

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

In the Matter of	)	
	)	
<b>Cactus Communications, LLC</b>	)	Facility ID No. 36232
	)	NAL/Acct. No. MB200741410127
Licensee of Station KKAY(AM)	)	File No. BR-20040331AEL
White Castle, Louisiana	)	FRN: 0010555878

**FORFEITURE ORDER**

**Adopted: August 28, 2009**

**Released: August 31, 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 one thousand five hundred dollars (\$1,500) to Cactus Communications, LLC (“Licensee”), licensee of Station KKAY(AM), White Castle, Louisiana (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application.<sup>1</sup>

**II. BACKGROUND**

2. On February 7, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Licensee in the amount of one thousand five hundred dollars (\$1,500) for violations at Station KKAY(AM).<sup>2</sup> Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 6, 2007.

3. Licensee’s renewal application for the Station for the current license term should have been filed on February 1, 2004, four months prior to the June 1, 2004, expiration date,<sup>3</sup> but was not. In fact, Licensee did not file the renewal application until March 31, 2004. Licensee provided no explanation for its failure to timely file the license renewal application. On February 7, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for failure to timely file Station KKAY(AM)’s renewal application.<sup>4</sup> In response, Licensee filed the subject Request.

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

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *Cactus Communications, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2331 (MB 2007).

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

<sup>4</sup> The KKAY(AM) renewal application was granted on February 7, 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 this violation was unintentional. Specifically, Licensee states that it mistakenly believed that it had filed "on schedule."<sup>9</sup> However, as the Commission has held, 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 cancelling 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 the forfeiture amount is "a lot of money" and would constitute approximately one-third of its "monthly billing,"<sup>12</sup> and has failed to provide us with any documentation regarding its finances. We find this information alone is an insufficient basis on which to assess Licensee's inability to pay.<sup>13</sup>

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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.

<sup>10</sup> 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, 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, 2651 (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 1.

<sup>13</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

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.<sup>14</sup>

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>15</sup> violated Section 73.3539 of the Rules, and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### 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>16</sup> that Cactus Communications, LLC, SHALL FORFEIT the sum of one thousand five hundred dollars (\$1,500) to the United States for willfully violating Section 73.3539 of the Commission's Rules.

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>17</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>18</sup>

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<sup>14</sup> See *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (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, 2008 WL 4758776, at \*3 (MB 2008) (same).

<sup>15</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>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>17</sup> 47 U.S.C. § 504(a).

<sup>18</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, to Cactus Communications, c/o Harry Hoyler, 706 Railroad Ave., Donaldsonville, Louisiana 70346.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau