

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

In re Application of)	
)	
BLOOMFIELD HILLS SCHOOL DISTRICT)	Facility I.D. No. 5872
)	NAL/Acct. No. MB-200741410254
For Renewal of License for)	FRN: 0011518016
Station WBFH(FM))	File No. BRED-20041019AAV
Bloomfield Hills, Michigan)	

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

Adopted: August 2, 2007

Released: August 3, 2007

By the Chief, Audio Division:

I. INTRODUCTION

1. The Media Bureau has before it the captioned application (the “Renewal Application”) of Bloomfield Hills School District (the “Licensee”) for renewal of its license for noncommercial educational (“NCE”) Station WBFH(FM), Bloomfield Hills, Michigan (the “Station”). The Commission also has before it a Petition to Deny (“Petition”) filed by Superior Communications (“Superior”) on January 21, 2005,¹ and a “Petition to Rescind Grant and Dismiss [the captioned Licensee] Application” filed by RB Schools (“RB”) on November 17, 2005.² 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”),³ by the Chief, Audio Division, Media Bureau by authority delegated under Section 0.283 of the Rules,⁴ we find that the Licensee apparently willfully violated Section 73.3539 of the Rules by failing to timely file a license renewal application for the Station;⁵ willfully and repeatedly violated Section 301 of the Act,⁶ by engaging in unauthorized operation of the Station after its authorization had expired; and willfully violated Section 73.3527 of the Rules⁷ by failing to retain all required documentation in the WBFH(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 seventeen thousand dollars (\$17,000); we grant in part and deny in part RB’s and Superior’s pleadings; we

¹ The Licensee filed an Opposition on February 18, 2005, to which Superior replied on March 14, 2005.

² On February 12, 2007, the staff granted in part this petition, rescinded the grant of the Renewal Application, and returned it and all related pleadings to pending status. See ¶ 5, *infra*.

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

⁴ See 47 C.F.R. § 0.283.

⁵ See 47 C.F.R. § 73.3539.

⁶ See 47 U.S.C. § 301.

⁷ See 47 C.F.R. § 73.3527.

admonish the Licensee for its apparent violation of Section 1.17 of the Rules;⁸ and we grant the 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.”⁹ An application for renewal of the Station’s license should have been filed by June 1, 2004, four months prior to the Station’s October 1, 2004, license expiration date,¹⁰ but was not. The Licensee did not properly file the Renewal Application until October 19, 2004, more than two weeks after the Station’s license had expired. It also failed to seek special temporary authorization (“STA”) to operate the Station after the license had expired. The Licensee explained that it believed that it had timely and properly filed the Renewal Application electronically on June 1, 2004, but, in fact, it did not.¹¹ Superior filed its Petition to Deny on January 21, 2005, stating, among other reasons discussed below, that the Renewal Application should be dismissed because it was filed 140 days late.¹²

3. On October 1, 2004, RB filed its application for an NCE FM station in Bloomfield Hills, Michigan, proposing to “share time” with WBFH pursuant to Section 73.561 of the Rules.¹³ Under Section 73.561(b), the Commission will consider non-consensual proposals for time sharing in connection with the renewal of an NCE FM station’s license only if the incumbent NCE FM station has operated for less than 12 hours per day during the preceding license term.¹⁴ In addition, the party seeking to share time must first attempt to reach agreement with the licensee; if the licensee and share-time proponent fail to reach agreement, the share-time proponent must file its application no later than the deadline for filing petitions to deny the renewal application of the existing licensee.¹⁵ RB’s application contained no representation regarding its attempts to reach an agreement with the Licensee. Accordingly, on March 24, 2005, the staff requested that RB provide either an executed share-time agreement or evidence of its attempts, prior to October 1, 2004, to achieve a share-time agreement with the Licensee.

⁸ 47 C.F.R. § 1.17.

⁹ 47 C.F.R. § 73.3539(a).

¹⁰ See 47 C.F.R. §§ 73.1020, 73.3539(a).

¹¹ See File No. BRED-20041019AAV at Exhibit 1.

¹² Superior has pending an application (File No. BPED-20040812ABS) to modify the facilities of its station WHYT(FM), Goodland Township, Michigan. An amendment to the application states that Superior “assume[d] the automatic expiration of WBFH and therefore is NOT mutually exclusive with WBFH.” Superior states that, if the Commission considers WBFH(FM)’s late-filed license renewal application, that application “should be in a ‘queue’ behind Superior’s amendment.” Petition at 7. We need not address these contentions in this Order.

¹³ 47 C.F.R. § 73.561.

¹⁴ 47 C.F.R. § 73.561(b); *Nassau Community College*, Memorandum Opinion and Order, 12 FCC Rcd 12234 (1997).

¹⁵ 47 C.F.R. §73.561(b); *Westchester Council for Public Broadcasting*, Memorandum Opinion and Order, 8 FCC Rcd 2213, 2214 (1993) (“[E]fforts to negotiate [must be] initiated prior to the filing of the application, so that either a share-time agreement, or a statement that no agreement could be reached, [may be] filed with [the] application.”).

4. RB's share-time application was originally dismissed on June 1, 2005, because it apparently had not responded to the staff's March 24, 2005, inquiry.¹⁶ In that letter, the staff also observed that Superior had filed a petition to deny the Renewal Application, and it stated that "because the staff has not reviewed the WBFH(FM) renewal in light of the allegations raised by Superior, the WBFH(FM) application will be retained in pending status."¹⁷

5. Nevertheless, despite this *caveat* in the *June 1 Dismissal Letter*, the staff erroneously granted the Renewal Application on June 1, 2005. In response to that action, Superior filed its "Petition for Reconsideration and Request for Rescission of Grant," arguing that the staff had granted the Renewal Application without considering its Petition to Deny. Subsequently, on November 17, 2005, RB filed its "Petition to Rescind Grant and Dismiss Application," arguing that the grant should be overturned and the Renewal Application dismissed because the application was filed 19 days after the WBFH(FM) license had expired and because the application was not signed by a "duly elected or appointed official as may be competent to do so," as required by Section 73.3513 of the Rules.¹⁸ On February 12, 2007, the staff rescinded the grant of the Renewal Application and returned this application proceeding to pending status.¹⁹

III. DISCUSSION

6. Both petitions to deny and informal objections must, pursuant to Section 309(e) of the Act, provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act.²⁰ Specifically, Section 309(k)(1) provides that we are to grant the renewal application 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)

¹⁶ On July 1, 2005, RB also filed a Petition for Reconsideration of the June 1, 2005, staff dismissal of its proposal (File No. BNPED-20041001AWW) to share time with WBFH(FM). See *Letter to Donald E. Martin, Esq. and Bloomfield Hills School District*, Reference 1800B3-ALM (MB Jun. 1, 2005) ("*June 1 Dismissal Letter*"). On August 18, 2006, the staff granted reconsideration to the extent of considering RB's response, but it denied reconsideration of the dismissal of RB's application, as the response demonstrated that RB had not, in fact, attempted to negotiate a share-time agreement with the licensee prior to filing its share-time application. *Letter to Donald E. Martin, Esq.*, Reference 1800B3-SS (MB Aug. 18, 2006) ("*August 18 Reconsideration Letter*"). On September 22, 2006, RB filed an Application for Review of the dismissal of its time-share application. The Application for Review remains pending.

¹⁷ See *June 1 Dismissal Letter*.

¹⁸ 47 C.F.R. § 73.3513. RB acknowledges that its pleading was filed long after the time allowed for filing petitions for reconsideration under Section 405 of the Act and Section 1.106 of the Rules. However, RB argues that it had on file at the time a petition for reconsideration of the dismissal of its application for a new NCE-FM station in Bloomfield Hills, and therefore the grant of the WBFH(FM) application could not be final. RB argues that at the very least the staff should consider its pleading to be an informal objection under Section 73.3587 of the Rules. We will do so.

¹⁹ See *Letter to Peter S. Bowers, Linda De Romanett, and Edward T. Czelada from Peter H. Doyle, Chief, Audio Division, Media Bureau*, 1800B3-SS (Feb. 12, 2007).

²⁰ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

there have been no other violations which, taken together, constitute a pattern of abuse.²¹ 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.”²²

7. **Procedural Matter. Standing.** Under Section 309(d) of the Act, a party has standing to file a petition to deny if grant of an application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.²³ The Commission also accords party-in-interest status to a petitioner who demonstrates either that he/she resides in the service area of the station that is the subject of the petition or that he/she listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.²⁴ To do so, the petitioner must provide an affidavit or declaration that establishes such standing.²⁵

8. Superior maintains that it had standing to file its Petition because the signal of its WHYT(FM), Goodland Township, Michigan, station is in close proximity to the Licensee’s station and that its interests are being adversely affected.²⁶ The Licensee argues that Superior lacks standing because it failed to provide evidence of standing as an entity and its principals failed to demonstrate standing as individuals.²⁷ The Licensee attaches an Engineering Exhibit demonstrating that WHYT(FM) and WBFH(FM) are separated by more than 68 kilometers and that there is no overlap of the stations’ protected service contours.²⁸ Furthermore, Superior does not provide in any of its pleadings either an affidavit or declaration specifically raising a specific injury that would be caused to it by grant of the WBFH(FM) renewal application or attempt to establish listener/residence status as a basis for standing. Therefore, we find that Superior lacks standing. Nevertheless, we will consider Superior’s Petition as an informal objection under Section 73.3587 of the Rules.²⁹

9. **Substantive Issues. WBFH(FM) Renewal Application. Signature Requirement.** RB argues in its November 17, 2005, Petition to Rescind Grant and Dismiss Application (“Objection”) that

²¹ 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).

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ See, e.g., *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC2d 696 (1978).

²⁴ See *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n. 3 (2000), and *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

²⁵ See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504 (1995); *Tabback Broadcasting Company, supra*, and *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959 (1992).

²⁶ See Petition at 1.

²⁷ See February 18, 2005, Opposition at 6.

²⁸ Superior notes that it seeks to upgrade WHYT(FM) from Class A to Class B but is prevented from doing so by WBFH(FM)’s licensed facilities.

²⁹ 47 C.F.R. § 73.3587.

the Licensee's application is defective and should be dismissed because it was not signed in accordance with Section 73.3513 of the Rules.³⁰ Section 73.3513(a)(5) states that an application of a governmental entity, such as Bloomfield Hills School District, "must be signed . . . [by] such duly elected or appointed officials. . . ."³¹ RB cites a number of cases where the Commission returned applications or amendments that were not properly signed.³² A review of the record indicates that Peter S. Bowers, whom the Licensee has identified as "General Manager," signed the Renewal Application.³³ Although Mr. Bowers would not be authorized to sign an application on the basis of this positional interest, the Licensee has submitted an affidavit that states that Mr. Bowers "has been granted full authority by the school board to carry out all necessary acts to operate and maintain radio station WBFH, Bloomfield Hills, Michigan, including but not limited to, all necessary interactions with the Federal Communications Commission."³⁴ We find, therefore, that as an appointed official of a governmental entity, Mr. Bowers' signature was in full compliance with the requirements of Section 73.3513(a)(5).

10. Late-filing of the Renewal Application. Superior and RB both argue that the Renewal Application should be dismissed because it was filed after the station's license expired. Superior adds that the Licensee has failed to demonstrate that the untimely filing was beyond its control. Superior argues that the FCC Helpdesk was available to assist the Licensee at any time during the application filing process. Given the filing date for the Station's application for renewal, it is indisputable that the application was untimely filed. Based on its review of the CDBS filing activities of the Licensee, the staff has determined that on June 1, 2004, the Licensee substantially completed its FCC Forms 303-S, and 323-E. However, the Licensee failed to click the "File Form" button after hitting the "Validate" button. Thus, the forms were never "filed," and Licensee's belief that it had completed the filing process was erroneous. Also, the Form 396 was improperly mailed, *i.e.*, paper-filed, rather than electronically filed. When informed on September 14, 2004, by Commission staff of the requirement to electronically file the Form 396, the Licensee similarly terminated the filing process after "Validating" the Form 396, neglecting to press the "File Form" button. It was not until October 19, 2004, that the Licensee, with aid from Commission staff, electronically filed all three forms.³⁵

11. We reject the Licensee's purported explanation for the late filing. Its errors do not excuse the violations of Section 73.3539 or the fact that the Station operated without authorization for 19 days.³⁶ The Licensee was obligated to fully comply with the Rules, including timely filing the Renewal

³⁰ See Objection at 1-2.

³¹ See 47 C.F.R. § 73.3513; see also *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991) and *Central Florida Communications Group, Inc., et al.*, Hearing Designation Order, 6 FCC Rcd 522, 523 (1991).

³² See Objection at 3-4.

³³ See Objection at 2-3.

³⁴ See Affidavit of Bloomfield Hills School Board President Steve J. Weiss, filed February 16, 2006.

³⁵ See February 18, 2005, Opposition at 4 and at Exhibit 3; see also File No. BRED-20041019AAV at Exhibit 1.

³⁶ See, e.g., *UTV of San Francisco, Inc. (KBHK-TV)*, Letter, 10 FCC Rcd 10986, 10987 and note 1 (MMB 1995); *Le Sea Broadcasting Corp. (WHKE-TV)*, Letter, 10 FCC Rcd 4977, 4978 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, Letter, 10 FCC Rcd 4959, 4960 (MMB 1995); *Gannett Massachusetts Broadcasting, Inc. (WLVI-TV)*, Letter, 9 FCC Rcd 1555 (MMB 1994); *Ramar Communications, Inc. (KJTV-TV)*, Letter, 9 FCC Rcd 1831 (MMB 1994).

Application.³⁷ Moreover, the Licensee operated station WBFH(FM) for nearly three weeks after its license expired, in violation of Section 301 of the Act.³⁸ However, we will not dismiss the late-filed WBFH(FM) license renewal application. In similar circumstances, the Commission has accepted license renewal applications filed after the station's license has expired and found that a forfeiture for late-filing and unauthorized operation, rather than a license cancellation, is the appropriate action in such cases.³⁹

12. Public File Rule Violations. Section 73.3527 of the Rules⁴⁰ requires an NCE 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.⁴¹ Superior alleges the following Section 73.3527 violations: (1) no issues/programs lists were filed during the entire term of the license; (2) lists of requests for free political time were not maintained; (3) lists of local public notice announcements were not maintained; (4) a copy of the current FCC authorization was missing from the file; and (5) a copy of "The Public and Broadcasting" manual was not in the file.⁴² In support of these allegations, Superior submits the declarations of Superior officials Edward Czelada and Robert Wolfe based on their review of the public file on or about October 21, 2004. In opposition, the Licensee "admits that certain items may have been disorganized" in the public file, but that it "attempted to provide all items requested [by visiting Superior officials] immediately."⁴³ Further, in a declaration made under penalty of perjury, Mr. Bowers states that he "believe[d] that the WBFH(FM) public file was in order and in material compliance with the FCC Rules and that [he would] welcome a visit by the FCC or [Messrs. Czelada or Wolfe] to review it."⁴⁴ The Licensee, however, does not deny Superior's allegations, and neither its "attempt" to provide all requested items to Messrs. Czelada and Wolfe nor its "belief" that the file was in order is a sufficient rebuttal of Superior's allegations.

13. We have held in the past that public inspection files that are "disorganized," "incomplete," or a "mess" are in violation of Section 73.3527 of the Rules.⁴⁵ Furthermore, we repeatedly have found licensees to be in violation of the public file rule for not making items "available" to the

³⁷ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

³⁸ 47 U.S.C. § 301.

³⁹ See *Discussion Radio Incorporated*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7438 (2004).

⁴⁰ 47 C.F.R. § 73.3527.

⁴¹ 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)).

⁴² See Petition at 2-5.

⁴³ See February 18, 2005, Opposition at 5.

⁴⁴ See *id.* at Exhibit 2.

⁴⁵ See *Discussion Radio Incorporated*, 19 FCC Rcd at 7439 (notice of apparent liability for forfeiture issued to licensee where it is claimed that the station's public inspection files were in "disarray").

public during the Station's license term.⁴⁶ Accordingly, we find that the Licensee violated Section 73.3527 of the Rules during the license term.

14. **Misrepresentation.** Section III, Item 3 of the WBFH(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 "Yes" to that certification. Superior alleges that the Licensee's certification was false and that the Licensee misrepresented the facts in its Renewal Application regarding the Licensee's compliance with the public file rule.⁴⁷ A misrepresentation is a false statement of fact made with an intent to deceive the Commission.⁴⁸ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.⁴⁹ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.⁵⁰ Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity."⁵¹ Intent can also be found from motive.⁵² We find that the Licensee's Form 303-S, Section III, Item 3 certification was false, but we cannot conclude that the Licensee intentionally attempted to deceive the Commission. In support of our finding, we note that the Station's general manager declared under penalty of perjury that he believed the file was in order, and he invited FCC staff to inspect the Station's file at any time. We therefore find that the evidence presented by Superior is insufficient to raise a substantial and material question as to whether the Licensee intended to deceive the Commission by making a false certification regarding its compliance with the Commission's public file rule. We nevertheless caution the Licensee that it should exercise more care in the future to ensure that the information it submits to the Commission is accurate, because a false statement, even absent an intent to deceive, may constitute a violation of Section 1.17 of the Rules.⁵³ Accordingly, we will admonish the Licensee for its false response to Section III, Item 3 of the renewal form.⁵⁴

15. **Proposed Forfeiture.** *Section 73.3539 violation.* 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

⁴⁶ See, e.g., *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 07-2101, ¶ 7 (rel. May 18, 2007) ("Even if the lists were completed and eventually placed in the public file, as the Licensee contends, the record is clear that they were unavailable to the public for much of the license term."); *Felipe Ramirez*, Letter, 21 FCC Rcd 3426 (2006) (rule serves the critical function of making important information available to the public); *Joe McKissick*, Letter, 21 FCC Rcd 2187 (2006) (lists must be properly filed and be made continuously available to the public).

⁴⁷ See Petition at 2 and 10.

⁴⁸ *Fox River Broadcasting, Inc.*, Order, 93 F.C.C.2d 127, 129 (1983).

⁴⁹ *Id.*

⁵⁰ *Trinity Broadcasting of Florida, Inc.*, Initial Decision, 10 FCC Rcd 12020, 12063 (ALJ 1995).

⁵¹ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D. C. Cir. 1980)).

⁵² *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (Rev. Bd. 1994).

⁵³ See 47 C.F.R. § 1.17; see also 47 C.F.R. § 73.1015.

⁵⁴ See *Blue Chip Broadcasting Licenses, Ltd., and Radio One of Dayton Licenses, LLC*, Letter, 21 FCC Rcd 3444, 3447 (MB 2006) (licensee admonished for its false certification of Section III, Item 3 of renewal form).

issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵⁵ 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.⁵⁶ 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,⁵⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁵⁸ 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.”⁵⁹

16. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form and of \$10,000 for violation of Section 73.3527.⁶⁰ The guidelines also specify a base forfeiture amount of \$10,000 for station construction and/or operation without an instrument of authorization for the service. In determining the appropriate forfeiture amount, we may adjust the base 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.”⁶¹

17. In this case, the Licensee failed to timely file the Renewal Application and continued operating the Station for nearly three weeks after the Station’s license expired on October 1, 2004, before filing the appropriate application, never seeking STA to so operate. Nevertheless, because it had previously been licensed to operate the Station, the latter transgressions are not comparable to “pirate” wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to timely file the renewal application for the Station, but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000.⁶²

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

⁵⁶ 47 U.S.C. § 312(f)(1).

⁵⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁵⁸ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁵⁹ 47 U.S.C. § 312(f)(2).

⁶⁰ *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.

⁶¹ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

⁶² *See, e.g., Discussion Radio Incorporated*, *supra*, 19 FCC Rcd at 7438; *Gospel Media, Inc.*, Letter, 19 FCC Rcd 15600 (MB 2004). Although in *Gospel Media*, the Bureau imposed a proposed forfeiture of \$3,000 for unauthorized operation, the unauthorized operation lasted only two weeks and the applicant did not allow its STA for continued operations to expire. The \$4,000 forfeiture proposed here for unauthorized operation is analogous to use of an unauthorized frequency by a land mobile station holding a license for a different frequency. *See, e.g., In the Matter of Dave Mitchell*, Forfeiture Order, 20 FCC Rcd 1366 (EB 2005); *In the Matter of Joselyn Gordon*, Forfeiture Order, 19 FCC Rcd 23557 (EB 2004).

18. Regarding the WBFH(FM) public inspection file deficiencies, we believe that a \$10,000 forfeiture, rather than designation of the WBFH(FM) application for evidentiary hearing, is appropriate for the violations in this case. Accordingly, we will grant Superior's objection in part and 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 of the Rules. Thus, we propose a forfeiture in the total amount of \$17,000.

19. We have evaluated the Renewal Application pursuant to Section 309(k) of the Act. We find that the Licensee's violations of Sections 73.3527 and 73.3539 of the Rules and Section 301 of the Act 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.⁶³ Further, we find that NCE FM Station WBFH(FM) served the public interest, convenience, and necessity during its subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

20. 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 Bloomfield Hills School District is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for the apparent willful violation of Sections 73.3539 and 73.3527 of the Commission's Rules and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

21. 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*, Bloomfield Hills School District SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

22. 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.

23. 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.

24. 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

⁶³ For example, we do not find here that the Licensee's operation of the Station "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).

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.

25. 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. 20554.⁶⁴

26. IT IS FURTHER ORDERED, that the Petition to Deny filed January 21, 2005, by Superior Communications IS DISMISSED, and, when treated as an informal objection, IS GRANTED in part and IS DENIED in all other respects.

27. IT IS FURTHER ORDERED that the "Petition to Rescind Grant and Dismiss Application" filed by RB Schools on November 17, 2005, when treated as an informal objection, IS GRANTED in part and IS DENIED in all other respects.

28. IT IS FURTHER ORDERED that, pursuant to Section 1.17 of the Rules, Bloomfield Hills School District IS ADMONISHED for its false certification that the documentation required by Section 73.3527 of the Rules had been placed in the WBFH(FM) public inspection file at the appropriate times.

29. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application for NCE FM Station WBFH(FM), Bloomfield Hills, Michigan (File No. BRED-20041019AAV) IS GRANTED.⁶⁵

30. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. Peter S. Bowers, Bloomfield Hills School District, 4200 Andover Road, Bloomfield Hills, Michigan, 48302, and to its counsel, John C. Trent, Esq., Putbrese, Hunsaker & Trent, PC, 200 South Church Street, Woodstock, Virginia 22664. Copies shall also be sent to Edward T. Czelada, Superior Communications, 3302 North Van Dyke, Imlay City, Michigan 48444 and to Counsel for RB Schools, Donald E. Martin, Esq. P.O. Box 8433, Falls Church, Virginia 22041.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁶⁴ See 47 C.F.R. § 1.1914.

⁶⁵ This action will not become final unless and until the staff action dismissing the RB Schools share time application, currently the subject of an application for review, has become final. See n.16, *supra*.