of the Rules. In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of

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<sup>7</sup> Application, Exhibit 11 at 1.

<sup>8</sup> Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

<sup>9</sup> Application, Exhibit 11 at 2.

<sup>10</sup> See *id.*

<sup>11</sup> See *Letter to Bowdoin College from Peter H. Doyle, Chief, Audio Division* (Aug. 17, 2006).

<sup>12</sup> 47 C.F.R. § 73.1020.

station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>13</sup>

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission 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.<sup>14</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.<sup>15</sup> 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,<sup>16</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>17</sup> 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 omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>18</sup>

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3000 for failure to file the required form and of \$10,000 for violation of Section 73.3527.<sup>19</sup> In determining the appropriate forfeiture amount, we must consider 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.”<sup>20</sup>

9. In this case, the Licensee failed to timely file the WBOR(FM) renewal application. Also, although it admitted to the public file rule violations, it did so only in the context of the question contained in its captioned license renewal application that compelled such disclosure. Moreover, the violations were extensive, occurring for almost the whole period of the license term and involving at least 28 late-filed and/or missing issues/programs lists.<sup>21</sup> Considering the record as a whole, we believe that a forfeiture of \$1500 for the late application filing and \$10,000 for the Section 73.3527 violations, is appropriate in this case. Accordingly, we find that the Licensee is apparently liable for a total proposed forfeiture in the amount of \$11,500.

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<sup>13</sup> See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

<sup>14</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

<sup>15</sup> 47 U.S.C. § 312(f)(1).

<sup>16</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>17</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>18</sup> 47 U.S.C. § 312(f)(2).

<sup>19</sup> 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 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>20</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>21</sup> Although 24 of the missing issues/programs lists were reconstructed and later placed in the public file, Section 73.3527(e)(8) states, in part: “The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter . . . .”

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>22</sup> 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>23</sup> 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.”<sup>24</sup>

11. We find that the Licensee's apparent violations of Sections 73.3539 and 73.3527 of the Rules do not constitute “serious violations” warranting designation of its renewal application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>25</sup> Further, we find that Station WBOR(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

#### 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 Commission's Rules, that Bowdoin College is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eleven thousand five hundred dollars (\$11,500) for its apparent willful violation of Section 73.3539 and willful and repeated violation of Section 73.3527 of the Commission's Rules.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Bowdoin College 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, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh,

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<sup>22</sup> 47 U.S.C. § 309(k).

<sup>23</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>24</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>25</sup> For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (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." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 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 the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>26</sup>

18. IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Bowdoin College for Station WBOR(FM), Brunswick, Maine (File No. BRED-20060217AAB) IS GRANTED.

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Bowdoin College, 5600 College Station, Brunswick, Maine 04011, and to its counsel, David A. O’Connor, Esq., Holland & Knight, LLP, Suite 100, 2099 Pennsylvania Ave., N.W., Washington, DC, 20006.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau

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<sup>26</sup> See 47 C.F.R. § 1.1914.