

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

| | | |
|-----------------------------|---|-------------------------------|
| In the Matter of |) | |
| |) | Facility ID No. 39776 |
| Manchester College |) | NAL/Acct. No. MB-200741410018 |
| |) | FRN: 0010782563 |
| Licensee of Station WBKE-FM |) | File No. BRED-20050316ABW |
| North Manchester, Indiana |) | |

FORFEITURE ORDER

Adopted: April 9, 2010

Released: April 12, 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 six hundred dollars (\$5,600) to Manchester College (“Licensee”), licensee of Station WBKE-FM, North Manchester, Indiana (“Station”). Licensee willfully violated Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application, and willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.¹

II. BACKGROUND

2. On January 30, 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.² Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 19, 2007.

3. As noted in the NAL, Licensee’s renewal application for the current Station license term should have been filed on April 1, 2004, four months prior to the Station’s August 1, 2004, license expiration date, but was not.³ On February 22, 2005, Licensee filed a request for Special Temporary Authorization (“STA”), and on March 16, 2005, more than seven months after the Station’s license had expired, Licensee filed its renewal application.⁴ In response to the NAL, Licensee filed the subject Request.

4. In its Request, Licensee states that: (1) its failure to timely file the renewal application was inadvertent; (2) payment of the proposed forfeiture will cause it financial hardship; and (3) it has a history of compliance with the Commission’s Rules.

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

² *Manchester College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1467 (MB 2007). The Commission granted the above-referenced license renewal application on February 8, 2007.

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

⁴ File No. BRED-20050316ABW. The staff granted the STA request on April 5, 2005. See *Letter to Mr. Logan Condon*, Ref. 1800B3 (MB Apr. 5, 2006).

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. Specifically, it states that at the time of the renewal deadline, the Station was in transition because the student station manager had graduated and a new faculty advisor had assumed responsibility for the Station. The new student station manager and faculty advisor mistakenly assumed that their previous counterparts had applied for the license renewal when they had not. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.⁹ 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 this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹⁰ Moreover, the Commission has long held that "licensees are responsible for the acts and omission of their employees and independent contractors,"¹¹ and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."¹²

7. Next, Licensee argues that the forfeiture would cause significant financial hardship to the Station because it would constitute approximately 20 percent of its total budget, and 35 percent of its available funds. The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period;

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *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"); *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"). *See also Corning Community College*, Forfeiture Order, 24 FCC Rcd 14285, 14286, (MB 2009) (rejecting argument to reduce forfeiture based on student-run status); *University of Montana-Western*, Forfeiture Order, 24 FCC Rcd 3127, 3128-29 (MB 2009) (same).

¹⁰ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (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.

¹¹ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361, 1972 WL 26325, at *1 (1972).

¹² *See Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

(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.

8. Here, Licensee did not submit federal tax returns, financial statements or any documentation setting forth its finances in support of its Request. It only provided a one-page “Budget Summary” showing the Station’s operating budget for the year 2007. This fails to meet the standard of “other reliable and objective documentation” sufficient to establish the Licensee’s current financial status.¹³ Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.¹⁴

9. Finally, Licensee notes that it has had an unblemished record of compliance with the Commission’s Rules since obtaining authority to operate in 1967. Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$7,000 to \$5,600.

10. 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 violated Section 73.3539 of the Rules and willfully and repeatedly¹⁶ violated Section 301 of the Act. However, given Licensee’s history of compliance with the Rules, we reduce the forfeiture amount to \$5,600.¹⁷

IV. ORDERING CLAUSES

11. 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 Manchester College SHALL FORFEIT to the United States the sum of five thousand six hundred dollars (\$5,600) 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.

¹³ See *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (rejecting licensee’s financial hardship argument, finding that a one-page document summarizing its station budget and no information about licensee’s finances was an insufficient basis on which to assess the licensee’s inability to pay); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821, 15825 (MB 2008) (same).

¹⁴ Cf. *Cornell College*, Memorandum Opinion and Order, 19 FCC Rcd 14586, 14587 (EB 2004) (forfeiture cancelled after licensee provided information regarding both the school’s financial condition *and* the station’s budget to support its claim that the forfeiture would cause financial hardship).

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 See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (reducing forfeiture amount based on licensee’s history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536, 1537 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

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

12. 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.¹⁹ 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).²⁰ 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. 20554.²¹

13. 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: Manchester College, c/o Dr. Sunday Isang, 604 College Avenue, Box 181, North Manchester, Indiana 46962, and to its representative, Yolanda Edwards, Esq., Barnes and Thornburg, LLP, 11 South Meridian Street, Indianapolis, Indiana 46204-3535.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.

²¹ *Id.*