

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

In the Matter of) Facility ID No. 56509
) NAL/Acct. No. MB-200641410161
Ritenour Consolidated School District) FRN: 0012657870
) File No. BRED-20050207ABW
Licensee of KRHS(FM))
Overland, Missouri)

FORFEITURE ORDER

Adopted: March 30, 2010

Released: March 31, 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 the Ritenour Consolidated School District ("Ritenour"), licensee of noncommercial educational ("NCE") radio station KRHS(FM), Overland, 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 January 31, 2007, the Media Bureau issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture ("NAL") in the amount of seven thousand dollars (\$7,000) for Ritenour's failure to timely file the Station's renewal application and for unauthorized operation of the Station. As noted in the NAL, Ritenour's application for renewal of the Station's license should have been filed by October 1, 2004, four months prior to the Station's license expiration date. Ritenour did not file the application until February 7, 2005, six days after the Station's license expired, and provided no explanation for the untimely filing of the renewal application. Approximately one week later on February 15, 2005, Ritenour filed a request for special temporary authorization ("STA") to continue operations pending consideration of the untimely KRHS(FM) renewal application. The staff granted the STA on April 7, 2005, and it expired on October 7, 2005. Ritenour failed to timely seek an extension of

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

2 Ritenour Consolidated School District, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2777 (MB 2007) (granting the Station's renewal application and fining Ritenour \$3,000 for failure to file the renewal application and \$4,000 for operating without authorization).

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

4 BLSTA-20050215ABZ.

5 Letter to Ingrid Clark-Jackson, Supervising Principal, Ritenour School District, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Aug. 25, 2006).

the STA, and it did not file for further authority to continue KRHS(FM)'s operations until August 14, 2006.⁶ The staff granted the second STA on August 25, 2006.⁷

3. Ritenour filed a response to the NAL on March 23, 2007 ("Response").⁸ In its Response, Ritenour alleges that its good-faith efforts to timely file the renewal application and its reliance on staff advice with regard to continuing Station operations after its renewal application filing warrant reduction or cancellation of the proposed forfeiture.⁹

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² 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.¹³

5. Ritenour first asks that we take into account its good faith efforts to timely file the Station application.¹⁴ The Response alleges that the General Manager thought that he had electronically filed the Station's license renewal application in a timely fashion; however, he incorrectly interpreted "pending" status in CDBS to mean "pending FCC approval."¹⁵ The Commission has held that violations resulting from inadvertent error or failure to become familiar with the Commission's requirements are willful violations.¹⁶ The General Manager's failure to familiarize himself with the license renewal system is not grounds for a reduction in the forfeiture amount.

6. Ritenour next argues that the forfeiture amount be reduced or waived because it sought and acted in accordance with advice of Commission staff. According to Ritenour, Commission staff failed to advise it to cease operating after its license had expired and led it to believe that because the

⁶ BLSTA-20060814AAT.

⁷ *Letter to Jane Bannister and Sam Gulotta, Ritenour School District*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Aug. 25, 2006). Ritenour did not seek to extend this STA after it expired.

⁸ The NAL specifically noted in paragraphs 10 and 12 that the response, if any, must be sent within 30 days of the date of the NAL to a Washington D.C. address. Ritenour instead faxed the Response 40 days after the date of the NAL. We admonish Ritenour for its late response and for failing to follow the NAL's instructions.

⁹ Response at paras. 2, 3, 7 and 8.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *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).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ Response at paras. 1 and 2.

¹⁵ *Id.*

¹⁶ *Care Broadcasting, Inc.*, Forfeiture Order, DA 10-260 (MB rel. Feb. 17, 2010) (holding that no reduction or cancellation of forfeiture was warranted for licensee's failure to complete the electronic filing process). *See also Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

license renewal was “under review,” Ritenour need not apply for an STA extension.¹⁷ Commission precedent has established that parties relying on informal discussions with Commission staff do so at their own risk,¹⁸ and reliance on such advice will not reduce the forfeiture amount.¹⁹ In addition, the first STA grant clearly stated that it expired 180 days from the date of the letter or upon action on the pending license renewal application, whichever is sooner.²⁰ Accordingly, we decline to reduce the forfeiture amount on this basis.

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 Ritenour willfully²¹ violated Section 73.3539 of the Rules and willfully and repeatedly²² violated Section 301 of the Act, and that no mitigating circumstances warrant cancellation or further 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,²³ that Ritenour Consolidated School District, 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 for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.²⁴

9. IT IS FURTHER ORDERED, that Ritenour IS ADMONISHED for its late response and for failing to follow the NAL’s instructions.

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.²⁵ 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

¹⁷ Response at paragraphs 4, 7 and 8. Between October 7, 2005, and August 25, 2006, the Station operated without authorization. See File No. 20050215ABZ (granted Apr. 7, 2005; expired Oct. 7, 2005) and File No. 20060814AAT (granted Aug. 25, 2006; expired Feb. 25, 2007).

¹⁸ *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).

¹⁹ *Kojo Worldwide Corp., San Diego, California*, Memorandum Opinion and Order, FCC 09-114 (Dec. 29, 2009).

²⁰ See BLSTA - 20050215ABZ at 2.

²¹ 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*”).

²² 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).

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

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

²⁵ 47 U.S.C. § 504(a).

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).²⁶ 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. 20554.²⁷

11. 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 Ritenour Consolidated School District, 2420 Woodson Road, Overland, Missouri 63114, and to the general manager, Jane Bannester, Ritenour High School, 9100 St. Charles Rock Road, St. Louis, Missouri 63114.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See 47 C.F.R. § 1.1914.

²⁷ *Id.*