



Federal Communications Commission
Washington, D.C. 205543

June 17, 2011

DA 11-1071

In Reply Refer to:

1800B3-SAR

NAL/Acct No.: MB-20051810105

FRN: 0011510450

Released: June 17, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Dan Karbginsky
Chief Control Operator
Bible Broadcast Church School
P.O. Box 42
Lupton, Michigan 48635

In re: WMSD(FM), Rose Township, Michigan
Bible Broadcast Church School
Facility ID: 88118
File No. BRED-20040913AAR

Dear Mr. Karbginsky:

We have before us a letter (“Letter”) filed by Bible Broadcast Church School (“Licensee”), licensee of Station WMSD(FM), Rose Township, Michigan (“Station”), requesting reduction or cancellation 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 (the “Rules”).² The violation addressed in the *Forfeiture Order* involves Licensee’s failure to file a timely license renewal application for the Station. By this action, we treat the Letter as a petition for reconsideration of the *Forfeiture Order* under Section 1.106 of the Rules³ and deny it.

Background. As noted in the *Forfeiture Order*, Licensee’s license renewal application for the Station was due on June 1, 2004, four months prior to the October 1, 2004, license expiration date. Licensee did not file a license renewal application until September 13, 2004, and provided no explanation for the untimely filing. On December 20, 2005, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)⁴ in the amount of one thousand five hundred dollars (\$1,500) to Licensee. In response, Licensee submitted a letter requesting a reduction or cancellation of the forfeiture amount based on the fact that its violation of Section 73.3539 was inadvertent.⁵ The Bureau rejected this argument in the *Forfeiture Order*, and Licensee submitted the subject Letter on March 16, 2010. In the Letter here, Licensee argues that payment of the forfeiture order would cause financial hardship.

¹ *Bible Broadcast Church School*, Forfeiture Order, 25 FCC Rcd 1978 (MB 2010) (“*Forfeiture Order*”).

² 47 C.F.R. § 73.3539.

³ 47 C.F.R. § 1.106

⁴ *Letter to Bible Baptist Church School from Peter H. Doyle*, Reference 1800B3 (MB 2005). The Station’s renewal application (File No. BRED-20040913AAR) was granted on December 20, 2005.

⁵ See *Forfeiture Order*, 25 FCC Rcd at 1978.

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 Licensee 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*, 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.¹¹

Typically, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹² Here, however, Licensee does not submit a tax return or any comparable showing of its revenues. Rather, it indicates that WMSD(FM) is a non-profit station and provides one undocumented statement regarding the Station's finances.¹³ The Letter thus fails to meet the standard of "other reliable and objective documentation" sufficient to establish Licensee's current financial status.¹⁴ Accordingly, we find that it cannot be used to support Licensee'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); *WWIZ, 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 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).

¹² *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹³ See Letter at 1. The Letter states only that the Station's 2009 income totaled \$15,305.25 and that it ended fiscal year 2009 with a balance of \$673.

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 Licensee's Letter requesting reconsideration of the *Forfeiture Order* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Licensee 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, Bible Broadcast Church School's petition for reconsideration of the *Forfeiture Order* (NAL/Acct. No. MB-20051810105) for violation of Section 73.3539 of the Commission's Rules is HEREBY DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau