

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

In the Matter of	)	
	)	Facility ID No. 13908
<b>Cornell College</b>	)	NAL/Acct. No. MB200641410163
	)	FRN: 0007463037
Licensee of KRNL-FM	)	File No. BRED-20050309AAU
Mount Vernon, Iowa	)	

**FORFEITURE ORDER**

**Adopted: October 8, 2010**

**Released: October 12, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Cornell College (“Licensee”), licensee of KRNL-FM, Mount Vernon, Iowa (“Station”), for its willful violation of Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station,<sup>1</sup> and its willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>2</sup>

**II. BACKGROUND**

2. On February 13, 2007, 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.<sup>3</sup> As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on October 1, 2004, four months prior to the February 1, 2005 expiration date.<sup>4</sup> Licensee did not file the application until March 9, 2005, over one month after the Station’s license had expired, and provided no explanation for the untimely filing of the renewal application.<sup>5</sup> Licensee submitted a response (“Response”) to the NAL on March 15, 2007. Along with the Response, Licensee filed a separate Request for Confidential Treatment (“Confidentiality Request”) attaching supplementary financial information and requesting confidential treatment thereof.<sup>6</sup>

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<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> 42 U.S.C. § 301.

<sup>3</sup> *Cornell College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2790 (MB 2007). The Commission granted the license renewal application on February 13, 2007.

<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>5</sup> On September 5, 2006, Licensee filed a request for special temporary authority (“STA”) to continue operations pending consideration of the untimely renewal application. The staff granted the STA on October 3, 2006. *Letter to Dee Ann Rexroat, Cornell College*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Oct. 3, 2006).

<sup>6</sup> We grant this request for confidentiality.

3. In its Response, Licensee asserts that the proposed forfeiture should be cancelled because: (1) payment of the proposed forfeiture would cause it financial hardship due to its limited financial resources, and (2) it made a good faith effort to comply with the Rules in a timely manner.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission's *Forfeiture Policy Statement*.<sup>9</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>10</sup>

5. We turn first to Licensee's claim of financial hardship. The Commission will not consider reducing or cancelling a proposed 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 principles ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the licensee's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>11</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>12</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>13</sup>

6. Here, Licensee has provided a one-page document that contains bare figures labeled generally as "Recent Operating Results," and lists its budget deficits for fiscal years 2002 through 2006.<sup>14</sup> The document does not provide gross revenue figures, and provides no explanation of how the listed figures were calculated.<sup>15</sup> Licensee has also submitted records showing recent trends in enrollment and endowment spending,<sup>16</sup> but these are at best indirect clues as to Licensee's current financial condition, and in any event do not provide any meaningful indication of Licensee's available resources. Thus, these materials fail to meet the standard of "other reliable and objective documentation" sufficient to establish Licensee's financial status.<sup>17</sup> Finally, Licensee has provided a one-page summary of the Station's annual

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<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</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>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> *See, e.g., CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411, 1413 (MB 2010) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship); *Discussion Radio, Inc.*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (same).

<sup>12</sup> *See PJB Commc'ns of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992).

<sup>13</sup> *See id.* (forfeiture not deemed excessive where it represented 2.02 percent of violator's gross revenues).

<sup>14</sup> Confidentiality Request at 5.

<sup>15</sup> *Id.*

<sup>16</sup> Response at Exs. 3-4.

<sup>17</sup> *See, e.g., Friends of Christian Radio*, Forfeiture Order, 25 FCC Rcd 2580 (MB 2010) (holding that notarized copies of handwritten account book reflecting "[r]eceipts and [d]isbursements" was an insufficient basis upon which  
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budget,<sup>18</sup> but we have consistently held that this is an insufficient basis upon which to evaluate ability to pay.<sup>19</sup> Accordingly, in the absence of sufficient information to support a finding of Licensee's inability to pay the proposed forfeiture, we decline to cancel or reduce the forfeiture on the basis of financial hardship.

7. Licensee also contends that the proposed forfeiture should be reduced or canceled because of its good faith efforts to comply with the Rules in a timely manner.<sup>20</sup> Specifically, Licensee alleges that it believed it had correctly filed its renewal application on September 28, 2004, and learned of its late renewal only after it contacted FCC staff in March 2005. It alleges that it then discovered that "the renewal application had not, in fact, been received by the FCC."<sup>21</sup> Our records reveal that Licensee initiated its online renewal application on September 28, 2004, but did not actually file the application until March 9, 2005.

8. The Commission has held that violations resulting from inadvertent error or failure to become familiar with the Commission's requirements are willful violations.<sup>22</sup> Moreover, the Media Bureau has specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.<sup>23</sup> Accordingly, we find Licensee's argument is meritless.

9. We have considered Licensee'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 Licensee willfully<sup>24</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>25</sup> violated Section 301 of the Act and

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to evaluate licensee's ability to pay); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821, 15825 (MB 2008) (holding that one-page statement of operating budget and separate listing of general manager salaries was an insufficient basis upon which to evaluate licensee's ability to pay).

<sup>18</sup> Response at Ex. 2.

<sup>19</sup> See, e.g., *Manchester College*, Forfeiture Order, 25 FCC Rcd 3638 (MB 2010) (rejecting licensee's financial hardship argument because one-page summary of station's budget and no information about licensee's finances was an insufficient basis upon which to evaluate licensee's ability to pay); *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (same).

<sup>20</sup> Response at 1.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> See *Ritenour Consol. School Dist.*, Forfeiture Order, 25 FCC Rcd 3266, 3267 (MB 2010) (rejecting licensee's good faith argument where station manager had misinterpreted the meaning of "pending" in CDBS).

<sup>23</sup> See, e.g., *University of Southern Mississippi*, Forfeiture Order, 2010 WL 3632177 (MB 2010) (declining to reduce forfeiture amount based on mistaken belief that "validating" renewal application constituted completion); *Bible Broadcast Church School*, Forfeiture Order, 25 FCC Rcd 1978 (MB 2010) (declining to reduce forfeiture amount based on failure to press the "File Form" button).

<sup>24</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 (1991).

<sup>25</sup> 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).

that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### 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,<sup>26</sup> that Cornell College SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission's Rules and willfully and repeatedly violating Section 301 of the Act.

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.<sup>27</sup> 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).<sup>28</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Joshua.Parker@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>29</sup>

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Sara Smith, Cornell College, 810 Commons Circle, Mount Vernon, Iowa, 52314, and to counsel for Licensee, Brendan Holland, Esq., Davis Wright Tremaine LLP, 1500 K Street NW, Suite 450, Washington, DC 20005-1272.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>26</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>27</sup> 47 U.S.C. § 504(a).

<sup>28</sup> See 47 C.F.R. § 1.1914.

<sup>29</sup> *Id.*