

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

In the Matter of	)	
	)	Facility ID No. 26688
<b>Heidelberg College</b>	)	NAL/Acct. No. MB200741410137
	)	FRN: 0005280995
Licensee of	)	File No. BR-20060912AAP
Station WHEI(FM)	)	
Tiffin, Ohio	)	
	)	

**FORFEITURE ORDER**

**Adopted: September 16, 2009**

**Released: September 17, 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 seven thousand dollars (\$7,000) to Heidelberg College (“Licensee”), licensee of Station WHEI(FM), Tiffin, Ohio (“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 after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On February 8, 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 March 1, 2007.

3. As noted in the NAL, Licensee’s renewal application for the current Station license term should have been filed on June 1, 2004, four months prior to the Station’s October 1, 2004, license expiration date, but was not.<sup>3</sup> Accordingly, on June 13, 2006, the staff wrote to Licensee, indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station’s call letters were deleted from the Commission’s data base. Licensee was advised that any operation of the Station would be unauthorized and must cease immediately.<sup>4</sup> Upon receipt of the staff letter, on June 22, 2006, Licensee filed a request for Special Temporary Authorization (“STA”), stating that although it downloaded the instructions for filing the WHEI(FM) license renewal application electronically, it did not “follow through with the filing.”<sup>5</sup> Licensee subsequently filed a license renewal

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

<sup>2</sup> *Heidelberg College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2395 (MB 2007).

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

<sup>4</sup> *Letter to Heidelberg College*, Ref. 1800B3-JDB (MB June 13, 2006).

<sup>5</sup> File No. BSTA-20060622AAD.

application for WHEI(FM) on September 12, 2006.<sup>6</sup> Staff granted the STA request on December 18, 2006.<sup>7</sup> On February 8, 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>8</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) payment of the proposed forfeiture will cause financial hardship because WHEI(FM) has limited funding and Licensee is in the process of upgrading the equipment necessary to operate the station and its commonly owned television station.<sup>9</sup>

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>10</sup> Section 1.80 of the Rules,<sup>11</sup> and the Commission's *Forfeiture Policy Statement*.<sup>12</sup> In determining the appropriate forfeiture amount, 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>13</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 it mistakenly assumed that the faculty advisor responsible for oversight of the Station had applied for the license renewal when he had not. 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>14</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>15</sup> Moreover, the Commission has long held that "licensees

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<sup>6</sup> File No. BRED-20060912AAP.

<sup>7</sup> *Letter to Jeannine Curns, Heidelberg College*, Ref. 1800B3 (MB Dec. 18, 2006).

<sup>8</sup> The Commission granted the above-referenced license renewal application on February 8, 2007.

<sup>9</sup> Licensee requests that the "forfeiture be structured to require the College to invest the amount of the forfeiture in the equipment that [it needs] for the station rather than paying in the form of a penalty." Request at 2.

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</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>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</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>15</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.

are responsible for the acts and omission of their employees and independent contractors,”<sup>16</sup> and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”<sup>17</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 provided us with an unsubstantiated claim that it is currently upgrading its Station and television studio equipment and that as such, funding is limited. However, because this information does not provide us with reliable, objective information reflecting Licensee’s financial status,<sup>18</sup> we find this information alone is an insufficient basis on which to assess its inability to pay.<sup>19</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>20</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>21</sup> violated Section 301 of the Act<sup>22</sup> and that no mitigating circumstances warrant cancellation or 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>23</sup> that Heidelberg College SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) 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.

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<sup>16</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (“*Eure*”); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361, 1972 WL 26325, at \*1 (1972).

<sup>17</sup> See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

<sup>18</sup> See *Jason Konarz*, Memorandum Opinion and Order, 21 FCC Rcd 10082, 10083 (EB 2006) (finding that bank statements provided by licensee failed to provide an objective basis to support a financial hardship claim).

<sup>19</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).

<sup>20</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>21</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>22</sup> 47 U.S.C. § 301.

<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

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>24</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>25</sup>

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, to: Dr. Stephen R. Storck, Vice President for Administration and Chief Financial Officer, Heidelberg College, 301 E. Market Street, Tiffin, Ohio 44883-2434.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>24</sup> 47 U.S.C. § 504(a).

<sup>25</sup> See 47 C.F.R. § 1.1914.