

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

In the Matter of	)	
	)	Facility ID No. 30442
<b>John Reynolds</b>	)	NAL/Acct. No. MB20061410062,
	)	MB2006414140106
Licensee of FM Translator Station W267AD	)	FRN: 0009598376
Bryson City, North Carolina	)	File No. BRFT-20030917AAR

**FORFEITURE ORDER**

**Adopted: June 18, 2009**

**Released: June 19, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250), to John Reynolds (“Reynolds”), licensee of FM translator station W267AD, Bryson City, North Carolina (“Station”), for his willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to timely file a license renewal application for the Station.

**II. BACKGROUND**

2. On July 27, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to Reynolds for this violation.<sup>2</sup> In response to the NAL, Reynolds submitted a letter (“Letter”) on August 9, 2006.

3. As noted in the NAL, Reynolds’s renewal application for the Station’s current license term was due on August 1, 2003, four months prior to the December 1, 2003, expiration date.<sup>3</sup> Reynolds did not file the application until September 17, 2003, and provided no explanation for the untimely filing of the renewal application. On July 27, 2006, the staff advised Reynolds of his apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that he failed to timely file a renewal application for the Station.

4. In his Letter, Reynolds states that his failure to timely file the renewal application was unintentional and that it would be a financial hardship for him to pay the forfeiture. Therefore, he argues, the forfeiture should be cancelled.

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<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *John Reynolds*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8476 (MB 2006). The staff erroneously released a second Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture for this same violation on February 22, 2007. *John Reynolds*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3726 (MB 2007). We cancel the second NAL below.

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account 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>7</sup>

6. Reynolds does not dispute that he failed to file a timely renewal application for the Station, but states that this violation was unintentional. Specifically, he asserts that although he made a note to remind himself of the deadline, he misplaced the note.<sup>8</sup> As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>9</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>10</sup>

7. Reynolds also argues that it would be a financial hardship for him to pay the forfeiture amount. Specifically, he explains that he operates the Station as a "hobby business" from which he has "never made one dime." He also states that he was laid off in 2003 as the result of a work-related injury. As a result of the injury, he has been living off his savings.<sup>11</sup> The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee 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 reflect the licensee's current financial status.<sup>12</sup> Reynolds has not provided any such documentation and we therefore will not reduce the forfeiture based on financial hardship.

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *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), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Letter at 1.

<sup>9</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); . *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>10</sup> *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

<sup>11</sup> Letter at 1.

<sup>12</sup> *Radio Free Georgia Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 3336 (MB 2009).

8. We have considered Reynolds' Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Reynolds willfully<sup>13</sup> and repeatedly<sup>14</sup> violated Section 73.3539 of the Rules. However, in light of the Commission's recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250.<sup>15</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that the Notice of Apparent Liability issued on February 22, 2007 (NAL/Acct. No. MB2006414140106), IS HEREBY CANCELLED.

10. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>16</sup> that John Reynolds SHALL FORFEIT to the United States the sum of \$250 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules.

11. 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

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<sup>13</sup> 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4387-88 (1991).

<sup>14</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>15</sup> *See, e.g., Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to John Reynolds, 116 Mary Miles Drive, Danville, Virginia 24540, and his counsel, Lauren A. Colby, P.O. Box 113, Frederick, Maryland, 21705-0113.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau