

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

In the Matter of	)	
	)	File No. EB-06-SE-050
Criswell College	)	NAL/Acct. No. 200632100013
Dallas, Texas	)	FRN # 0008702540
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 8, 2006**

**Released: May 11, 2006**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Criswell College (“Criswell”), former licensee of satellite earth station, E940272, Dallas, Texas, apparently liable for forfeiture in the amount of four thousand dollars (\$4,000) for operating its earth station without Commission authority and for failing to timely file a renewal application. Criswell acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)<sup>1</sup> and Sections 25.102(a) and 25.121(e) of the Commission’s Rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. Criswell was granted a license for its fixed-satellite service earth station, E940272, on June 24, 1994, with an expiration date of June 24, 2004. On December 7, 2005, Criswell filed with the Commission’s International Bureau an application for a new earth station license. On December 8, 2005 Criswell filed a request for special temporary authority (“STA”) to continue operating its earth station pending Commission action on the license application. The International Bureau granted Criswell’s STA on December 13, 2005,<sup>3</sup> and granted Criswell a new earth station license, call sign E050379, on January 17, 2006.<sup>4</sup>

3. Because it appeared that Criswell may have operated the earth station after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On February 27, 2006, the Enforcement Bureau’s Spectrum Enforcement

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 25.102(a) and 25.121(e).

<sup>3</sup> See File No. SES-STA-20051208-01726 (granted December 13, 2005).

<sup>4</sup> See File No. SES-LIC-2005012070-01710 (granted January 17, 2006). The new license for earth station E050379 was granted by the International Bureau without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

Division issued a letter of inquiry (“LOI”)<sup>5</sup> to Criswell.

4. In its April 7, 2006 response to the LOI,<sup>6</sup> Criswell stated that it first became aware that its earth station license E940272 may have expired on December 5, 2005.<sup>7</sup> Citing an “inadvertent error” as the basis for its failure to timely renew its license,<sup>8</sup> Criswell explained that once it discovered the expiration of its license, it filed for a new earth station license on December 7, 2005 and an STA on December 8, 2005.<sup>9</sup> Further, Criswell admitted that it continued to operate its earth station beyond the license expiration date without Commission authorization.<sup>10</sup> Specifically, Criswell explained that it mistakenly believed its license for expired E940272 was in effect for a term of fifteen years not ten.<sup>11</sup>

### III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization. Additionally, Section 25.121(e) of the Rules requires that licensees file renewal applications for earth stations “no earlier than 90 days, and no later than 30 days, before the expiration of the license.”<sup>12</sup> Absent a timely filed renewal application, an earth station license automatically terminates.<sup>13</sup>

6. As a Commission licensee, Criswell was required to maintain its authorization in order to operate its earth station. Based upon the information before us, Criswell operated the earth station without Commission authority from the station’s license expiration date of June 24, 2004, until the STA grant date of December 13, 2005. By operating its earth station for approximately eighteen months without an instrument of authorization, Criswell apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Criswell also acted in apparent violation of Section 25.121(e) of the Rules by filing its license renewal application on December 7, 2005, more than eighteen months beyond the 30-day requirement prescribed by the Rules.

7. Section 503(b) of the Act,<sup>14</sup> and Section 1.80(a) of the Rules,<sup>15</sup> provide that any person

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<sup>5</sup> See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Dr. Ronald L. Harris, Executive Vice President/General Manager, Criswell College (February 27, 2006).

<sup>6</sup> See Letter from Douglas E. Price, Vice President for Operations, Criswell College to Jacqueline Ellington, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 7, 2006).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> 47 C.F.R. § 25.121(e).

<sup>13</sup> 47 C.F.R. § 25.161(b).

<sup>14</sup> 47 U.S.C. § 503(b).

<sup>15</sup> 47 C.F.R. § 1.80(a).

who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.<sup>16</sup> Based upon the record before us, it appears that Criswell’s violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs us to consider factors, such as “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>17</sup> Having considered the statutory factors, as explained below, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$6,500 to \$4,000 based upon Criswell’s voluntary disclosure of its violations and its history of compliance.

9. In its response to the LOI, Criswell argues that it only committed one violation: failure to timely file its renewal application. We disagree. In *Discussion Radio*, the licensee was sanctioned both for failing to timely file a license renewal application and for operating its station without authorization for the time between the expiration of the license and the untimely renewal filing.<sup>18</sup> Thus, Criswell’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.<sup>19</sup>

10. Further, we are not persuaded by Criswell’s reliance upon Section 558 of the Administrative Procedure Act<sup>20</sup> to support its assertion that one violation occurred. The portion of Section 558 to which Criswell cites provides that “[w]hen the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.” Section 558 is premised upon the presumption that a required application is actually timely filed. Without a timely filed application, one does not get the benefit afforded by Section 558. Clearly, Criswell did not file its renewal application on time. Thus, there is no presumption of authorization to continue to operate until the Commission determines otherwise. Moreover, nothing in Section 558 addresses Criswell’s assertion that failing to file a timely renewal application and operating after the license has expired results in the commission of only one violation and we do not believe Section 558 supports such a position.

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<sup>16</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *WCS Communications, Inc.*, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div. 1998) (finding that a licensee’s inadvertent failure to file timely renewal applications, constitutes a repeated violation that continues until the date the license is renewed).

<sup>17</sup> 47 U.S.C. § 503(b)(2)(D). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17110 (1997), recon. denied (1999).

<sup>18</sup> See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (assessing proposed forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application).

<sup>19</sup> See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004). We note that, although Criswell asserts that the full Commission has not tested this approach of assessing two separate forfeitures for these violations, *Discussion Radio* was a Commission decision.

<sup>20</sup> 5 U.S.C. § 558.

11. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority.<sup>21</sup> Consistent with precedent,<sup>22</sup> we propose a \$1,500 forfeiture for Criswell's failure to file the renewal application for its earth station within the time period specified in Section 25.121(e) of the Rules. Additionally, we propose a \$5,000 forfeiture for Criswell's continued operation of its earth station beyond June 24, 2004. In proposing a \$5,000 forfeiture for Criswell's unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.<sup>23</sup> Thus, we propose an aggregate forfeiture of \$6,500.

12. As a Commission licensee, Criswell is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorization for its earth station.<sup>24</sup> We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$4,000 is warranted because Criswell made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action and because of Criswell's history of overall compliance.<sup>25</sup>

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act<sup>26</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>27</sup> Criswell **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand (\$4,000) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

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<sup>21</sup> 47 C.F.R. 1.80(b).

<sup>22</sup> See *Discussion Radio, Inc.*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Self Communications, Inc.*, 15 FCC Rcd 18661, 18664-65 (WTB, Public Safety and Private Wireless Div., 2000) (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a 218-219 MHz service); *Vincent Communications, Inc.*, 15 FCC Rcd 8432 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$4,500 forfeiture for failure to timely renew applications for three paging stations), *forfeiture ordered*, 15 FCC Rcd 18263 (Enf. Bur. 2000); *Snider Communications Corp.*, 14 FCC Rcd 20047, 20048 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$21,000 forfeiture for failure to file timely renewal applications for 14 paging stations).

<sup>23</sup> See *Discussion Radio, Inc.*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license instead of a \$10,000 forfeiture).

<sup>24</sup> See *Discussion Radio*, 19 FCC Rcd at 7437; *William S. Mills*, 15 FCC Rcd 20071, 20072 (Enf. Bur. 2000); see also *Peacock's Radio and Wild's Computer Service, Inc.*, 16 FCC Rcd 15016, 15017 (2001).

<sup>25</sup> See, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *Emery Telephone*, 13 FCC Rcd 23854, 23858 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999); *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-98 ¶¶ 5-6 (Enf. Bur. 2004); *American Family Association*, 17 FCC Rcd 18135, 18137 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 2413 (Enf. Bur. 2003); *but see American Paging, Inc.*, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that the mitigating effect of voluntary disclosure was abrogated by the licensee's delay).

<sup>26</sup> 47 U.S.C. § 503(b).

<sup>27</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>28</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Criswell **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the 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, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>29</sup>

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

17. 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; 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.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Douglas E. Price, Vice President for Operations, Criswell College, Box 619000, Dallas, Texas 57261 and to its counsel, Midlen Law Center, 7618 Lynn, Chevy Chase, MD 20815.

## FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>28</sup> 47 C.F.R. § 1.80.

<sup>29</sup> See 47 C.F.R. § 1.1914.