

STATE AND RETURN

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January 3, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

ACCEPTED/FILED

JAN - 3 2014

Federal Communications Commission
Office of the Secretary

Attention: Lewis Pulley, Assistant Chief, Policy Division, Media Bureau

Re: Maryland Public Broadcasting Commission
WMPB(TV), Baltimore, MD, Fac. I.D. No. 65944
WCPB(TV), Salisbury, MD, Fac. I.D. No. 40618
WFPT(TV), Frederick, MD, Fac. I.D. No. 40626
WGPT(TV), Oakland, MD, Fac. I.D. No. 40619
WMPT(TV), Annapolis, MD, Fac. I.D. No. 65942
WWPB(TV), Hagerstown, MD, Fac. I.D. No. 65943
NAL/Acct. No. MB-201341410021

Dear Ms. Dortch:

On behalf of the Maryland Public Broadcasting Commission (FRN: 0003857380), licensee of the six noncommercial educational television stations listed above, we hereby transmit its letter, pursuant to Section 1.80 of the Commission's rules, seeking a reduction in the amount of the forfeiture proposed in the Notice of Apparent Liability for Forfeiture issued on December 5, 2013.

Please address any questions to the undersigned.

Respectfully submitted,

SCHWARTZ, WOODS & MILLER

By: 
Steven C. Schaffer

SCS/nmc

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By: 
Steven C. Schaffer

SCS/nmc

MARYLAND PUBLIC TELEVISION

11767 OWINGS MILLS BLVD
OWINGS MILLS MD 21117-1499

T 410.581.4141 F 410.581.6579
WWW.MPT.ORG



LARRY D. UNGER
PRESIDENT & CEO

January 2, 2014

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals Building, Room TW-B204
445-12th Street, S.W.
Washington, D.C. 20554

Attention: William T. Lake
Chief, Media Bureau

Re: Maryland Public Broadcasting Commission
WMPB(TV), Baltimore, MD, Fac. I.D. No. 65944
WCPB(TV), Salisbury, MD, Fac. I.D. No. 40618
WFPT(TV), Frederick, MD, Fac. I.D. No. 40626
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WWPB(TV), Hagerstown, MD, Fac. I.D. No. 65943

NAL/Acct. No. MB-201341410021

Dear Ms. Dortch:

Maryland Public Broadcasting Commission, dba Maryland Public Television (MPT) (FRN: 0003857380), licensee of the six noncommercial educational television stations listed above, pursuant to Section 1.80 of the Commission's Rules, hereby seeks rescission of the forfeiture proposed in the Notice of Apparent Liability for Forfeiture (NAL) issued on December 5, 2013 (DA 132331). The NAL proposes forfeitures totaling \$20,000 for failure to comply with components of the FCC's Equal Employment Opportunity (EEO) rules and "for providing incorrect factual information of a material nature to the Commission without a reasonable basis for believing that the information was correct" in violation of Section 1.17(a)(2) of the Commission's rules. Reporting conditions are also proposed "to ensure that the licensee... maintains an adequate EEO program in compliance with the rules." (NAL Para. 13).

The facts considered by the Media Bureau (Bureau) do not warrant the result reached and, in any event, this letter provides further information that demonstrates that any violation by MPT was, at most, isolated, inadvertent, and slight. Moreover, the Bureau has proposed an arbitrarily high and unprecedented penalty for what was at most an administrative oversight in the context of an otherwise fully compliant and effective EEO program. The Bureau has noted a single inconsistency in the materials

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
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submitted by MPT in response to the 2011 EEO Audit and has greatly inflated the gravity of that single inconsistency into violations supposedly warranting a \$20,000 forfeiture and three years of reporting conditions. This result is inequitable and inconsistent with precedent.

Rescission of the NAL and cancellation of the proposed forfeiture and reporting conditions are clearly compelled by a full review of the facts and the law. At most, the only penalty warranted by the facts would be admonishment of MPT to exercise greater care.

Background

MPT is a Maryland state agency and the licensee of six noncommercial educational television stations serving the State of Maryland. It does so from its headquarters and studios located in Owings Mills, Maryland, near flagship Station WMPB, Baltimore, Maryland. The other five stations operate pursuant to "waivers" of the FCC main studio rule. As such, MPT consists of a single employment unit as defined by the FCC's EEO rules. As an FCC licensee and state agency, it is subject to the FCC's EEO rules as well as the EEO laws and policies of the State of Maryland.

The NAL stemmed from an audit of Station WMPB commenced by the Bureau's letter of March 2, 2011 (Audit Letter). MPT timely responded to that letter and to two subsequent informal inquiries by FCC staff. MPT's audit response contained a single inconsistency. In its Public File Report of June 1, 2008 through May 31, 2009, MPT stated that "one organization (CSB School of Broadcasting, Columbia, MD) requested notice of job openings. CSB has been added to our list and is notified of all vacancies." In the audit response letter submitted May 5, 2013, MPT stated "For the 2 years covered by this response we have received no special requests from organizations seeking to be included in our recruitment efforts." This is the sole inconsistency on which the \$20,000 of proposed forfeitures and three years' reporting requirements are based.

The two EEO public file reports submitted with the audit response listed information for 11 job openings filled during the two-year period covered by the audit. Twenty recruitment sources were listed, including state-wide and nationwide sources and institutions of higher education. These twenty recruitment sources resulted in 67 interviews for the 11 job openings. "CSB School of Broadcasting, Columbia, MD" was not included among the referral sources for these 11 openings.

FCC staff informally inquired about the inconsistency. MPT's then-Vice President for Facilities and H.R., since retired, investigated the matter and found that no contact information for CSB had been left in the files by the former Employment

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Manager, who had prepared the 2008-2009 public file report and who left MPT in September, 2009.

Failure to Circulate Notices to Organizations Requesting Them

The Bureau found that MPT should have notified CSB School of Broadcasting of openings for all 11 jobs filled during the two-year audit period, and for the proposed \$1,000 of the \$20,000 forfeiture for this alleged violation of Section 73.2080(c)(1)(ii) of the rules. The premise for this finding is incorrect.

Following receipt of the NAL, MPT has further investigated and has determined that the "CSB School of Broadcasting" of Columbia, an affiliate of the "Connecticut School of Broadcasting", discontinued all instruction as of March 4, 2009, <http://tinyurl.com/qfpy8kl> (viewed December 29, 2013). Attached hereto is a copy of the letter sent to students of the school advising them of their rights, sent by the Maryland Higher Education Commission on March 12, 2009.¹

In hindsight, it appears likely that CSB School of Broadcasting of Columbia made its request for notifications after the last notification of a job opening sent by MPT to its recruitment sources during the 2008-2009 reporting year. Unfortunately, MPT does not have a record of when during that period the request was made. However all notices of openings were sent out early in the reporting year. The last positions for which recruitment was done involved notices reissued for two positions on October 17, 2008, just four and a half months into the reporting period. There were no further openings during that reporting period. The most likely explanation for the fact that the CSB School of Broadcasting was not notified of the openings is that it made its request for notifications after the last referral requests for the year were made. It then went out of business during that reporting period and was gone when referral notices were sent out during the next reporting period. There is thus no reason to assume that MPT failed to notify

¹ MPT notes in its review of the EEO Audit responses that there was confusion by all concerned as to the identity of the school at issue. In contemporaneous notes by counsel of the call from FCC staff and the email to MPT reporting on that call, inquiry was made concerning the "Columbia School of Broadcasting." MPT's then-Vice President for Facilities and H.R investigated the matter to fulfill the staff's request and found a "Columbia School of Broadcasting," not in Columbia but in Fairfax, Virginia. She erroneously assumed this was the "CSB School of Broadcasting" of Columbia, Maryland, and that it had relocated. In fact, the two schools were never related. The "Columbia School of Broadcasting" has never requested notification of MPT job openings. CSB School of Broadcasting, which coincidentally had at one time been in operation in Columbia, Maryland, had made the request, apparently shortly before it went out of business. That company is back in business, after going in and out of bankruptcy, although it never reopened its Columbia, Maryland office or any office in Maryland or a contiguous state. http://en.wikipedia.org/wiki/Connecticut_School_of_Broadcasting; (viewed December 30, 2013); <http://www.gocsb.com/locations> (viewed December 30, 2013)

the CSB School of Broadcasting of openings after it requested notifications and until it went out of business.

Failure to Self-assess EEO Performance

The Bureau concluded based on its assumption that MPT had not sent notices to a requesting organization that MPT also had failed to self-assess its EEO performance, and proposes \$2,000 of the \$20,000 fine for this violation of Section 73.2080(c)(3). This finding is not consistent with MPT's factual submissions to the Bureau.

As stated above, the CSB School of Broadcasting that had requested job openings went out of business as of March 4, 2009. Thus, for at least four of the 11 jobs filled during the two-year period, it would have been impossible for MPT to notify the CSB School of Broadcasting.

In any event, the Bureau ignored MPT's comprehensive program including detailed information regarding self-assessment, as set forth in MPT's response to the Audit Letter. Specifically, in response to the request for a description of "efforts to analyze its EEO recruitment program to ensure that it is effective and to address any problems found as a result of such analysis," MPT stated:

MPT monitors and evaluates its EEO performance on a monthly basis. Data is presented to the Executive Vice President and to the Maryland Public Broadcasting Commission. In addition, the Executive Vice President and COO reviews EEO data collected during recruitment as a part of the New Hire approval process. Because our analysis occurs on a regular basis potential problems can be addressed in a timely manner and resolved effectively.

MPT is a state agency and is required to file an annual EEO report with the state of Maryland. This is an in-depth report that includes applicant flow, training, promotions, a workforce analysis and summary of any pending complaints.

MPT Audit Response, item 3(g).

The \$2,000 proposed fine based on the failure to mention CSB in the narrative audit response overlooks the totality of the evidence submitted in response to the audit and should be rescinded. MPT staff made an understandable mistake in characterizing the status of a request for notifications by an organization that apparently requested notifications and then went out of business during the year covered by a single EEO

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report. In any event, the omission of CSB is irrelevant to whether or not MPT substantively analyzed the effectiveness of its EEO program and, perhaps more importantly, that program in fact generated adequate pools of qualified applicants.

Section 1.17(a)(2) Violation

The Bureau proposes \$17,000 of the \$20,000 forfeiture based on a purported violation of Section 1.17(a)(2) "by providing material factual information that was incorrect without a reasonable basis for believing that the information was correct and not misleading" (NAL, para. 8). The size of the proposed forfeiture is shocking and unwarranted by the facts. The imposition of a penalty under Section 1.17(a)(2) in the context of EEO enforcement is unprecedented. MPT fully, promptly and completely responded to the Audit Letter and to subsequent inquiries by FCC staff. There was no incomplete record. There is a conflict between a single statement in an EEO public file report prepared in 2009 and a summary statement of MPT's EEO program prepared in 2011. The former was submitted as part of the response to the Audit Letter without alteration. Nothing was concealed. The Bureau acknowledges that it has no evidence to show an intentional violation of the rule (NAL, para. 8). Yet it proposes an enormous penalty against a public television licensee nowhere justified by the facts or relevant precedent.

When Section 1.17(a)(2) was amended by the FCC in 2003 to revise the standards applicable to regulatees with respect to their obligation to make truthful statements, the Commission could hardly have intended to apply it to the kind of isolated occurrence present in this case. The cases cited by the Bureau in the NAL show that the rule has been applied in cases involving widespread violations affecting large numbers of people directly that, if allowed unchecked, would substantively undermine FCC policies. For example, in Cardinal Broadband, LLC, 23 FCC Rcd 1233 (Enf. Bur. 2008), further decision at 27 FCC Rcd 7985 (Enf. Bu. 2012), a VOIP operator failed to provide 911 service to its subscribers and falsely stated information in response to an FCC inquiry, in direct contradiction to its marketing materials. The company was fined \$25,000 under Section 1.17(a)(2)), based on the vital public safety issue involved. Two cases involved widespread violations of rules requiring television sets to have digital television tuners, an important consumer protection and an underlying requirement of the conversion of television broadcasting from analog to digital. Invision Industries, Inc., 23 FCC Rcd 13095 (2008) involved a retailer that imported and sold 4,115 television sets having only analog tuners. It filed an initial response to an investigation stating that it had shipped 12 units. Its fine for the Section 1.17(a)(2) violation was \$4,000. Syntex-Brillain Corporation, 23 FCC Rcd 6323 (2008) involved a retailer that imported and sold 11,524 television sets having only analog tuners. It filed incorrect information in response to an NAL and its fine was increased by \$11,000 for the Section 1.17(a)(2) violation.

Only one case was cited by the Bureau involving a broadcast licensee, Citicasters Licenses, L.P., 22 FCC Rcd 19324 (2007). In that case, the licensee misrepresented on a radio renewal application that there had been no violations of the Communications Act or the Commission's rules during the license term. The licensee had in fact had received NALs for violation of the FCC's indecency rules. It was fined \$10,000 for this false certification. MPT submits that a false certification regarding a matter directly related to licensee qualifications in the context of a renewal showing is more serious than an inconsistency submitted in an EEO audit response by a licensee with a fully compliant EEO Program. The alleged violation here in no way warrants a comparable financial penalty, let alone reporting conditions. In fact, relevant precedent compels a contrary result. In Jones College, 24 FCC Rcd 10157 (2009), the Bureau found that a noncommercial licensee should be admonished pursuant to Section 1.17(a)(2), in light of its erroneous initial response to a Letter of Inquiry involving underwriting announcements on its station. The FCC accepted the corrected information submitted in response to an NAL, reduced the forfeiture for the substantive underwriting violations, and cautioned the Licensee to exercise greater care in its responses to the Commission in the future.

At most, MPT's isolated inconsistency warrants an admonishment. In an analogous case, the Bureau entirely excused a licensee for failure to report discrimination complaints on a Form 396 Broadcast Equal Employment Opportunity Program Report filed with its license renewal application, The Curators of the University of Missouri, 19 FCC Rcd 3030 (2004). While the Bureau there did not apply Section 1.17(a)(2), the licensee's conduct was functionally equivalent to the alleged omission in the instant case and, substantively speaking, involved what is clearly a more serious omission.

Reporting Conditions Are Unwarranted

Notwithstanding the lone circumstance of a reporting inconsistency, the licensee's EEO Program manifestly complies with the rules. Ordinarily, reporting conditions are imposed on licensees that have facially deficient EEO programs, including in particular the failure to recruit widely for vacancies as well as multiple record keeping infractions. See, e.g. Opus Broadcasting Systems, Inc., 25 FCC Rcd 17674 (2010); Capstar TX LCC, 26 FCC Rcd 17138 (2011). No such failings are present in the instant case. The imposition of detailed reporting conditions on a state agency that has consistently demonstrated widespread recruitment and exceeded requirements for EEO outreach with one isolated issue is not calculated to further the public interest.

MPT Has a History of Overall Compliance with the Rules

Ms. Marlene H. Dortch, Secretary
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MPT submits that nothing short of rescission of the NAL and, at most, imposition of an admonition would be appropriate here. However, in line with Section 1.80(b)(8), Section II, we note that any forfeiture should be subject to downward adjustment in consideration of MPT's history of overall compliance with the rules.

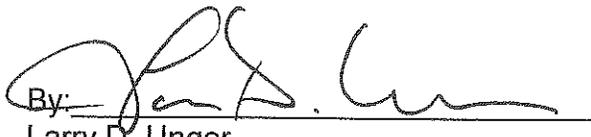
Conclusion

MPT takes its EEO obligations very seriously. For decades, the licensee has implemented an effective EEO program that includes among other things a diverse complement of recruitment sources and outreach efforts. This robust program, which is regularly reviewed by MPT, has broadly disseminated notice of employment opportunities and consistently generated qualified applicants.

For the above reasons, MPT respectfully requests recession of the NAL in all respects.

Very truly yours,

MARYLAND PUBLIC BROADCASTING
COMMISSION

By: 

Larry D. Unger
President and CEO, Maryland Public Television



Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Kevin M. O'Keefe
Chairman

James E. Lyons, Sr.
Secretary of Higher Education

March 12, 2009

XXX
XXX
XXX, XX XXXX

Dear X:

This letter is to provide information to students actively enrolled at CSB School of Broadcasting (the "School") as of March 4, 2009. As you know, CSB School of Broadcasting located at 9891 Broken Land Parkway, Suite 102, Columbia, Maryland 21045, discontinued all instruction effective March 5, 2009. Therefore, CSB School of Broadcasting's authority to operate became void as of March 5, 2009.

The Maryland Higher Education Commission became aware of the School's precipitous closure on March 5, 2009, and has been actively working to assist students caught in this unfortunate circumstance. Since the School closed, Commission staff has:

- visited the School,
- collected and compiled accessible hard-copy student records,
- emailed all students who are known to have been attending the School at the time it closed,
- issued a Notice of Deficiencies to the School,
- contacted other Maryland broadcasting schools about participating in a teach-out,
- initiated communications with Sallie Mae, and
- initiated the process to redeem the School's bond.

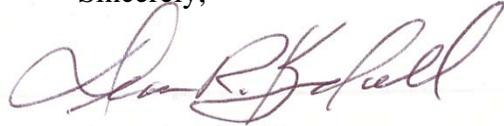
In accordance with Maryland regulations, certain protections are provided to eligible students who were actively enrolled at the time the School closed. Eligible students include those whose documents verify that they were:

- Enrolled and initially attending the School as of March 5, 2009; or
- Enrolled but never started any initial training at the School prior to March 5, 2009.

You have been identified as an eligible CSB School of Broadcasting student who was attending the School at the time it closed. As such, you now have two options. One is to participate in a teach-out opportunity with the Sheffield Institute for the Recording Arts in Phoenix, Maryland. The other is to receive a refund of all tuition and fees that you paid to CSB School of Broadcasting, or were paid on your behalf. Details of each option are attached. Please carefully review each and return a signed copy of the option of your choice to me no later than Friday, March 27, 2009.

Thank you for your patience and cooperation in this matter. We will also post updates as they occur on the closed school section of the Commission's web site at www.mhec.state.md.us (specifically <http://www.mhec.state.md.us/career/pcs/closures.asp>).

Sincerely,

A handwritten signature in dark ink, appearing to read "Dean R. Kendall", written in a cursive style.

Dean R. Kendall
Associate Director for Workforce Development/
Education Analyst
Planning and Academic Affairs

DRK

enc: Teach-out information and form
Refund information and form

cc: Mr. L. Leslie Bennett, Jr., Associate Director for Career Education, MHEC
Ms. Patricia Logan, Office of the Attorney General

TEACH-OUT:

Maryland Higher Education Commission staff members have arranged an opportunity for you to transfer equitable class credit for your CSB School of Broadcasting education and training to another Maryland broadcasting school.

In this instance, the teach-out will be performed at The Sheffield Institute of the Recording Arts at their Phoenix (Maryland) facility in Baltimore County. Sheffield will review your CSB education and training to determine equitable classes, grant you credit for them, then contract with you for the remaining coursework in *their* broadcasting program. You then enter into the school's program at an appropriate time per your contract.

The only cost to you would be the difference between what you already paid CSB School of Broadcasting, and what remained to be paid. Simply put, you would be charged only the remaining balance on your CSB School of Broadcasting account.

If you are entertaining Option A: Teach-out, then I strongly suggest you *immediately* do the following:

1. Locate The Sheffield Institute of the Recording Arts on a map to determine if you can accommodate the commute to Phoenix, Maryland.
2. Contact Richard (Vance) Van Horn (President) or Lee Weinstock (Director) at The Sheffield Institute of the Recording Arts to arrange an interview and school visit to see if the school, broadcasting program, and facility are right for you.

The Sheffield Institute of the Recording Arts
 13816 Sunnybrook Road
 Phoenix, MD 21131
 410-628-7260

Should you decide that Option A: Teach-out is the right choice for you, then please complete the tear-off below and mail it back to me. I will then notify Sheffield to expect you. If you have any questions, feel free to contact me at dkendall@mhec.state.md.us or 410-260-4582.

Dean Kendall
 Associate Director for Workforce Development
 Maryland Higher Education Commission
 839 Bestgate Road, Suite 400
 Annapolis, Maryland 21401

I WISH TO PARTICIPATE IN THE CSB SCHOOL OF BROADCASTING TEACH-OUT BEING OFFERED THROUGH THE SHEFFIELD INSTITUTE OF THE RECORDING ARTS.

NAME: _____

ADDRESS: _____

PHONE: _____ EMAIL: _____

SIGNATURE/DATE: _____

REFUND

Maryland's minimum refund policy for private career schools as published in the CSB School of Broadcasting catalog states:

If the school closes or discontinues a course or program, the school shall refund to each currently enrolled student monies paid by the student for tuition and fees and monies for which the student is liable for tuition and fees.

Simply stated, if you choose this option you will be refunded the money you or a third party paid for your tuition and fees. The purpose is so that you may start over should you so choose. The key words are "start over".

By choosing this option, you are basically returning your education and training for a full refund; therefore, you will no longer be able to formally claim the education and training received at CSB School of Broadcasting. Of course, nobody can take away the knowledge and skills you acquired, but no transcribed credit will be available. It will be as if it never happened. This is comparable to returning merchandise to a store: you receive your money back and forfeit the merchandise.

Maryland Higher Education Commission staff members are currently attempting to redeem the School's bond from which refunds will be paid. We will progress as quickly as possible, but at this time there is no estimate on the amount of time it will take to redeem the bond and process your refund. Please note that should you choose this option, you *will* be refunded.

The refund will be paid to YOU. It will be your responsibility to use this money to repay any personal or private student loans you may have incurred. Refund amounts will not include interest on loans.

Should you decide that Option B: Refund is the right choice for you, then please complete the following form and mail it to the indicated point of contact. If you have any questions, feel free to contact me at dkendall@mhec.state.md.us or 410-260-4582.

Dean Kendall
Associate Director for Workforce Development
Maryland Higher Education Commission
839 Bestgate Road, Suite 400
Annapolis, Maryland 21401

**MARYLAND HIGHER EDUCATION COMMISSION CLAIM FORM SURVEY FOR
CSB SCHOOL OF BROADCASTING (MARYLAND)**

Please return this form to: Mr. Dean Kendall
Maryland Higher Education Commission
839 Bestgate Road, Suite 400
Annapolis, MD 21401

NAME: _____

ADDRESS: _____

PHONE NO: (Day) _____ (Evening) _____

EMAIL: _____

SOCIAL SECURITY NO: _____

PROGRAM YOU WERE ATTENDING:

DATE YOU BEGAN CLASSES: _____

LAST DATE OF ATTENDANCE AT THE SCHOOL: _____

AMOUNT OF OUT-OF-POCKET TUITION PAYMENTS MADE DIRECTLY BY YOU TO CSB
SCHOOL OF BROADCASTING (TUITION PAYMENTS MADE BY CASH, CHECK, MONEY
ORDER, OR CREDIT CARD):

AMOUNT OF THIRD PARTY STUDENT LOAN TUITION PAYMENTS MADE TO CSB SCHOOL
OF BROADCASTING-MARYLAND:

(Supporting documentation of payment is critical. You must enclose any proof of payment, such as copies of canceled checks, charge card statements, money order receipts, or school receipts. Also enclose a copy of your enrollment agreement.)

I understand that this and any other information obtained may be provided to other agencies, lenders, insurers or others in the course of the processing of my claim.

(Signature)

(Date)