

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

In the Matter of)	Facility ID No. 65631
)	NAL/Acct. No. MB200741410290
The Florida Institute of Technology)	FRN: 0001800200
)	File No. BRED-20031203ABX
Licensee of WFIT(FM))	
Melbourne, Florida)	
)	

FORFEITURE ORDER

Adopted: December 20, 2010

Released: December 21, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of one thousand, five hundred dollars (\$1,500) to The Florida Institute of Technology (“Licensee”), licensee of noncommercial educational radio station WFIT(FM), Melbourne, Florida (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station.¹

II. BACKGROUND

2. On March 21, 2007, the Media Bureau adopted a Notice of Apparent Liability for Forfeiture (“NAL”) proposing a forfeiture in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for failure to timely file the Station’s renewal application.² As noted in the NAL, the renewal application should have been filed by October 1, 2003, four months prior to the Station’s February 1, 2004, license expiration date,³ but was not. Licensee did not file the application until December 3, 2003. On April 30, 2007, Licensee filed a response to the NAL (“Response”).

3. In its Response, Licensee states that cancellation of the proposed forfeiture is warranted because: (1) its failure to timely file the renewal application was inadvertent, and (2) it is unable to pay the proposed forfeiture amount.⁴

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,⁵ Section 1.80(b)(4) of the Rules,⁶ and the Commission’s *Forfeiture Policy*

¹ 47 C.F.R. § 73.3539.

² *The Florida Institute of Technology*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5434, 5435 (MB 2007). The Station’s license renewal application was granted on March 23, 2007. The Commission reduced the \$3,000 base forfeiture amount to \$1,500 because Licensee filed the license renewal form prior to the license expiration date.

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

⁴ Response at 1-2.

*Statement.*⁷ 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.⁸

5. Licensee first claims that the forfeiture should be reduced or cancelled because the violation was unintentional. Specifically, it claims to have been “informed” in early 2003 that an informal objection had been filed against its renewal application.⁹ It allegedly had understood, incorrectly, that the Commission would not consider the Station’s license renewal application until the Commission had resolved the informal objection filed against it and that therefore it was not required to file a renewal application for the Station at that time. Licensee claims to have unsuccessfully attempted to verify this understanding with Commission staff on a number of occasions starting in September of 2003; it states that, once it was informed by the staff that, regardless of any pending complaint, it was still required to file a license renewal application for the Station by October 1, 2003, it broadcast the required announcements, gathered the paperwork, and submitted the application.¹⁰ To the extent that Licensee suggests that the renewal application was late due to difficulties reaching Commission staff, we note that long-standing Commission precedent states that responsibility for complying with terms of station license “rests solely and exclusively with the licensee.”¹¹ Not only does the Response fail to address how the timing of the license renewal application filing is related to the informal objection, but our records show that the aforementioned objection was filed on January 8, 2004, *after* Licensee filed its renewal application.¹² Notwithstanding this factual discrepancy, the Commission has held that violations resulting from inadvertent error or failure to become familiar with the Commission’s requirements are willful violations.¹³ Accordingly, we find this argument meritless.

6. Licensee also argues that the forfeiture should be reduced or cancelled because it “would deplete valuable resources that could be allocated to community education and information services.”¹⁴ This is essentially an argument to support a claim of financial hardship.¹⁵ The Commission will not

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⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Response at 1.

¹⁰ *Id.* at 1-2.

¹¹ See *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, n.11 (MB 2010) (“Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station’s authorization”), citing *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940 (CIB 1999); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (“[E]mployee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

¹² See *Letter to Mr. L. Edward Jefferies, Jr. from Dale Bickel, Senior Electronics Engineer, Audio Division, Media Bureau* (Mar. 14, 2007) (dismissing interference complaint filed against the Station).

¹³ 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.”).

¹⁴ Response at 2.

¹⁵ See *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (rejecting licensee’s argument that it should not be required to pay the proposed forfeiture because it would divert funds that would otherwise be used to create public interest programming), *modified*, 23 FCC Rcd 15959 (2008).

consider reducing or canceling a forfeiture in response to financial hardship 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.¹⁶ Licensee has not provided any such documentation; we therefore will not reduce the forfeiture based on financial hardship.

7. We have considered the 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 willfully¹⁷ violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.

IV. CONCLUSION

8. 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 The Florida Institute of Technology SHALL FORFEIT to the United States the sum of one thousand, five hundred dollars (\$1,500) for willfully violating Section 73.3539 of the Commission’s Rules.¹⁹

9. 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.²⁰ 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).²¹ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@FCC.gov and Maureen.McCarthy@FCC.gov. Requests for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²²

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount based on financial hardship).

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*, Memorandum Opinion and Order, 6 FCC Rcd at 4387-88.

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

¹⁹ 47 C.F.R. § 73.3539.

²⁰ 47 U.S.C. § 504(a).

²¹ See 47 C.F.R. § 1.1914.

²² *Id.*

10. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to The Florida Institute of Technology, c/o Terri Wright, 150 W. University Blvd., Melbourne Florida 32901.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau