

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

In the Matter of	)	
	)	Facility ID No. 132039
<b>Calvary Chapel (Church) of Menomonie</b>	)	NAL/Acct. No. MB200741410159
	)	FRN: 0006282065
Licensee of Low Power FM Station WRJF-LP	)	File No. BRL-20041223ABN
Menomonie, Wisconsin	)	

**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 five hundred dollars (\$500) to Calvary Chapel (Church) of Menomonie (“Licensee”), licensee of Low Power FM Station WRJF-LP, Menomonie, Wisconsin (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by engaging in unauthorized operation of the Station.<sup>1</sup>

**II. BACKGROUND**

2. On February 9, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.<sup>2</sup> Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on February 26, 2007.

3. As noted in the NAL, Licensee’s renewal application for the current WRJF-LP license term should have been filed on August 1, 2004, four months prior to the December 1, 2004, expiration date, but was not.<sup>3</sup> In fact, Licensee did not file the renewal application until December 23, 2004, more than three weeks after the Station’s license expiration, and it did not seek special temporary authorization (“STA”) to continue Station operations pending consideration of the late-filed renewal application. On February 9, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station’s renewal application and for unauthorized operation of the Station.<sup>4</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that: (1) its failure to file properly the renewal application was inadvertent; and (2) it is financially unable to pay the proposed forfeiture. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Calvary Chapel (Church) of Menomonie*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2538 (MB 2007).

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

<sup>4</sup> The Commission granted the above-referenced license renewal application on February 9, 2007.

### III. DISCUSSION

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

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, it states that its failure to timely file the renewal application was the result of a filing error.<sup>9</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>10</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>11</sup>

7. Regarding Licensee's claim of financial hardship, 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. Here, Licensee has only made unsubstantiated claims that payment of the forfeiture would be "devastating," and has failed to provide us with any documentation regarding its finances.<sup>12</sup> We find this information alone is an insufficient basis on which

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> Request at 1. Licensee asserts that it mistakenly believed that it had successfully filed the renewal application through the Bureau's Consolidated Data Base System ("CDBS") on October 22, 2004, because CDBS showed that the application's status was "valid." *Id.*

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*"); 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>11</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>12</sup> Request at 2.

to assess Licensee's inability to pay.<sup>13</sup> Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

8. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>14</sup> violated Section 73.3539 of the Rules and willfully and repeatedly violated<sup>15</sup> Section 301 of the Act.<sup>16</sup> However, consistent with our recent precedent regarding Low Power FM Stations, we reduce the forfeiture amount *sua sponte* to \$500.<sup>17</sup>

#### IV. ORDERING CLAUSES

9. 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>18</sup> that Calvary Chapel (Church) of Menomonie SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

10. 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>19</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>20</sup>

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<sup>13</sup> See *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (rejecting licensee's financial hardship argument, finding that a one-page document summarizing its station budget and no information about licensee's finances was an insufficient basis on which to assess the licensee's inability to pay); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821 (MB 2008) (same).

<sup>14</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.

<sup>15</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>16</sup> 47 U.S.C. § 301.

<sup>17</sup> See *Soul's Harbor Assembly of God Church*, Forfeiture Order, 2009 WL 1794434 (MB 2007) (reducing forfeiture amount against LPFM station for late-filed renewal application and unauthorized operation from \$7,000 to \$500).

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>19</sup> 47 U.S.C. § 504(a).

<sup>20</sup> See 47 C.F.R. § 1.1914.

11. 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: Calvary Chapel (Church) of Menomonie, c/o Daniel W. Harris, Operations Manager, 621 Wilson Avenue, Menomonie, Wisconsin 54751, and to its counsel, Eric S. Kravetz, Esq., Law Office of Eric S. Kravetz, 3511 Porter Street, N.W., Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau