



Federal Communications Commission
Washington, D.C. 20554

June 16, 2011

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In Reply Refer to:

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NAL/Acct No.: MB-20074141007

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Earl R. Hutchison
Tennessee Technological University
P.O. Box 5072
Cookeville, Tennessee 38505

In re: Tennessee Technological University
Licensee of Station WTTU(FM)
Cookeville, Tennessee
Facility ID: 65217
File No. BRED-20040630ACB

Dear Mr. Hutchison:

We have before us a letter (“Letter”) filed by Tennessee Technological University (“TTU”), licensee of Station WTTU(FM), Cookeville, Tennessee (“Station”), requesting reduction of a *Forfeiture Order*¹ in the amount of one thousand five hundred dollars (\$1,500) for violation of Section 73.3539 of the Commission’s Rules (“Rules”).² The violation addressed in the *Forfeiture Order* involves TTU’s failure to file a timely license renewal application for the Station. By this action, we deny TTU’s request for reduction of the *Forfeiture Order*.

Background. As noted in the *Notice of Apparent Liability for Forfeiture* (“NAL”),³ TTU’s license renewal application for the Station was due on April 1, 2004, four months prior to the August 1, 2004, license expiration date. TTU did not file a license renewal application until June 30, 2004, and provided no explanation for the untimely filing. On January 30, 2007, the Bureau issued a NAL in the amount of one thousand five hundred dollars (\$1,500) to TTU. In response, TTU submitted a letter requesting a reduction of the forfeiture amount based on the fact that its violation of Section 73.3539 was inadvertent.⁴ The Bureau rejected this argument in the *Forfeiture Order*, and TTU submitted the subject Letter on April 28, 2010. In the Letter, TTU argues that payment of the forfeiture order would cause financial hardship and attaches its yearly budget in support.⁵

¹ *Tennessee Technological University*, Forfeiture Order, 25 FCC Rcd 2351 (MB 2010) (“*Forfeiture Order*”).

² 47 C.F.R. § 73.3539.

³ *Tennessee Technological University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1504 (MB 2007). The Commission granted the above-referenced renewal application on October 17, 2007.

⁴ See *Forfeiture Order*, 25 FCC Rcd at 2352.

⁵ TTU subsequently paid the full \$1,500 forfeiture amount on January 31, 2011.

Discussion. The Commission will consider a request for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or unknown additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁶ TTU has failed to meet this burden.

The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ 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.¹⁰

As noted in the *NAL*,¹¹ the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed 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 reflected the party'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.¹²

Typically, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ Here, however, TTU does not submit a tax return or any comparable showing of its revenues. Rather, it submits the Station's yearly budget, which provides no information about TTU's revenues. It thus fails to meet the standard of "other reliable and objective documentation" sufficient to establish TTU's current financial status.¹⁴ Accordingly, we find that it cannot be used to support TTU's claim of its inability to pay. In the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on this basis.

⁶ See 47 C.F.R. § 1.106(c); *WWJZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *NAL*, 22 FCC Rcd at 1507.

¹² 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 after review of submitted federal tax returns demonstrated a financial hardship).

¹³ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁴ 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).

We have examined TTU's Letter requesting reconsideration of the *Forfeiture Order* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that TTU willfully violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.

Conclusion. In view of the foregoing, Tennessee Technological University's request for reconsideration of the *Forfeiture Order* (NAL/Acct. No. MB-20074141007) for violation of Section 73.3539 of the Commission's Rules is HEREBY DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau