

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

In the Matter of	)	
	)	Facility ID No. 22805
<b>Fort Belknap College</b>	)	NAL/Acct. No. MB-20051810145 <sup>1</sup>
	)	FRN: 0007034853
Licensee of Station KGVA(FM),	)	File No. BRED-20041201AEU
Fort Belknap Agency, Montana	)	

**FORFEITURE ORDER**

**Adopted: January 27, 2009**

**Released: January 29, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of nine thousand dollars (\$9,000), to Fort Belknap College (“Licensee”), licensee of Station KGVA(FM), Fort Belknap Agency, Montana (“Station”), for its willful and repeated violation of Section 73.3527 of the Commission’s Rules (“Rules”)<sup>2</sup> by failing to properly maintain a public file for the Station.

**II. BACKGROUND**

2. On May 24, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of nine thousand dollars (\$9,000) to Licensee for this violation.<sup>3</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on June 23, 2005.

3. On January 20, 2004, Licensee filed an application to renew the license of the Station. 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 of the Rules, as applicable, has been placed in the station’s public inspection file at the appropriate times. Licensee indicated “No” to that certification, attaching an exhibit explaining that from the last quarter of 1997 through the third quarter of 2001, no quarterly issues and programs lists were placed in the Station’s public file. On December 22, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3527 of the Rules, based on the fact that, by its admission, several years’ worth of issues/programs lists were missing from the Station's public inspection file between 1997 and 2001.<sup>4</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeiture is warranted because the Station is in poor financial condition. Specifically, it claims that payment of the

<sup>1</sup> The NAL/Account Number originally assigned to this case was “MB-20051810039.” That number had already been designated for another Notice of Apparent Liability issued by the Media Bureau. Accordingly, we will use “MB-20051810145” here.

<sup>2</sup> 47 C.F.R. § 73.3527.

<sup>3</sup> *Letter to John Crigler, Esq. from Peter Doyle*, reference 1800B3-KV (MB May 24, 2005).

<sup>4</sup> The Commission granted the above-referenced license renewal application on May 24, 2005.

proposed forfeiture would divert funds it receives from federal grants, thereby diminishing the effectiveness of such grants, and limit its ability to provide public service programming. Licensee further asserts that the Station has taken remedial steps to ensure future compliance with the Rules. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

### 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 contends that payment of the proposed forfeiture would divert funding necessary to provide public service programming and federal grant money that would otherwise go toward scholarships.<sup>9</sup> These are essentially arguments to support a claim of financial hardship.<sup>10</sup> The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee 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 reflect the licensee'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>11</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>12</sup> We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>13</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>14</sup> While Licensee claims that the Station operated at a loss from 2002 through 2004, Licensee's financial documentation also indicates that its 2003 total gross revenues totaled \$6,084,538.<sup>15</sup> A \$9,000 forfeiture is less than one percent of Licensee's total gross revenues. We therefore believe that the gross revenues are sufficiently great when

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<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> Request at 2-3.

<sup>10</sup> *See Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (rejecting licensee's argument that it should not be required to pay the proposed forfeiture because it would divert funds that would otherwise be used to create public interest programming), *rev. granted in part, decision modified by*, 23 FCC Rcd 15959 (Oct. 28, 2008).

<sup>11</sup> *See Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

<sup>12</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See* Request, Exhibit at 10.

compared to the forfeiture amount such that the mere fact that the Station may be experiencing an operating loss does not demonstrate that Licensee cannot afford to pay the forfeiture amount.<sup>16</sup>

7. We further reject Licensee's argument that its implementation of new measures at the Stations to ensure future compliance 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>17</sup>

8. 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 Licensee willfully<sup>18</sup> and repeatedly<sup>19</sup> violated Section 73.3527 of the Rules. We find that there is no basis for reduction of the proposed monetary forfeiture.

#### IV. ORDERING CLAUSES

9. 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>20</sup> that Fort Belknap College, SHALL FORFEIT to the United States the sum of \$9,000 for willfully and repeatedly violating Section 73.3527 of the Commission's Rules.

10. 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>21</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,

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<sup>16</sup> See, e.g., *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues, despite the fact that licensee was operating at a loss); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

<sup>17</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>18</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 3453 (1992) ("Southern California").

<sup>19</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if 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>20</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

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>22</sup>

11. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to: Fort Belknap College, P.O. Box 159, Harlem, Montana 95926, and to its counsel, John Crigler, Esq., Garvey Shubert Barer, 1000 Potomac Street, NW, 5<sup>th</sup> Floor, Flour Mill Building, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>22</sup> See 47 C.F.R. § 1.1914.