



Federal Communications Commission
Washington, D.C. 20554

April 21, 2009

DA 09-880

In Reply Refer to:

1800B3-KAD

NAL/Acct No.: MB200641410033

FRN: 0001711175

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

K.S.L.O. Broadcasting Co., Inc.
Penny Allegood Smith, President
P.O. Box 1150
Opelousas, LA 70571-1150

In re: KSLO(AM), Opelousas, LA
K.S.L.O. Broadcasting Co., Inc.
Facility ID: 35607
File No. BR-20050308ABU

Dear Ms. Smith:

The Chief, Audio Division, has before him the May 10, 2006, letter filed on behalf of KSLO Broadcasting Co., Inc. (“Licensee”), licensee of Station KSLO(AM), Opelousas, Louisiana (“Station”).¹ The Response requests the cancellation or substantial reduction of a March 31, 2006, Notice of Apparent Liability for a Forfeiture (“NAL”)² in the amount of seven thousand dollars (\$7,000) for violation of Section 73.3539 of the Commission's Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”).³ The violations involve Licensee's failure to timely file a license renewal application for the Station and its unauthorized operation of KSLO(AM) after its license for the Station had expired. By this action, we cancel the NAL and admonish Licensee for filing the renewal application in paper format without demonstrating good cause.

Background. As noted in the NAL, Licensee's renewal application for the current KSLO(AM) license term was due on February 1, 2004, four months prior to the June 1, 2004, license expiration date.⁴ According to Commission records, no such application was filed, and the Station's license expired on June 1, 2004. Upon discovering this problem in March of 2005, Licensee filed its captioned license renewal

¹ Response to Notice of Apparent Liability for Forfeiture, filed by K.S.L.O. Broadcasting Co., Inc. on May 5, 2006 (“Response”).

² See *Letter to Penny Allegood Smith and John L. McKnight from Peter Doyle, Chief, Audio Division*, reference 1800B3-MFW (Mar. 31, 2006).

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

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(c).

application and subsequently tendered a request for special temporary authorization (“STA”) to operate the Station pending consideration of the untimely renewal application. The staff granted the STA request on April 4, 2005.⁵ On March 31, 2006, the staff advised Licensee of its apparent liability for 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 Response.

In support of its Response, Licensee states that it made a good-faith effort to file its renewal application on a timely basis. Specifically, Licensee states that it filed the subject application in paper form on January 10, 2004, nearly two weeks prior to the due date, together with the filing fee and FCC Form 159. In support of this assertion, Licensee submits a copy of a cancelled check made payable to the Commission bearing a Mellon Bank date stamp of January 23, 2004, and a certified mail receipt stamped January 21, 2004, by Mellon Bank. Licensee states that its paper filing was returned on February 18, 2004, because at that point the Commission was only accepting electronically-filed applications. Wandall Allegood, then the Station’s General Manager, subsequently attempted to file the renewal application electronically but inadvertently failed to complete the filing process due to his unfamiliarity with the Commission’s electronic filing process and issues related to his deteriorating health. Licensee asserts it took immediate corrective action upon learning of the deficiencies. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

Discussion. 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

Licensee asserts that it should be excused from liability because its failure to properly file the renewal application was inadvertent. Specifically, Licensee indicates that because of Mr. Allegood’s lack of familiarity with the Commission’s electronic filing procedures, he mistakenly believed that he had electronically filed the renewal application in a timely fashion. However, the Commission has held that 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 (or in

⁵ *Letter to Mr. Wandell Allegood*, Ref. 1800B3 (MB Apr. 4, 2005).

⁶ The Commission granted the above-referenced license renewal application on March 31, 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). *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”).

this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹² Moreover, while we are sympathetic to any health issues Mr. Allegood may have been facing at the time of filing, the Commission has held that “an employee’s illness does not ... warrant[] special consideration” that would allow for deviation from the Rules.¹³ Finally, while we recognize Licensee’s efforts to file the renewal application upon learning of its deficiencies, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁴

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 willfully¹⁵ and repeatedly¹⁶ violated Section 73.3539 of the Rules and Section 301 of the Act.¹⁷ However, because Licensee timely filed a renewal application in paper format, we will cancel the NAL and instead admonish Licensee for filing its renewal application in paper format without demonstrating any showing of good cause for its failure to file electronically.¹⁸

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).

¹³ *Southern Communications Systems, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 25103, 25107 (2000), *recon. denied*, Second Memorandum Opinion and Order, 16 FCC Rcd 18357 (2001) (upholding denial of request for waiver that was based on claim that applicant was unable to wire transfer an auction installment due to the illness of its financial officer).

¹⁴ *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)).

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 See *Peter Gutmann, Esq.*, Letter, 23 FCC Rcd 14666 (MB 2008) (cancelling NAL and admonishing licensee for failure to file its renewal application in electronic form).

Conclusion/Actions. In view of the foregoing, K.S.L.O. Broadcasting Co., Inc.'s May 5, 2006, response to our March 31, 2006, NAL in the amount of \$7,000 IS GRANTED, and the Notice of Apparent Liability (MB-20064140033) for violation of Sections 73.3539 of the Rules and 301 of the Act is HEREBY CANCELLED. K.S.L.O. Broadcasting Co., Inc. is instead hereby ADMONISHED for filing the renewal application in paper format without demonstrating good cause.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Charles L. Spencer, Esq.