

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

In the Matter of	)	
	)	Facility ID No. 123734
<b>College Wesleyan Church</b>	)	NAL/Acct. No. MB200641410130
Former Licensee of	)	FRN: 0011297918
Low Power FM Station WIWU-LP	)	File No. BRL-20040728ADI
Marion, Indiana	)	

**FORFEITURE ORDER**

**Adopted: July 9, 2009**

**Released: July 10, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250), to College Wesleyan Church (“Wesleyan”), former licensee<sup>1</sup> of Low Power FM Station WIWU-LP (formerly WCWC-LP), Marion, Indiana (“Station”), for its willful violation of Section 73.3539 of the Commission’s Rules (“Rules”)<sup>2</sup> by failing to timely file a license renewal application for the Station.

**II. BACKGROUND**

2. On December 6, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to Wesleyan for this violation.<sup>3</sup> Wesleyan filed a Request for Cancellation of Proposed Forfeiture (“Request”) on December 26, 2006.

3. As noted in the NAL, Wesleyan’s renewal application for the Station’s current license term was due on April 1, 2004, four months prior to the August 1, 2004, expiration date.<sup>4</sup> Wesleyan did not file the application until July 28, 2004, and provided no explanation for the untimely filing of the renewal application. On December 6, 2006, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for willfully violating Section 73.3539 of the Rules, based on the fact that Wesleyan

<sup>1</sup> College Wesleyan Church assigned the Station to Indiana Wesleyan University in 2007 (*see* File No. BALL-20060831ABE (granted June 18, 2007)). The assignment was consummated on June 25, 2007. Despite this assignment, College Wesleyan Church remains liable for forfeiture for those violations occurring when the Station was under its stewardship. *See, e.g., Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140 ¶ 1 n.2 (MMB 1999) (finding licensee liable for forfeiture for violations of the Commission’s rules that took place when station was under its stewardship).

<sup>2</sup> 47 C.F.R. § 73.3539.

<sup>3</sup> *College Wesleyan Church*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 14108 (MB 2006).

<sup>4</sup> *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

failed to timely file a renewal application for the Station.<sup>5</sup> In response, Wesleyan filed the subject Request.

4. In support of its Request, Wesleyan states that: (1) its failure to properly file the renewal application was inadvertent; and (2) it has a history of overall compliance with the Commission's Rules. Wesleyan asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission's *Forfeiture Policy Statement*.<sup>8</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>9</sup>

6. Wesleyan does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, it asserts that it was "in the midst of significant personnel change during the summer of 2004" and that many deadlines were missed during this period.<sup>10</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>11</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>12</sup>

7. We have considered Wesleyan's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Wesleyan willfully<sup>13</sup> violated

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<sup>5</sup> The Commission granted the above-referenced license renewal application on December 6, 2006.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</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>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> Request at 1.

<sup>11</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>12</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>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).

Section 73.3539 of the Rules. However, given Wesleyan's history of compliance with the Rules, as well as the Commission's recent precedent regarding Low Power FM stations, we reduce the forfeiture amount *sua sponte* to \$250.<sup>14</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS 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>15</sup> that College Wesleyan Church SHALL FORFEIT to the United States the sum of two hundred and fifty dollars (\$250) for willfully violating Section 73.3539 of the Commission's Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>16</sup> 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).<sup>17</sup>

10. 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 College Wesleyan Church, 4001 South Selby Street, Marion, Indiana 46953, and to its counsel, Kathryn R. Schmeltzer, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>14</sup> See, e.g., *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241 (MB 2008) (reducing \$1,500 forfeiture against LPFM licensee for its late-filed renewal to \$250).

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.