

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

In the Matter of)	
)	Facility ID No. 86507
TEA-VISZ, INC.)	NAL/Acct. No. MB-200741410154
)	FRN: 0009578824
Licensee of FM Translator Station W272AY)	File No. BRFT-20041022ADT
Park Falls, Wisconsin)	

FORFEITURE ORDER

Adopted: September 30, 2009

Released: October 1, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to TEA-VISZ, Inc. (“TEA-VISZ”), licensee of FM translator station W272AY, Park Falls, Wisconsin (“Station”), for its willful violation of Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license renewal application for the Station.

II. BACKGROUND

2. On February 9, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to TEA-VISZ for this violation.² In response to the NAL, TEA-VISZ submitted a letter (“Letter”) on March 8, 2007.

3. As noted in the NAL, TEA-VISZ’s renewal application for the Station’s current license term was due on August 1, 2004, four months prior to the December 1, 2004, expiration date.³ TEA-VISZ did not file the application until October 22, 2004, and provided no explanation for the untimely filing of the renewal application. On February 9, 2007, the staff advised TEA-VISZ of its apparent liability for a forfeiture of \$1,500 for willfully violating Section 73.3539 of the Rules, based on the fact that it failed to timely file a renewal application for the Station.

4. In its Letter, TEA-VISZ states that its failure to timely file the renewal application was unintentional and that it would be a financial hardship for it to pay the forfeiture. Therefore, it argues, the forfeiture should be cancelled.

¹ 47 C.F.R. § 73.3539.

² *TEA-VISZ, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2522 (MB 2007).

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

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the “Act”),⁴ Section 1.80 of the Rules,⁵ and the Commission’s *Forfeiture Policy Statement*.⁶ 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.⁷

6. TEA-VISZ does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. Mr. Scott Reinhard, the President of TEA-VISZ, states in the Letter that he is not involved in the radio industry and “was unfamiliar with the regulations and believed that [TEA-VISZ] would receive some type of notification for the renewal.”⁸ As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.⁹ 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.¹⁰

7. TEA-VISZ also argues that it would be a financial hardship for it to pay the forfeiture amount. Mr. Reinhard states that the Station receives no income and that he himself personally pays for all of the Station’s expenses.¹¹ 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.¹² Here, TEA-VISZ has only provided a printout showing the Station’s expenses and has not provided any further documentation.¹³ We find this information alone is an insufficient basis

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Letter at 1.

⁹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 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”).

¹⁰ 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).

¹¹ Letter at 1.

¹² *Radio Free Georgia Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 3336 (MB 2009).

¹³ Letter, Attachment “Register Report” at 3-5.

on which to assess TEA-VISZ's inability to pay.¹⁴ 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 TEA-VISZ's Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that TEA-VISZ willfully¹⁵ violated Section 73.3539 of the Rules. However, in light of the Commission's recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250.¹⁶

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,¹⁷ that TEA-VISZ, Inc. SHALL FORFEIT to the United States the sum of two hundred and fifty (\$250) 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.¹⁸ Payment of the 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).¹⁹

¹⁴ 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).

¹⁵ 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.

¹⁶ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

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

¹⁸ 47 U.S.C. § 504(a).

¹⁹ 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 Scott A. Reinhard, TEA-VISZ, Inc., Post Office Box 151, Parks Falls, Wisconsin 54552, and his counsel, Lauren A. Colby, Esq., Law Offices of Lauren A. Colby, 101 East Fourth Street, Frederick, Maryland 21701.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau