

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

In the Matter of) Facility ID No. 49747
) NAL/Acct. No. MB-200641410162
Board of Regents, Northwest Missouri State) FRN: 0002487072
University) File No. BRED-20050214AAN
)
Licensee of KRNW(FM))
Chillicothe, Missouri)

FORFEITURE ORDER

Adopted: March 26, 2010

Released: March 29, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to the Board of Regents, Northwest Missouri State University ("Northwest"), licensee of noncommercial educational ("NCE") radio station KRNW(FM), Chillicothe, Missouri ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") by engaging in unauthorized operation of the Station after its authorization had expired.

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) for its failure to timely file the Station's renewal application and for unauthorized operation of the Station. As noted in the NAL, the Station's license term expired on October 1, 2004, four months prior to the Station's February 1, 2005, license expiration date. The application was not filed until February 14, 2005, two weeks after the Station's license had expired. Northwest also failed to seek special temporary authorization ("STA") to operate after the license had expired, and it provided no explanation for its failure to timely file the Station's renewal application. Northwest filed a response to the NAL on March 9, 2007 ("Response").

3. In its Response, Northwest seeks reduction or cancellation of the proposed forfeiture based on its (1) reliance on purportedly incorrect staff advice; (2) good faith efforts to timely file its renewal application; and (3) status as an NCE licensee.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section

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

2 Board of Regents, Northwest Missouri State University, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2786 (MB 2007). The Station's renewal application was granted on January 31, 2007. The Commission fined Northwest \$3,000 for failure to file a required form and \$4,000 for operating without authorization.

3 Response at 2.

503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In determining the appropriate forfeiture amount, 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.⁷

5. Northwest, owner of KXCV(FM) and the Station, which simulcasts KXCV(FM)'s programming, first argues that the forfeiture amount should be reduced or waived because Commission staff allegedly told its Station manager ("Manager") to file both stations' renewals on the same form. Accordingly, the Manager referenced the Station in KXCV(FM)'s timely renewal application.⁸ While the Commission allows for some stations to file on the same form,⁹ the Manager should have filed, as she did in the past,¹⁰ a separate renewal application for the Station pursuant to Section 73.3539 of the Rules.¹¹ Commission precedent has established that parties relying on informal discussions with Commission staff do so at their own risk.¹² The Commission may still enforce its rules despite the public's reliance on allegedly erroneous staff advice.¹³ Moreover, the instructions to the renewal application Form 303-S make clear that only associated translator stations may be included in a primary station's license renewal – *not* other full-service stations.¹⁴ Accordingly, we decline to cancel or reduce the forfeiture amount on this basis.

6. Northwest next asks that we take into account the good faith efforts of the Manager to timely file the Station application and to subsequently remedy the filing error upon its discovery.¹⁵

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ File No. BRED-20040922AGN (filed Sept. 23, 2004, granted Mar. 2, 2005). The Station was referenced in the portion of KXCV's application titled "Other Authorizations" and in the engineering report.

⁹ The Commission's license renewal form, Form 303-S, was revised in 1994 to enable co-owned translator and associated primary stations licensed to communities in the same state to file for license renewal on a single application form. *See In the Matter of Modifying Renewal Dates for Certain Stations Licensed under Part 74 of the Commission's Rules*, Report and Order, 9 FCC Rcd 6504 (1994).

¹⁰ *See* Response at 1.

¹¹ 47 C.F.R. § 73.3539(a).

¹² *Applications of Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991), *citing Texas Media*, 5 FCC Rcd 2581, 2852 (1990); *aff'd sub nom. Malkan FM Associates v. FCC*, No. 90-1281, slip op. at 12 (D.C. Cir. Jun. 14, 1991).

¹³ *Kojo Worldwide Corp., San Diego, California*, Memorandum Opinion and Order, FCC 09-114 (rel. Dec. 29, 2009) *citing Hinton Telephone Company*, 10 FCC Rcd 11625, 11637 (1995). *See also Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir 1991); *Schweiker v. Hansen*, 450 U.S. 785, 790 (1981) (petitioner's reliance on erroneous staff advice does not estop agency from requiring compliance with valid regulation).

¹⁴ *See* Instructions to Form 303-S, <http://www.fcc.gov/Forms/Form303-S/303s.pdf>.

¹⁵ Response at 1-2. Northwest avers that, when the Manager realized that other stations in the area had received their licenses, she spoke with another staff member, who reportedly said that KXCV(FM) could continue broadcasting "as long as the forms have been filed." Response at Exhibit 2. On February 11, 2005, a Commission staff member called the Manager regarding Northwest's failure to file the Station's license renewal application. Through this and a follow-up conversation with Commission staff, the Manager learned that she needed to file an application for renewal for the Station. *Id.* at 2.

Reductions of proposed forfeitures based on good faith efforts to comply generally involve situations where violators demonstrate that they initiated measures to correct or remedy violations prior to the Commission's involvement.¹⁶ Here, we find that Northwest made ongoing good faith efforts to comply with the Rules by attempting to timely file a renewal application for the Station, as demonstrated by the fact that it referenced the Station in KXCV(FM)'s renewal application, and by contacting staff when it realized that the Station's renewal may not have been properly filed.¹⁷ Accordingly, we reduce the proposed forfeiture to five thousand dollars (\$5,000).¹⁸

7. Finally, Northwest asks the Commission to take into account the noncommercial status of the Station. However, it is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.¹⁹ Accordingly, we will not cancel or further reduce the forfeiture amount on the basis of this argument.

8. 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 Northwest willfully²⁰ violated Section 73.3539 of the Rules and willfully and repeatedly²¹ violated Section 301 of the Act, but based on Northwest's good faith efforts to comply with Commission Rules, we reduce the forfeiture amount to five thousand dollars (\$5,000).

I. CONCLUSION.

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,²² that Board of Regents, Northwest Missouri State University, SHALL FORFEIT to the United States the sum of five thousand

¹⁶ *Nevada Yellow Cab Corp., dba Yellow Cab*, Forfeiture Order, DA 09-2574, ¶ 9 (EB 2009) (rel. Dec. 11, 2009) citing *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003) (finding that a "substantial" good faith reduction was warranted for licensee that hired outside contractor to ensure compliance with Commission regulations; when it became apparent that the company failed to do so, licensee terminated relationship with the contractor and hired another, all prior to Commission intervention).

¹⁷ Response at 2.

¹⁸ See, e.g., *Praise Communications, Inc.*, 23 FCC Rcd 9139, 9141 (MB 2008) (reducing forfeiture based on licensee's demonstrated good faith efforts to timely file its renewal application).

¹⁹ *Des Moines Independent Community School District*, Forfeiture Order, 24 FCC Rcd 3869, 3871 (MB 2009) citing *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); *Lebanon Educational Broadcasting Foundation*, Memorandum, Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) (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).

²⁰ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

²¹ 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).

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

dollars (\$5,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

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.²³ 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).²⁴ 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. 20554.²⁵

11. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Northwest Missouri State University, c/o Joseph W. Cornelison, General Counsel, 143 Administration Building, 800 University Drive, Maryville, Missouri 64468 and to Board of Regents, Northwest Missouri State University, c/o Sharon Cross Bonnett, Wells Hall, 800 University Drive, Maryville, Missouri 64468.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²³ 47 U.S.C. § 504(a).

²⁴ See 47 C.F.R. § 1.1914.

²⁵ *Id.*