

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

In re Application of)	
)	
Corning Community College)	NAL/Acct. No. MB-200941410021
)	Facility I.D. No. 13942
For Renewal of License for)	FRN: 0003410743
Station WCEB(FM))	File No. BRED-20090316ABN
Corning, New York)	

FORFEITURE ORDER

Adopted: November 30, 2009

Released: December 2, 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 five hundred dollars (\$500) to Corning Community College (“Corning”), licensee of Class D FM Station WCEB(FM), Corning, New York (“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.¹

II. BACKGROUND

2. On October 16, 2009, the Media Bureau (“Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Corning for these violations.² Corning filed a Request for Reduction or Cancellation (“Request”) on November 3, 2009.

3. As noted in the NAL, Corning’s renewal application for the current Station license term should have been filed on February 1, 2006, four months prior to the June 1, 2006, expiration date, but was not.³ Accordingly, on February 23, 2009, the staff wrote to Corning 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 Commissions database. Corning was advised that any further operation of the Station was unauthorized and must cease immediately.⁴ Upon receipt of the letter, on March 16, 2009, Corning took the station off the air and tendered both the captioned license renewal application and a request for temporary authorization (“STA”) to resume Station operations pending consideration of the untimely license renewal application.⁵ The staff granted the STA Request on September 29, 2009.⁶ In

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

² *Corning Community College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd ____, DA 09-2231 (MB Oct. 16, 2009).

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

⁴ See *Letter to Corning Community College*, Ref. 1800B3-KAW (MB Feb. 23, 2009).

⁵ See File No. BLSTA- 20090316ABQ (“STA Request”).

the STA Request, Corning explained that it simply inadvertently failed to file the WCEB(FM) license application in a timely manner. On October 16, 2009, the staff advised Corning 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.⁷ In response, Corning filed the subject Request.

4. In support of its Request, Corning states that: (1) WCEB(FM) is a student-run station with no full- or part-time employees; and (2) it is financially unable to pay the proposed forfeiture. Corning submits financial statements for calendar years 2005-2008, prepared by an independent auditor, a firm of certified public accountants. Corning asserts that 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,⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ 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.¹¹

6. Corning does not dispute that it failed to file a timely renewal application for the Station or that it engaged in unauthorized operation of the station, but states that these violations were unintentional. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹² 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.¹³

(...continued from previous page)

⁶ *Letter to Mr. Thomas Carr*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Sept.29, 2009).

⁷ The Commission granted the above-referenced license renewal application on October 16, 2009.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 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").

¹³ 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).

7. Regarding Corning'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, Corning has provided us with financial statements for calendar years 2005-2008 prepared by an independent accounting firm. We have reviewed Corning's documentation and conclude that a reduction in the forfeiture amount would ordinarily be warranted here.

8. Additionally, we note that WCEB(FM) is a Class D station operating with an effective radiated power of 10 watts. Given the Commission's recent precedent assessing forfeitures in the amount of \$500 against a licensee of a Class D FM station for violations of Section 73.3539 of the Rules and Section 301 of the Act,¹⁴ the NAL should have specified that forfeiture amount. We therefore will reduce the forfeiture amount *sua sponte* to \$500.

9. We have considered Corning's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Corning willfully¹⁵ violated Section 73.3539 of the Rules and willfully and repeatedly¹⁶ violated Section 301 of the Act.¹⁷ However, as described immediately above, we reduce the forfeiture amount *sua sponte* to \$500.

IV. ORDERING CLAUSES

10. 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,¹⁸ that Corning Community College SHALL FORFEIT to the United States the sum of five hundred dollars (\$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.

11. 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.¹⁹ 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

¹⁴ See *School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896, 2989 (MB 2008) (issuing NAL in the amount of \$500 for Class D station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

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 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).

¹⁷ 47 U.S.C. § 301.

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

¹⁹ 47 U.S.C. § 504(a).

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).²⁰

12. 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 Ms. Marie Coleman, Administrative Services, Corning Community College, 1 Academic Drive, Corning, New York, 14830-3297.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.