

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

In re Application of)	
)	
Southern Adventist University)	Facility I.D. No. 61269
)	NAL/Acct. No. MB200641410324
For Renewal of License for)	FRN: 0001773431
Station WSMC-FM)	File No. BRED-20040329AKC
Collegedale, Tennessee)	

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

Adopted: May 1, 2007

Released: May 3, 2007

By the Associate Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Southern Adventist University (the "Licensee") for renewal of its license for noncommercial educational Station WSMC-FM, Collegedale, Tennessee (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"),¹ by the Associate Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3527 of the Rules³ by failing to retain all required documentation in the WSMC-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 ten thousand dollars (\$10,000), and we grant the captioned WSMC-FM renewal application.

II. BACKGROUND

2. 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.⁴

3. Section III, Item 3 of the WSMC-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 Item and,

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

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3527.

⁴ 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).

in response to a Letter of Inquiry from Commission staff,⁵ filed an amended Exhibit 11 to the application,⁶ explaining that:

As of March 29, 2004 [the renewal application filing date], WSMC's public inspection file did not contain all the issues/programs lists required by Section 73.3527. . . .

We were unable to certify that the issues/programs quarterly reports required prior to the arrival of our current manager were filed, and filed in a timely manner. Our current manager came [on] July 1, 2001, and has maintained the issues/programs files appropriately during his tenure.

After receiving your letter of August 20, 2004, the management team contacted all program contributing individuals and agencies in order to reconstruct the issues/programs lists . . . [and] several quarterly reports have been reformatted [where] program notes were put into several of the files, but were not transferred into the proper format for the issues/programs files. . . .

Here is a listing of the quarterly reports that were reformatted from program notes that were placed in the files during these quarters, and the dates the reformatting was finished:

All of '96 – Sept. 10, 2004
All of '97 – Sept. 16, 2004
1st of '98 – Sept. 16, 2004

Here is a listing of the quarterly reports that were reconstructed from program notes of our program contributors and the dates they were put into the files:

2nd, 3rd, 4th of '98 – Sept. 16, 2004
All of '99 – Sept. 16, 2004
All of '00 – Sept. 16, 2004
1st, 2nd of '01 – Sept. 16, 2004⁷

The public inspection file for WSMC-FM now contains all documentation required by 47 C.F.R. Section 73.3527.

III. DISCUSSION

4. *Proposed Forfeiture.* As the Licensee has acknowledged, at the time of filing of the WSMC-FM license renewal application, and during periods of time within the license term, the Station's public inspection file did not contain certain 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

⁵ Letter to David N. Brooks, Jr. from Peter H. Doyle, Chief, Audio Division, Media Bureau, ref. 1800B3-JWR (Aug. 20, 2004).

⁶ The Licensee amended its renewal application on September 16, 2004.

⁷ Application, Ex. 11.

omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁸

5. 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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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."¹³

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3527.¹⁴ 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."¹⁵

7. In this case, although the Licensee has admitted to the 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 during an over five-year period during the license term and involving at least 22 missing issues/programs lists. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violation of Section 73.3527.

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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant

⁸ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (MMB 1999)(citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

⁹ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ 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.

¹⁵ 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).

¹⁶ 47 U.S.C. § 309(k).

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. We find that the Licensee’s violations of Section 73.3527 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁹ Further, we find that noncommercial educational Station WSMC-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

10. 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 is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Section 73.3527 of the Commission’s Rules.

11. 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*, Southern Adventist University SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th 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.

14. 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-

¹⁷ 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).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 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).

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.

15. 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. 20554.²⁰

16. IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Southern Adventist University for noncommercial educational Station WSMC-FM, Collegedale, Tennessee (File No. BRED-20040329AKC) IS GRANTED.

17. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to David N. Brooks, Jr., Southern Adventist University, 5055 Hickman Drive, P.O. Box 870, Collegedale, Tennessee 37315.

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman
Associate Chief, Media Bureau

²⁰ See 47 C.F.R. § 1.1914.