

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

In the Matter of)	NAL/Acct. No. MB200741410075
)	FRN: 0004950861
Kalispell Christian Radio Fellowship, Inc.)	File No. BRH-20050815AEF
)	
Licensee of)	Facility I.D. No. 49340
Station KALS(FM))	
Kalispell, Montana)	Facility I.D. No. 11015
)	
and)	
)	
FM Translator Station K257BR)	
Polson, Montana)	

FORFEITURE ORDER

Adopted: September 17, 2009

Released: September 18, 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, five hundred dollars (\$7,500) to Kalispell Christian Radio Fellowship, Inc. (“Licensee”), licensee of Station KALS(FM), Kalispell, Montana, and FM Translator Station K257BR, Polson, Montana (“Stations”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Stations and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Stations.¹

II. BACKGROUND

2. On February 6, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of fourteen thousand dollars (\$14,000) to Licensee for these violations.² Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 9, 2007.

3. As noted in the NAL, Licensee’s renewal application for the Stations’ current license term should have been filed by December 1, 2004, four months prior to the Stations’ April 1, 2005, expiration date, but was not.³ In fact, Licensee did not file the renewal application until August 15, 2005,

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Kalispell Christian Radio Fellowship, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2239 (MB 2007).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

more than four months after the Stations' license expiration, and it did not seek special temporary authorization ("STA") to continue operating the Stations pending consideration of the late-filed renewal application. On February 6, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$14,000 for its failure to timely file the Stations' renewal application and for unauthorized operation of the Stations.⁴ 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; (2) it is financially unable to pay the proposed forfeiture, and (3) it has a history of compliance with the Rules. Licensee asserts 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,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

6. Licensee does not dispute that it failed to file a timely renewal application for the Stations, but states that these violations were unintentional. Specifically, it states that it mistakenly believed that PetroMedia Consulting ("Petromedia"), a consultant retained by Licensee to file all of its Commission applications, had electronically filed the renewal application in a timely fashion. According to Licensee, Petromedia notified Licensee on November 30, 2004, that it had prepared and filed its renewal application for the Stations, and provided Licensee with a copy of the application it had purportedly submitted. At that point, Licensee claims that "it had every reason to believe that its application had, in fact, been timely filed" with the Commission.⁹ Upon receiving the NAL, it contacted PetroMedia seeking an explanation, and was informed that Petromedia thought that it had correctly filed the Stations' renewal application on November 29, 2004, but during a routine check on August 15, 2005, of all of its pending renewal applications, realized that that Licensee's application was still in "Ready" status in CDDBS. According to Licensee, PetroMedia assumed that the previous application had not been filed because of a "glitch" in CDDBS and immediately filed the referenced application.

7. We reject Licensee's argument. The Commission has held that violations resulting from inadvertent error or failure to become familiar with the Commission's requirements are willful violations.¹⁰ In the context of a forfeiture action, "willful" does not require a finding that the rule

⁴ The Commission granted the above-referenced license renewal application on February 6, 2007.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Request at 1. Licensee further claims that it received in October of 2005 a Commission authorization granting a license modification application and showing an expiration date of April 1, 2013. *See* File No. BMLH-20040607AAC. Licensee asserts that this documentation gave it additional reason to believe that its renewal application had been timely filed.

¹⁰ *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.*,

(continued...)

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.¹¹ Moreover, the Commission has long held that “licensees are responsible for the acts and omissions of their employees and independent contractors,”¹² and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”¹³ Finally, we reject Licensee’s suggestion that technical difficulties within CDBS may have interfered with the Commission’s timely receipt of the renewal application allegedly filed by PetroMedia in November 2004. Indeed, Licensee’s description of events indicate that CDBS was working properly but that Petromedia failed to complete the filing process by hitting the “File Form” button.¹⁴

8. 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 it is a non-profit entity¹⁵ whose “funding is limited”¹⁶ 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.¹⁷

9. Finally, we reject Licensee’s argument that it deserves a reduction based on its history of compliance with the Rules. Licensee, by its own admission, failed to file properly its applications for

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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”).

¹¹ 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.

¹² *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).

¹³ See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹⁴ See *Dewey D. Lankford*, Forfeiture Order, 24 FCC Rcd 4558, 4560 (MB 2009) (rejecting licensee’s claim that its failure to timely file its application was due to a “glitch” in CDBS).

¹⁵ Although Licensee claims to be a non-profit entity, it has not claimed an exemption from application filing fees on that basis since it acquired the Station in 2001. Moreover, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station. See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743, 8745 (MB 2008) (rejecting argument that forfeiture should be cancelled or reduced because of noncommercial educational status); see also *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) (“Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station”).

¹⁶ Request at 3.

¹⁷ 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).

Stations KALS(FM) and FM Translator Station K257BR. Based on these combined offenses, we cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.¹⁸

10. 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 willfully¹⁹ violated Section 73.3539 of the Rules and willfully and repeatedly²⁰ violated Section 301 of the Act,²¹ and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount assessed against Station KALS(FM). However, given the Commission's recent decisions assessing forfeitures in the amount of \$500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act,²² we reduce the forfeiture amount against Translator Station K257BR *sua sponte* to five hundred dollars (\$500).²³

IV. ORDERING CLAUSES

11. 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,²⁴ that Licensee SHALL FORFEIT to the United States the sum of seven thousand, five hundred dollars (\$7,500) 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.

12. 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

¹⁸ *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688, 5690 (MB 2009) (denial of "history of compliance" reduction when licensee filed several untimely license renewal applications). See also *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination); *Petracom of Texarkana, L.L.C.*, Forfeiture Order, 19 FCC Rcd 8096 (EB 2004) (citing *CCN, Inc., et al.*, Order, 13 FCC Rcd 13599, 13599-600 ¶ 1(1998)); *Hill Country Real Estate Development Corp.*, Forfeiture Order, 18 FCC Rcd 21079, 21080 ¶ 5 (EB 2003); *Rio Grande Transmission, Inc.*, Forfeiture Order, 16 FCC Rcd 17040, 17042-43 ¶ 10 (EB 2001); *Mega Communications of St. Petersburg, Licensee, L.L.C.*, Forfeiture Order, 16 FCC Rcd 15948, 15949 ¶ 6 (EB 2001)).

¹⁹ 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.

²⁰ 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).

²¹ 47 U.S.C. § 301.

²² See *KSOP, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20950, 20952 (MB 2007) (issuing NAL in the amount of \$500 for translator station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

²³ See, e.g., *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4143 (MB 2009) (reducing *sua sponte* forfeiture amount from \$7,000 to \$500 for translator station's late renewal filing and unauthorized operation); *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing).

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

to Section 504(a) of the Act.²⁵ 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).²⁶

13. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, to Roger Lonnquist, Vice President of Development, Kalispell Christian Radio Fellowship, Inc., Post Office Box 2426, Havre, Montana 59501-2426.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁵ 47 U.S.C. § 504(a).

²⁶ See 47 C.F.R. § 1.1914.