

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

In re Application of)	
)	
Detroit Public Schools)	Facility I.D. No. 6056
)	NAL/Acct. No. MB200641410116
For Renewal of License for)	FRN: 0009038092
Station WRCJ-FM)	File No. BRED-20040512AEL
Detroit, Michigan)	

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

Adopted: November 24, 2006

Released: November 27, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Detroit Public Schools (the "Licensee") for renewal of its license for Station WRCJ-FM, Detroit, Michigan (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 Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Sections 73.1943 and 73.3527 of the Rules³ by failing to retain all required documentation in the WRCJ-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 two thousand dollars (\$2,000), and we grant the captioned WRCJ-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 Section 73.1943 of the Rules requires retention in the station's public inspection file records of certain types of political broadcasts.

3. Section III, Item 3 of the WRCJ-FM license renewal application form, FCC Form 303-S,

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. §§ 73.1943, 73.3526.

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)).

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.

4. On August 30, 2004, Mr. Christopher Trey ("Trey") filed an Informal Objection (the "Objection") to the WRCJ(FM) renewal application.⁵ In a subsequent letter received December 6, 2004, Trey stated that he wished to withdraw his objection because the issues upon which his Objection was based had been resolved.⁶ In a further letter dated June 7, 2005, Trey averred that, in accordance with Section 73.3588 of the Rules,⁷ he had not received any consideration for the withdrawal of his Objection.

5. We have reviewed the Objection, the withdrawal request, and Trey's attestation regarding consideration, and we find that the withdrawal complies with Section 73.3588 of the Rules.

6. Even where a petition or objection is dismissed at the filing party's request, however, the Commission considers the merits of that submission.⁸ In his Objection, Trey alleged violations by the Licensee of Section 73.1943 of the Rules. These alleged violations included the failure to note in the Station's political file either broadcasts by a station air personality who was simultaneously a candidate for the University of Michigan Board of Regents or the station's airing of public service announcements voiced by a candidate for U.S. Congress.⁹ In its Opposition, the Licensee admits that certain broadcasts should have been noted in the station's political file, but were not¹⁰ and states that, effective November 3, 2004, it established a political reporting policy responsive to Trey's concerns and to allow future Station compliance with Section 73.1943.¹¹

III. DISCUSSION

7. *Political File Rule Violation.* Although we approve withdrawal of Trey's Objection, as noted above, the Licensee admits in its Opposition to having acted in violation of the political file rule including: (1) failure to note the August 2, 2004, appearance of a candidate on a call-in show (the Licensee argues that the subject call did not constitute the type of "use" that requires placement in the public file because the station had no control over or prior knowledge of the call; nevertheless, station states that it noted the appearance in the file as soon as it came to its attention and was willing to honor any equal opportunities requests resulting from this appearance); (2) failure to have a record in the file on August 12, 2004, of information concerning certain candidate requests for equal opportunities made during the 2002 General Election (the Program Director declares under penalty of perjury that records had been in the file previously and were restored to the file by September 9, 2004); (3) failure to note weekly appearances of an on-air employee candidate for the 2002 election (the Licensee indicates it took the

⁵ The Licensee filed an Opposition to the Informal Objection on October 1, 2004, to which Trey replied on November 30, 2004.

⁶ *Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Christopher Trey* (Dec. 6, 2004).

⁷ 47 C.F.R. § 73.3588.

⁸ *Stockholders of CBS, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3739 (1995); *Booth American Company*, Memorandum Opinion and Order, 58 FCC 2d 553, 554 (1976).

⁹ Trey Objection at 2, 3.

¹⁰ Licensee Opposition at 11-12, 14.

¹¹ Trey Withdrawal Letter, Enclosure 1.

employee off the air as soon as it found out he was a candidate);¹² and (4) failure to put in the file information regarding “uses” by a 2002 candidate appearing in public service announcements (“PSAs”) (the Licensee maintains that, as soon as the matter was brought to its attention, it placed a record of the 149 subject PSAs in the file, although it acknowledges that it does not know how many of the PSAs contained appearances by the subject candidate).

8. The Licensee states that these failures occurred because:

WRCJ is a struggling, noncommercial educational FM station that has recently cut staff and is searching for new management. Many of its tasks are performed by student interns. Any past failures to place documents in the political file occurred as a result of either station staff’s lack of knowledge that a guest was a candidate for political office, a belief that a particular program was exempt from the political broadcasting rules, or that an appearance or “use” was of such a fleeting and innocuous nature that it did not trigger the implementation of the station’s usual political broadcasting procedures.¹³

The Licensee also maintains that some of the violations were *de minimis*, as no other candidates complained or asked for equal opportunities and, therefore, the omissions did not result in harm to any listeners, candidates, or eligible voters and/or did not violate any candidate’s rights. In addition, the Licensee indicates that it “has implemented new procedures for insuring that the political file is complete, including procedures for determining whether a guest’s appearance, however fleeting, might constitute a ‘use’ within the meaning of the FCC’s political broadcasting rules.”¹⁴ In addition, the Licensee argues that many of the alleged violations happened nearly two years ago and are, therefore, beyond the Commission’s one year statute of limitations for imposing forfeitures, pursuant to Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6).

9. Section 73.3527(e)(5) of the Rules requires noncommercial educational broadcast licensees to maintain and make available for public inspection, at the main studio of a station, a file of information (public file), including such records as are required to be kept by Section 73.1943 of the Rules (political file).¹⁵ That Section and Commission policy require that this required portion of a station’s file contain a “complete record” of all requests for time made by candidates and the disposition of those requests, as well as all other “uses” by candidates, including those paid for by third parties and those given free by the station. This information is to be placed in the file as soon as possible and retained for a period of two years. The Commission defines a “use” as a positive, identifiable appearance of a candidate, including by voice or picture, lasting for four seconds or more, that is not exempt under the news programming exemptions listed in Sections 73.1941(a)(1)-(4) of the Rules.¹⁶ Information regarding these “uses”

¹² In its Opposition, the Licensee questions whether the office for which the employee was running -- Member of the University of Michigan Board of Regents -- is a “public office” within the meaning of the Rules. The Commission defers to the law of the state in which an election is being held when determining whether a particular office is a “public office.” *In Re complaint by Malcolm Cornell, Wappinger Falls, N.Y. Concerning Section 315 Political Broadcast by Station WEOK, Poughkeepsie, N.Y.*, Letter, 31 FCC 2d 649 (Bdcast. Bur. 1971). According to the Bureau of Elections, Michigan Department of State, a Member of the University of Michigan Board of Regents is a public office.

¹³ Opposition at 16.

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 73.3527(e)(5).

¹⁶ 47 C.F.R. § 73.1941(a)(1)-(4). *See In the Matter of Codification of the Commission’s Political Programming Policies*, Memorandum Opinion and Order, 9 FCC Rcd 651 (1994); 47 C.F.R. § 73.1941(b).

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requires a full description of the pertinent information sufficient to put competing candidates on notice of exactly what “equal opportunities” might exist for them. The station acknowledges failing to put required information in its political file on a number of occasions, thereby thwarting the notification purpose of the rule.

10. As the Commission has previously stated, “[m]aintenance of an accurate and complete political file is an essential element of Section 315 of the Communications Act. Except for maintaining a political file, a station generally has no obligation to notify opposing candidates when a candidate appears on its facility, and opposing candidates have only seven days within which to make a request for equal opportunities.”¹⁷ Because of the station’s failure to include the necessary information in the political file, opposing candidates did not have requisite information available for them to knowingly exercise their rights under Section 315 of the Act prior to the relevant elections.

11. We find that the claimed ignorance of WRCJ-FM’s staff of the Rules does not excuse the Licensee from complying with these provisions of the Rules.¹⁸ While WRCJ-FM’s staff may have been comprised of students lacking knowledge of an individual’s status as a candidate or that a candidate’s appearance constituted a “use,” the Commission has repeatedly declared that ignorance of the law is not a defense or a mitigating circumstance to a violation.¹⁹ Moreover, a broadcast licensee is responsible for the conduct of its employees.²⁰ 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.²¹

12. We also find the Licensee’s argument that certain violations were *de minimis* because no candidates filed complaints against the station and no candidate’s request for equal opportunities was denied to be without merit. The station’s lack of receipt of candidate complaints does not negate the fact that the Licensee violated the Commission’s political file rule. Further, a candidate would not have known to request equal opportunities from review of the public file, as it would have been reasonable for it to assume that the station’s political file was complete.²²

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¹⁷ *TVX Broadcast Group, Inc.*, Letter, 6 FCC Rcd 7494, 7495 (1991).

¹⁸ See *Bureau d’Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893, 17897 (EB 2005), citing *Profit Enterprises, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 2846 (1993) (a subject’s inadvertent mistake regarding and/or ignorance of the Act or Rule requirements does not exonerate, excuse or mitigate its violations).

¹⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991) (“*Southern California*”) (citing *Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, Memorandum Opinion and Order, 19 FCC 2d 829 (1969)).

²⁰ See, e.g., *Trustees of the University of Pennsylvania*, Decision, 69 FCC 2d 1394 (1978) (“*University of Pennsylvania*”) and *University of Southern California*, Memorandum Opinion and Order and forfeiture Order, 11 FCC Rcd 7239 (1996).

²¹ See *Alpha Broadcasting Corporation*, Memorandum Opinion and Order, 102 FCC 2d 18 (1984) (citing *Eleven Ten Broadcasting Corp.*, Memorandum Opinion and Order, 32 FCC 706 (1962) and *Gaffney Broadcasting, Inc.* Memorandum Opinion and Order, 23 FCC 2d 912 (1970)); *EICB-TV, LLC*, Forfeiture Order, 19 FCC Rcd 18611 (EB 2004) (quoting *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994)).

²² See *Fleet Broadcasting, Inc. and Zephyr Broadcasting, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 15372 (MMB 1998), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 6695 (MMB 1999).

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13. The Licensee's argument that some of the violations at issue occurred almost two years ago and are, therefore, beyond the statute of limitations for issuing forfeitures is incorrect. Section 503(b)(6) of the Act states that "No forfeiture penalty shall be determined or imposed against any person... if the violation charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; **or** (ii) prior to the date of commencement of the current term of such license, **whichever is earlier.**"²³ In this case, the earlier of the dates is prior to the date of commencement of the Station's current license term, as that date is October 1, 1996. Therefore, the violations that occurred in 2002 are not beyond the statute of limitations for issuing a forfeiture.

14. *False Certification.* Based on the foregoing discussion, it appears that the WRCJ-FM public inspection file was not complete when the information contained in the subject license renewal application was certified to by the Licensee and the application was filed with the Commission. It therefore appears that the Licensee's representation in the application that it had placed all required documentation in the station's public file at the appropriate times was untrue. The Commission relies on licensees to provide truthful and accurate information in order to carry out its mission. When issuing a license, we must be assured of the accuracy of the licensee's representations. Recently, the Commission expanded the scope of Section 1.17 of the Rules,²⁴ with respect to investigations and adjudications, to prohibit "written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing the statement is correct and not misleading."²⁵ Misrepresentation involves false statements made with an intent to deceive.²⁶ Lack of candor involves concealment, evasion, or other failure to be fully forthcoming, accompanied by an intent to deceive.²⁷ While we do not find that the Licensee engaged in misrepresentations or otherwise lacked candor,²⁸ we will admonish it for its public file certification which, by its own later admission, was inaccurate. We caution the Licensee to exercise diligence in ascertaining the accuracy of its statements made to the Commission, because "a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules."²⁹

15. *Proposed Forfeiture.* In this case, the Licensee has admitted to failing to maintain in its public inspection file materials relating to candidate "uses" and requests for equal opportunities. 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.³⁰ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or

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²³ 47 U.S.C. § 503(b)(6) (emphasis added).

²⁴ 47 C.F.R. § 1.17.

²⁵ *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016 (2003).

²⁶ *See Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

²⁷ *Id.*

²⁸ *See e.g. Southern Skies Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 19176, 19182 (1996).

²⁹ *Letter to John Jason Bennett et al.* 20 FCC Rcd 17193 (MB 2005), *citing San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13337 (2002).

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

omission of [any] act, irrespective of any intent to violate” the law.³¹ 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,³² and the Commission has so interpreted the term in the Section 503(b) context.³³ 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.”³⁴

16. 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 the public file rules.³⁵ 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.”³⁶

17. In this case, the Licensee admitted its violation of Sections 73.1943 and 73.3527. Considering the record as a whole as discussed above, we believe that a forfeiture of \$2,000 is appropriate for the willful and repeated violations in this case.³⁷ Additionally, we note that the Commission has long held that “retention of effective control by a licensee of the station’s management and operations is a fundamental obligation of the licensee, and a licensee’s lack of familiarity with station operation and management may reflect an indifference tantamount to lack of control.”³⁸ The Licensee is therefore cautioned to exercise greater diligence in overseeing station operations in the future.

18. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.³⁹ 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.⁴⁰ If, however, the licensee fails to meet that standard, the Commission may deny

³¹ 47 U.S.C. § 312(f)(1).

³² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³³ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

³⁴ 47 U.S.C. § 312(f)(2).

³⁵ 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, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

³⁶ 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).

³⁷ See *Bay Communications, Inc.*, Letter, 12 FCC Rcd 5989 (MMB 1997).

³⁸ *University of Pennsylvania*, 69 F.C.C.2d at 1397 (footnote omitted). See also *Alabama Educational Television Commission, et al.*, Decision, 50 FCC 2d 461 (1975).

³⁹ 47 U.S.C. § 309(k).

⁴⁰ 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).

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.”⁴¹

19. We find that the Licensee’s apparent violations of Sections 73.1943 and 73.3527 of the Rules do not constitute “serious violations” warranting designation of the renewal application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.⁴² Further, we find that Station WRCJ-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

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 Detroit Public Schools is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) for its apparent willful and repeated violation of Sections 73.1943 and 73.3527 of the Commission’s Rules. 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, Detroit Public Schools SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

21. 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.

22. 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.

23. 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.

24. Requests for full payment of the forfeiture proposed in this NAL under the installment plan

⁴¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁴² 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).

should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴³

25. IT IS FURTHER ORDERED that, pursuant to Section 1.17 of the Rules, Detroit Public Schools IS ADMONISHED for its false certification that the documentation required by Section 73.3527 of the Rules had been placed in the WRCJ-FM public inspection file at the appropriate times.

26. IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Detroit Public Schools for Station WCRJ-FM, Detroit, Michigan (File No. BRED-20040512AEL) IS GRANTED.

27. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Detroit Public Schools, 9345 Lawton, Detroit, Michigan, and to its counsel, David M. Silverman, Esq., Cole, Raywid & Braverman, L.L.P., Suite 200, 1919 Pennsylvania Avenue, N.W., Washington, DC, 20006.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

⁴³ See 47 C.F.R. § 1.1914.