

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

In the Matter of)	
)	Facility ID No. 16720
Des Moines Independent Community School District)	NAL/Acct. No. MB200641410047
)	FRN: 0012084091
)	File No. BRED-20050706AAR
Licensee of Station KDPS(FM))	
Des Moines, Iowa)	

FORFEITURE ORDER

Adopted: March 30, 2009

Released: March 31, 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 dollars (\$7,000), to Des Moines Independent Community School District (“Licensee”), licensee of noncommercial educational Station KDPS(FM), Des Moines, Iowa (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) for its failure to timely file a license renewal application and for unauthorized operation of the Station.¹

II. BACKGROUND

2. On June 8, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.² Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on July 6, 2006.

3. As noted in the NAL, Licensee’s renewal application for the current KDPS(FM) license term should have been filed on October 1, 2004, four months prior to the February 1, 2005, expiration date, but was not.³ Accordingly, on June 24, 2005, the staff wrote to Licensee, 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 Commission’s data base. Licensee was advised that any operation of the Station would be unauthorized and must cease immediately.⁴ Upon receipt of the letter, on July 6, 2005, the Licensee tendered the captioned license renewal application for the Station and a request for Special Temporary Authorization (“STA”) to operate the Station, pending consideration of the renewal application; Licensee also timely filed a Petition for Reconsideration of the June 24, 2005, staff action on July 8, 2005. In the STA request and the Petition for Reconsideration, the Licensee explained

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

² *Des Moines Independent School District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6342 (MB 2006).

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

⁴ *Letter to Des Moines Independent School District*, Ref. 1800B3-DW (MB June 24, 2005).

that this was the first year in which it was required to seek renewal via the Commission's electronic filing system for applications, and admitted that it had not filed the Station license renewal application properly or timely. Staff granted the STA request on July 14, 2005.⁵ On June 8, 2006, the staff advised Licensee 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.⁶ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that its failure to properly file the Application was inadvertent. It further states that it immediately took corrective action upon learning that the Station license had expired. Finally, Licensee asserts that it is a noncommercial educational station that operates on a limited budget. 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,⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ 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.¹⁰

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, Licensee asserts that because of staff error, it failed to electronically file the renewal form in a timely fashion. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹¹ 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 the action in question, irrespective of any intent to violate the Rules.¹² Moreover, the Commission has long held that "licensees are responsible for the acts and omission of their employees

⁵ *Letter to Mr. Bill Springer, General Manager, KDPS(FM)*, Reference 1800B3 (MB Jul. 14, 2005). Licensee timely sought an extension of the STA on December 22, 2005, which was dismissed on June 8, 2006, upon grant of the Station's renewal application.

⁶ The Commission granted the above-referenced license renewal application on June 8, 2006.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*"); 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 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹² 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).

and independent contractors,”¹³ and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”¹⁴

7. Licensee next asserts that a reduction of its forfeiture is warranted because it took corrective action following the discovery of the Station’s deficiencies. We reject this argument. While we recognize Licensee’s efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁵

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 provided us with no documentation regarding Licensee’s finances. Moreover, while Licensee argues that we should consider its noncommercial status, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.¹⁶ 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.

9. 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 willfully¹⁷ and repeatedly¹⁸ violated Section 73.3539 of the Rules and Section 301 of the Act¹⁹ and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

¹³ *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).

¹⁴ *See Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹⁵ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). *See also Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹⁶ *See Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743 (MB 2008) (rejecting licensee’s argument that its forfeiture should be cancelled or reduced because of its 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”).

¹⁷ 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.

¹⁸ 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).

¹⁹ 47 U.S.C. § 301.

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,²⁰ that Des Moines Independent Community School District, SHALL FORFEIT to the United States the sum of \$7,000 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and 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.²¹ 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).²²

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 Bill Springer, General Manager, Station KDPS(FM), Des Moines Independent School District, 1800 Grand Avenue, Des Moines, Iowa 50309-3382.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.