

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

In the Matter of)	
)	
Rollins College)	File No.: EB-11-TP-0093
)	NAL/Acct. No.: 201232700007
Licensee of Broadcast Station WPRK)	FRN: 0004575213
Winter Park, Florida)	Facility ID No.: 57473

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 25, 2012

Released: July 25, 2012

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Rollins College, licensee of Station WPRK, in Winter Park, Florida, apparently willfully and repeatedly violated Section 73.3527 of the Commission's rules (Rules)¹ by failing to maintain and make available a complete public inspection file. We conclude that Rollins College is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000). We further direct Rollins College to submit a written statement signed under penalty of perjury, no later than 30 days from the release date of this NAL, stating that Station WPRK is maintaining a complete public inspection file.

II. BACKGROUND

2. On October 28, 2011, in response to a complaint, agents from the Commission's Tampa Office (Tampa Office), accompanied by the station's manager, conducted an inspection of Station WPRK's main studio during regular business hours. In response to a request to inspect the station's public inspection file, the station manager produced a public inspection file that was missing all issues/programs lists after 2007. The station manager was unable to explain why the issues/programs lists were missing for 2008-2011.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.² 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.³ The legislative history to Section 312(f)(1) of the Act clarifies that this

¹ 47 C.F.R. § 73.3527.

² 47 U.S.C. § 503(b).

³ 47 U.S.C. § 312(f)(1).

definition of willful applies to both Sections 312 and 503(b) of the Act,⁴ and the Commission has so interpreted the term in the Section 503(b) context.⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁷

A. Violation of Public Inspection File Requirements

4. Section 73.3527(a)(2) of the Rules requires non-commercial educational stations to maintain for public inspection, a file containing materials listed in that section.⁸ Section 73.3527(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.⁹ Section 73.3527(e)(8)(i) of the Rules requires licensees to place in the public inspection file, for each calendar quarter, a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period.¹⁰ On October 28, 2011, in response to a request during normal business hours to inspect the public inspection file, Station WPRK failed to make available any copies of the station’s issues /programs lists after the year 2007. There was no evidence that Station WPRK maintained any issues/programs lists after 2007, and the station had no explanation for the missing items. Based on the evidence before us, we find that Rollins College apparently willfully and repeatedly violated Section 73.3527 of the Rules by failing to maintain a complete public inspection file and apparently willfully violated Section 73.3527 of the Rules by failing to make available a complete public inspection file.

B. Proposed Forfeiture and Reporting Requirement

5. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain a complete public inspection file is \$10,000.¹¹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the

⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁶ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

⁸ 47 C.F.R. § 73.3527(a)(2).

⁹ 47 C.F.R. § 73.3527(c)(1).

¹⁰ 47 C.F.R. § 73.3527(e)(8)(i).

¹¹ *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) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Rollins College is apparently liable for a total forfeiture of \$10,000.

6. We also direct Rollins College to submit a written statement signed under penalty of perjury, pursuant to Section 1.16 of the Rules,¹³ by an officer or director of Rollins College, stating that its maintaining issues/programs lists in its public inspection file. This statement must be provided to the Tampa Office at the address listed in paragraph 12, below, within thirty (30) calendar days of the release date of this NAL.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Rollins College is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 73.3527 of the Commission's rules.¹⁴

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Rollins College **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Rollins College **SHALL SUBMIT** a statement as described in paragraph 6 to the Tampa Office within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd, Suite 425, Tampa, FL 33607. Rollins College shall also e-mail the written statement to SCR-Response@fcc.gov.

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Rollins College will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 C.F.R. § 1.16.

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.3527.

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.¹⁷ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W Boy Scout Blvd, Suite 425, Tampa, FL 33607, and include the NAL/Acct. number referenced in the caption. Rollins College also shall e-mail the written response to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Rollins College at 1000 Holt Avenue, Box 2745, Winter Park, FL 32789-4499.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow
District Director,
Tampa Office
South Central Region
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.

¹⁷ 47 C.F.R. §§ 1.16, 1.80(f)(3).