

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

In the Matter of	)	
	)	
<b>UA-ASU-TSU Educational Radio Corporation</b>	)	Facility ID No. 6125
	)	NAL/Acct. No. MB-2006414140095
Licensee of	)	File No. BRED-20040121ABC
Station WAPR(FM)	)	FRN: 0001752955
Selma, Alabama	)	

**FORFEITURE ORDER**

**Adopted: December 4, 2009**

**Released: December 7, 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 one thousand five hundred dollars (\$1,500) to UA-ASU-TSU Educational Radio Corporation (“Licensee”), licensee of Station WAPR(FM), Selma, Alabama (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) for its failure to file a timely license renewal application for the Station.<sup>1</sup>

**II. BACKGROUND**

2. On January 29, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Licensee in the amount of one thousand five hundred dollars (\$1,500), for this violation.<sup>2</sup> Licensee filed a Petition for Reconsideration of the Proposed Forfeiture (“Petition”) on February 28, 2007.

3. As noted in the NAL, Licensee’s renewal application for the Station’s pertinent license term should have been filed on December 1, 2003, four months prior to the Station’s April 1, 2004, expiration date.<sup>3</sup> Licensee filed the renewal application on January 21, 2004, without explaining the circumstances of the late filing. On January 29, 2007, the staff advised Licensee of its apparent liability for a forfeiture of one thousand five hundred dollars for failure to timely file the Station’s renewal application. In response, Licensee filed the subject Petition on February 28, 2007.

4. In support of its Petition, Licensee states that its failure to file properly the renewal applications was (1) inadvertent because it thought it had been properly filed, and (2) may have been the result of technical difficulties in the Commission’s electronic filing system, known as CDBS. Licensee asserts that these reasons warrant a cancellation of the assessed forfeiture.

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *UA-ASU-TSU Educational Radio Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 1115 (MB 2007).

<sup>3</sup> 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 Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</sup> 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.<sup>7</sup>

6. Licensee asserts that it should be excused from liability because its failure properly to file the renewal application was inadvertent. In support of this assertion, Licensee includes with its Petition a statement from its Director of Engineering, David M. Baughn, who is responsible for all of its FCC application filings.<sup>8</sup> In his statement, Mr. Baughn indicates that he believed that had electronically filed the Station's renewal application in a timely fashion. Mr. Baughn further explains that on January 21, 2004, he noticed that the Station WAPR(FM) license renewal filing was not reflected in CDBS, and he immediately tried again and succeeded in filing. 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>9</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>10</sup>

7. Licensee also asserts that technical difficulties within CDBS may have interfered with the Commission's timely receipt of the renewal application. Licensee argues that the Commission should determine whether the Station's renewal filing was timely made but somehow lost due to the CDBS system problems at the time, and if so, vacate the forfeiture. In support of this claim, Licensee submits: (1) a copy of a *Public Notice*<sup>11</sup> released by the Bureau on November 21, 2003, extending the renewal application deadline for Alabama and Georgia radio broadcast licensees by one week due to difficulties with CDBS; and (2) Mr. Baughn's statement detailing his difficulty with filing the Station's application. In his statement, Mr. Baughn explains that he had unusual difficulties with the CDBS system in

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</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>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> See Petition, Exhibit 1.

<sup>9</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992). See also *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>10</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. 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).

<sup>11</sup> See *Media Bureau Announces Extension of Certain Filing Deadlines*, Public Notice, 18 FCC Rcd 24370, 24370 (MB 2003) (noting that CDBS users had been experiencing electronic filing difficulties following "planned system upgrade and maintenance activities" and extending the filing deadline to "provide a reasonable opportunity for impacted licensees and CDBS users to timely file [their renewal applications]").

November 2003, and while he cannot determine with certainty the cause, he believes that the Station WAPR(FM) license renewal filing was the “victim of the CDBS problems at the time or of my frustration and confusion caused by the unresponsiveness of the system.”<sup>12</sup> Licensee notes that Mr. Baughn successfully filed other applications for Stations WVUA, Tuscaloosa, Alabama,<sup>13</sup> WUAL-FM, Tuscaloosa, Alabama,<sup>14</sup> and WQPR(FM), Muscle Shoals, Alabama,<sup>15</sup> within the time extension provided in the *Public Notice*, to show that he was exercising reasonable diligence and taking appropriate steps to accomplish the various renewal filings. This documentation not only fails to substantiate Licensee’s claim that the Commission was responsible for its failure to timely file its renewal application, but in fact, works against it. First, if there were technical difficulties with CDBS, the Bureau compensated for them by extending the renewal application filing deadline via the *Public Notice*. Licensee’s application did not meet this extended deadline.<sup>16</sup> Licensee’s engineer does not claim that he ever received an “error” report from the system when attempting to file the Station’s renewal application. He also does not indicate that he had any difficulty filing Licensee’s other renewal applications. Finally, the screen shot provided by Licensee in an exhibit to its Petition indicates that the Station’s renewal application was “created” in CDBS on November 25, 2003, but was not “filed” until January 21, 2004. This seems to indicate that CDBS was working properly but that Licensee’s engineer failed to complete the filing process by hitting the “File Form” button after he “created” the document.<sup>17</sup> Given these considerations, we can only conclude that it was Licensee that was responsible for the failure to file its renewal application before the filing deadline, rather than some unspecified “glitch” in CDBS.<sup>18</sup>

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>19</sup> violated Section 73.3539 of the Rules, and that no mitigating circumstances warrant cancellation or further 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>20</sup> that UA-ASU-TSU Educational Radio Corporation, SHALL FORFEIT the sum of one thousand five hundred dollars (\$1,500) to the United States for willfully violating Section 73.3539 of the Commission’s Rules.

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<sup>12</sup> Petition, Exhibit 1..

<sup>13</sup> File No. BRED-20031125AKE.

<sup>14</sup> File No. BRED-20031204AGR.

<sup>15</sup> File No. BRED-20031204AGO

<sup>16</sup> 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).

<sup>17</sup> See Petition, Exhibit 2.

<sup>18</sup> See, e.g., *Union-Carolina Broadcasting Co., Inc.*, Letter, 22 FCC Rcd 14017, 14018 (MB 2007) (rejecting licensee’s argument that its failure to timely file its application was due to technical difficulties in CDBS).

<sup>19</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>20</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>21</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>22</sup>

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: UA-ASU-TSU Educational Radio Corporation, Box 870370, Phifer Hall, University of Alabama, Tuscaloosa, Alabama 35487, and to its counsel: M. Scott Johnson, Esq., Fletcher, Heald and Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> See 47 C.F.R. § 1.1914.