

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

In re Application of	)	NAL/Acct. No. MB-20051810003
	)	Facility I.D. No. 92738
<b>Truman State University</b>	)	FRN: 0005826003
	)	File No. BRED-20040924AGQ
For Renewal of License for	)	
Noncommercial Educational FM Station KKTR(FM)	)	
Kirksville, Missouri	)	

**FORFEITURE ORDER**

**Adopted: January 26, 2010**

**Released: January 27, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand two hundred dollars (\$7,200) to Truman State University (“TSU”), licensee of noncommercial educational FM Station KKTR(FM), Kirksville, Missouri (“Station”), for willfully violating Section 73.3527 of the Commission's Rules (“Rules”)<sup>1</sup> by failing to properly maintain the Station’s public inspection file.

**II. BACKGROUND**

2. On March 16, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to Licensee for failing to properly maintain the Station’s public inspection file. As noted in the NAL, Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times. TSU indicated "No" to that certification, filing an Exhibit and an amendment explaining that since KKTR(FM) began operation in August 2002, eight quarterly issues/programs lists of KBIA(FM), a station whose programming KKTR(FM) rebroadcasts, were mistakenly not placed in KKTR(FM)'s public inspection file. TSU stated that it had been under the impression that it had no duty to do so. TSU also stated that the missing reports have been placed in the public file and that the lists for future quarters will be placed in the public file on a timely basis.<sup>2</sup> Licensee filed a Response requesting that the forfeiture be cancelled or reduced (“Response”) on April 15, 2005.

3. In its Response to the NAL, Licensee states that when KKTR(FM) went on the air in August 2002, it replaced a translator that rebroadcast programming of noncommercial educational FM Station KBIA(FM), Columbia, Missouri. Licensee states that it was without the benefit of counsel, at the time, and

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<sup>1</sup> 47 C.F.R. § 73.3527.

<sup>2</sup> Letter to Matthew H. McCormick, Esq. from Peter H. Doyle, Chief, Audio Division (March 16, 2005).

it was not aware that it was necessary to include the issues/programs lists for the rebroadcast programming in KKTR(FM)'s public inspection file, since those documents were being maintained at KBIA(FM)'s main studio. Licensee states that as soon as it became aware of its mistake it assembled and placed the missing lists into the public file. Licensee requests cancellation or reduction of the proposed forfeiture because it is “grossly” out of proportion to its limited budget and would result in financial hardship. Specifically, Licensee states that KKTR(FM) is staffed and operated by volunteers and has a budget of zero dollars for 2005, and that the proposed forfeiture threatens the existence of KKTR(FM) and commonly owned noncommercial FM Station KTRM(FM), Kirksville, Missouri, which has a total budget of only \$22,600 for 2005. Citing *Cornell College*,<sup>3</sup> Licensee states that the Commission has, in the past, cancelled forfeitures for violation of the public inspection file rule, among other violations, based on financial hardship. Additionally, Licensee asserts, citing *Glen Iris Baptist School, Mid-Virginia Broadcasting Corp.*, and *John Brown University*, that the forfeiture amount is much higher than those assessed against similarly situated stations, which as here, voluntarily disclosed the issues/programs public file violations,<sup>4</sup> and that Licensee has a previously “unblemished” enforcement record.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</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>8</sup>

6. Licensee does not dispute that eight quarterly issues/programs lists were not placed in KKTR(FM)'s public inspection file, but states that it was not aware it was required to do so. It is, however, a well established and long-standing principle that mistaken belief or ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.<sup>9</sup>

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<sup>3</sup> *Cornell College*, Memorandum Opinion and Order, 19 FCC Red 14586 (EB 2004)(“*Cornell College*”).

<sup>4</sup> See *Glen Iris Baptist School*, 19 FCC Red 11234 (Chief, Audio Div. 2004) (\$3,000 NAL issued for four missing issue-programs lists); *Mid-Virginia Broadcasting Corp.*, 18 FCC Red 20183 (Chief, Media Bur. 2003) (\$3,000 NAL issued for several years of incomplete – not missing – issues-programs lists; *John Brown University*, 19 FCC Red 11246 (Chief, Audio Div. 2004) (\$9,000 NAL issued for 16 missing issues-programs lists).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *The Commission's 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>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See *Richard Mann d/b/a The Antique Radio Collector Toledo, Ohio*, Memorandum Opinion and Order, 2008 WL 1914220 (EB 2008) (denying request to reduce forfeiture based on petitioner's claim that it was unaware that its actions constituted a violation of the Commission's Rules); *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor”); see also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88

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Violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>10</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.<sup>11</sup>

7. Additionally, Licensee argues that the proposed forfeiture amount is inconsistent with that issued to licensees in similar situations. We disagree. It is undisputed that Licensee's public file was incomplete, missing eight issues/programs lists. We find that the \$9,000 forfeiture issued was an appropriate sanction for Licensee's violations and is consistent with prior forfeitures for similar violations.<sup>12</sup>

8. Licensee also asserts that payment of the proposed \$9,000 forfeiture would result in a financial hardship. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflected the party'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>13</sup>

9. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.<sup>14</sup> Here, however, in support of its request for cancellation or reduction of the forfeiture, Licensee has stated only that KKTR(FM) has a budget of zero dollars for 2005, and that commonly owned Station KTRM(FM) has a total budget of \$22,600 for 2005.

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(1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

<sup>11</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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>12</sup> See, e.g., *South Atlanta Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8471 (MB 2006) (issuing \$10,000 forfeiture for nine missing issues/programs lists). See also *Saga Communications of Illinois, LLC*, Forfeiture Order, 24 FCC Rcd 2479 (MB 2009) (affirming \$9,000 forfeiture issued for eight missing issues/programs lists); *Manuel Huerta*, Forfeiture Order, 23 FCC Rcd 14647 (MB 2008) (same); *ROA Licenses, LLC*, Forfeiture Order, 23 FCC Rcd 11333 (MB 2008) (noting initial \$9,000 forfeiture issued for eight missing issues/programs lists, but reducing the forfeiture amount to \$7,200 based on licensee's history of compliance with the Rules).

<sup>13</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7441 (2004).

<sup>14</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992).

10. Thus, Licensee's reliance on *Cornell College* is misplaced. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits adequate documentation to support its claim. In *Cornell College*, the Enforcement Bureau cancelled the proposed forfeiture *after reviewing the financial information provided by Cornell*.<sup>15</sup> Here, Licensee failed to submit acceptable documentation, providing only budget information for years 2002 to 2006, for Stations KKTR(FM) and KTRM(FM), respectively, rather than the *Licensee's* gross revenues. Therefore, we have no basis on which to analyze its claim. Accordingly, no cancellation or reduction is warranted on the basis of Licensee's inability to pay.<sup>16</sup>

11. Licensee argues that we should cancel or reduce the forfeiture because it voluntarily disclosed its public file deficiencies. However, Licensee's disclosure was not voluntary, but rather was information required in the license renewal application form.<sup>17</sup> We further reject Licensee's argument that its immediate remedial action correcting the violation is a basis for reduction or cancellation of the forfeiture. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>18</sup> Moreover, contrary to Licensee's reference to the volunteer nature of KKTR(FM)'s operation, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.<sup>19</sup>

12. We have considered Licensee's Response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that eight issues/programs lists were missing and Licensee willfully and repeatedly<sup>20</sup> violated Section 73.3527 of the Rules. However, given

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<sup>15</sup> *Cornell College supra* at ¶ 5.

<sup>16</sup> See, e.g. *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821, 15824 (MB 2008) (rejecting request for reduction when the licensee "has only provided us with a limited snapshot of the station's budget and has provided us with no information regarding Licensee's finances").

<sup>17</sup> See *NAL* at 2. Since 2007, we have declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, as noted above, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure. *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146, 9148 (MB 2007); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 10642, 10644 (MB 2006).

<sup>18</sup> *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that 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) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

<sup>19</sup> See *Bible Broadcasting Network, Inc.*, Forfeiture Order, -- FCC Rcd --, Released June 6, 2008 (MB 2008) (Staff rejects Licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation*, Memorandum, Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station").

<sup>20</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if

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Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$7,200.

#### IV. ORDERING CLAUSES

13. 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>21</sup> that Truman State University, SHALL FORFEIT to the United States the sum of seven thousand two hundred dollars (\$7,200) for willfully violating Section 73.3527 of the Commission's Rules.

14. 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>22</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>23</sup>

15. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, to Truman State University, 100 East Normal Street, Kirksville, Missouri 63501, and to its counsel, Matthew H. McCormick, Esq., Fletcher, Heald, & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief  
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such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

<sup>23</sup> *See* 47 C.F.R. § 1.1914.