

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

In the Matter of)
JOHN BROWN UNIVERSITY)
For renewal of Licensee of KLRC(FM))
Siloam Springs, Arkansas)
File No. BRED-20040128ACO
Facility ID No. 31470
FRN: 0007719222
NAL/Acct. No. MB20041810037

MEMORANDUM OPINION AND ORDER

Adopted: April 13, 2011

Released: April 14, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. John Brown University ("John Brown"), licensee of Station KLRC(FM) ("Station"), filed a Petition for Reconsideration ("Petition") of the Forfeiture Order issued to John Brown for its willful and repeated violation of Section 73.3527 of the Commission's Rules ("Rules") by failing to properly maintain a public file for KLRC(FM). In this Memorandum Opinion and Order, we deny reconsideration and affirm the forfeiture issued by the Media Bureau ("Bureau") in the total amount of seven thousand two hundred dollars (\$7,200) to John Brown.

II. BACKGROUND

2. On January 28, 2004, John Brown 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 has been placed in the station's public inspection file at the appropriate times. John Brown indicated "No" to that certification, explaining in an Exhibit that "the complete issues/program lists for station KLRC were not placed in the public file from January 10, 1999, (the first quarter in the new license term) through January 10, 2003."

3. On June 21, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") to John Brown in the amount of nine thousand dollars (\$9,000) for the violations. John Brown filed a

1 John Brown University, Forfeiture Order, 24 FCC Rcd 1536 (MB 2009).

2 47 C.F.R. § 73.3527.

3 Application, as amended, Exhibit 1.

4 Letter to James P. Riley, Esq., 19 FCC Rcd 11246 (MB 2004). In the NAL, the staff reduced the \$10,000 base forfeiture amount by \$1,000 because John Brown voluntarily disclosed the public file violations in its Application. This is inconsistent with our case law, which holds that disclosures prompted by license renewal form questions are (continued....)

response to the NAL on July 28, 2004, requesting reduction of the proposed forfeiture (“Request”). The Commission reduced the forfeiture amount in the Forfeiture Order to \$7,200 based on John Brown’s history of compliance with the Rules. John Brown then filed the subject Petition.

4. In its Petition, John Brown argues that the Forfeiture Order failed to explain how it distinguished its case from those cited in the Request involving \$3,000 forfeiture amounts. Further, John Brown argues that its actions in failing to keep a complete public inspection file were not egregious.

III. DISCUSSION

5. The Commission will consider a Petition for Reconsideration only when petitioner shows either a material error in the Commission’s original order or raises changed circumstances or unknown additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.⁵ John Brown has failed to meet this burden.

6. John Brown argues that the Forfeiture Order “provides no rational basis for the amount of the forfeiture proposed,”⁶ and demands an explanation for why its case is distinguishable from several Media Bureau decisions cited in its Request involving public file violations in which each licensee was assessed a \$3,000 forfeiture.⁷ As an initial matter, *Towson University*, *Mid-Virginia*, and *Liberty University* are all distinguishable from the instant case. The Bureau has explicitly acknowledged that the \$3,000 amount assessed in *Towson University* was inconsistent with prevailing precedent.⁸ *Mid-Virginia* involved an

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not voluntary disclosures. See, e.g., *WPW Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 13250, 13252 (MB 2010).

⁵ See 47 C.F.R. § 1.106(c); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sum nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁶ Petition at 1.

⁷ *Id.* at 5. Specifically, John Brown cited in its Request to *Towson University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20223 (MB 2003) (“*Towson University*”); *Mid-Virginia Broadcasting Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20183 (MB 2003) (“*Mid-Virginia*”); *Liberty University, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20115 (MB 2003) (“*Liberty University*”); *National Cable Satellite Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20159 (MB 2003) (“*National Cable*”); *Starcast Systems, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20163 (MB 2003) (“*Starcast*”); *Oakland Media Group, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20167 (MB 2003) (“*Oakland-WMSG*”); *Bonneville Holding Co.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20175 (MB 2003) (“*Bonneville*”); *Bay Broadcasting Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20207 (MB 2003) (“*Bay*”); *Oakland Media Group*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20219 (MB 2003) (“*Oakland-WWHC*”). John Brown also cited in its request one Enforcement Bureau decision in which a licensee was issued a \$3,500 forfeiture for, among other things, public file violations. See *Petracom of Joplin, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 6248 (EB 2004) (“*Petracom*”). With respect to *Petracom*, we note that the Media Bureau retains discretion to determine forfeiture amounts on a case-by-case basis. See 47 C.F.R. § 1.80(b)(4); see, e.g., *Gaston College*, Forfeiture Order, 25 FCC Rcd 982, 986 (EB 2010) (Enforcement Bureau declines to follow Bureau precedent involving denial of access to station’s public file); *John Jason Bennett*, Letter, 20 FCC Rcd 17193, 17195, n.14 (MB 2005) (noting that Wireless Bureau precedent is not binding on the Bureau).

⁸ *Towson University*, Forfeiture Order, 23 FCC Rcd 8747 (MB 2008) (noting that the \$3,000 forfeiture issued in the NAL for ten missing issues/programs lists was inconsistent with precedent).

unspecified number of *incomplete* issues and programs lists and a missing issue of “the Public and Broadcasting.”⁹ *Liberty University* involved “some” missing issues/programs lists “from the early years” of the license term, which remained missing for the license term. Similarly, *National Cable*, *Starcast*, *Oakland-WMSG*, *Bonneville*, *Bay* and *Oakland-WWHC* are also all distinguishable from the instant case. In each of these cited cases, the petitioners were issued forfeitures of \$3,000 for public file violations which occurred over an “indiscernible amount of time during the license period.”¹⁰ An unspecified number of missing or incomplete lists over the course of the license term, and violations which occurred during an unspecified period of time are not the same as the instant case, which involves sixteen missing issues/programs lists over a period of four years from January 10, 1999, through January 10, 2003. Accordingly, we find that the forfeiture amount in the instant case is appropriate and consistent with recent precedent involving violations of Section 73.3526 of the Rules.¹¹

8. KUOA further claims that its failure to comply with the public file rule was not an egregious action that merited a \$9,000 forfeiture amount. We disagree. As noted above, the forfeiture amount in this case is consistent with precedent for similar violations. Moreover, we note that we have already reduced the forfeiture amount based on John Brown’s history of compliance with the Rules. We believe the forfeiture amount here is appropriate and that no further reduction is warranted.

IV. CONCLUSION

9. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by John Brown University, on March 16, 2009, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁹ *Mid-Virginia*, 18 FCC Rcd at 20183.

¹⁰ John Brown also refers to a Video Division case to support its argument that a \$7,200 forfeiture amount is excessive. See *S&E Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 20 FCC Rcd 20282 (MB 2005) (issuing a \$3,000 forfeiture for Section 73.3526(e)(11)(iii) violations). However, *S&E Network* is inapposite because the violation at issue there was the licensee’s failure to “publicize the existence and location of the Children’s Television Programming Reports” as required by Section 73.3526(e)(11)(iii) of the Rules. *Id.*, 20 FCC Rcd at 20283.

¹¹ *Capstar TX Limited Partnership (Station WHJY(FM))*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 12715 (MB 2007) (\$10,000 forfeiture issued for 14 missing issues/programs lists); *South Atlanta Broadcasting, Inc.* Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8471 (MB 2006) (\$10,000 forfeiture assessed for nine missing issues/programs lists); *Emerson College*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 8488 (MB 2006)(\$10,000 forfeiture assessed for fifteen missing issues/programs lists).