

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

In re Applications of	)	
	)	
CALVARY CHAPEL OF TWIN FALLS, INC.	)	NAL/Acct. No. MB-2007414140113
	)	FRN: 0005005699
Licensee of	)	
FM Translator Station K201FP	)	Facility I.D. No. 92559
Arapaho, Oklahoma	)	File No. BRFT-20050531ASS
	)	
and	)	
	)	
FM Translator Station K216FR	)	Facility I.D. No. 92560
Clinton, Oklahoma	)	File No. BRFT-20050531AST

FORFEITURE ORDER

Adopted: November 3, 2009

Released: November 4, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Calvary Chapel of Twin Falls, Inc. ("Calvary"), licensee of FM translator stations K201FP, Arapaho, Oklahoma, and K216FR, Clinton, Oklahoma (collectively, "Stations"), for its willful violations of Section 73.3539 of the Commission's Rules ("Rules")¹ by failing to timely file license renewal applications for the Stations.

II. BACKGROUND

2. On February 16, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of three thousand dollars (\$3,000) to Calvary for this violation.² In response to the NAL, Calvary submitted a letter ("Response") on February 23, 2007.

3. As noted in the NAL, Calvary's license renewal applications for the Stations were due February 1, 2005, four months prior to the Stations' June 1, 2005, expiration date.³ Calvary filed its renewal applications on May 31, 2005.⁴ On February 16, 2007, the staff advised Calvary of its apparent liability for a forfeiture of \$3,000 for willfully violating Section 73.3539 of the Rules, based on its failure to timely file renewal applications for the Stations.

4. In its Response, Calvary states that (1) its failure to timely file the renewal applications was unintentional, and (2) it has a history of compliance with the Rules. Calvary asserts that these reasons warrant cancellation or a substantial reduction of the proposed forfeiture.

¹ 47 C.F.R. § 73.3539.

² *Calvary Chapel of Twin Falls, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3308 (MB 2007).

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

⁴ Based on the explanation provided in its renewal applications, Calvary apparently believed that the recent grant of its license modifications obviated the need to file renewal applications for the Stations.

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”),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. Calvary does not dispute that it failed to file timely renewal applications for the Stations, but states that this violation was unintentional. In support of this assertion, Calvary submits the declaration of Lois Mills, FCC Applications Technician for Calvary. Ms. Mills states that she filed over 1,500 applications in the last five years (379 of which were FM translator renewal applications), and that these two applications apparently got overlooked in the context of her heavy workload.⁹ As the Commission has held, however, violations resulting from inadvertent error are willful violations.¹⁰ 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.¹¹

7. We also reject Calvary’s argument that it deserves a reduction based on its history of compliance with the Rules. Calvary, by its own admission, failed to file timely applications for both FM Translator Stations K201FP and K216FR. Based on these combined offenses, we cannot find that Calvary’s history of compliance warrants reduction of the forfeiture amount.¹²

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 Letter at 1-1, Declaration of Lois Mills at 1. We note that this explanation appears to be inconsistent with the explanation provided in the renewal applications. Because neither explanation would justify a reduction or cancellation of the forfeiture, we need not address this issue further.

¹⁰ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *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”).

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. 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).

¹² *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688, 5690 (MB 2009) (denied “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, 9535 (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).

8. We have considered Calvary's Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Calvary willfully¹³ 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 \$500.¹⁴

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,¹⁵ that Calvary Chapel of Twin Falls, Inc., SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) 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.¹⁶ 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).¹⁷

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 of Twin Falls, Inc., P.O. Box 391 Twin Falls, Idaho 83303, and its counsel, Cary S. Tepper, Esq., Booth, Freret, Imlay and Tepper, P.C., 7900 Wisconsin Avenue, Suite 304, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ 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.

¹⁴ See, e.g., *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); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922, 20923 (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, 11446 (MB 2007) (same).

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

¹⁶ 47 U.S.C. § 504(a).

¹⁷ See 47 C.F.R. § 1.1914.