

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

In the Matter of)	Facility ID No. 72035
)	NAL/Acct. No. MB-201041410005
Westport Board of Education)	FRN: 0019055664
)	File No. BRED-20090826ABA
Licensee of WWPT(FM))	
Westport, Connecticut)	
)	

FORFEITURE ORDER

Adopted: February 3, 2011

Released: February 4, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600) to the Westport Board of Education (“Licensee”), licensee of noncommercial educational radio station WWPT(FM), Westport, Connecticut (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station, 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.¹

II. BACKGROUND

2. On March 29, 2010, the Media Bureau adopted a Notice of Apparent Liability for Forfeiture (“NAL”) proposing a forfeiture in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.² As noted in the NAL, the renewal application should have been filed by December 1, 2005, four months prior to the Station’s April 1, 2006, license expiration date,³ but was not. Licensee did not file the renewal application until August 26, 2009, more than three years after the Station’s license had expired. On that same date, the Licensee also filed a request for special temporary authorization (“STA”).⁴ Licensee filed a letter in response to the NAL requesting cancellation of the proposed forfeiture (“Response”) on April 15, 2010.

3. In its Response, Licensee states that cancellation of the proposed forfeiture is warranted because: (1) its failure to timely file the renewal application was inadvertent; (2) payment of the proposed

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

² *Westport Board of Education*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3215 (MB 2010). The Commission granted the above-referenced license renewal application on March 30, 2010.

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

⁴ File No. BLSTA-20090826ABC. The staff granted the STA request on September 3, 2009, and it expired on March 3, 2010. See *Letter to Mr. James Honeycutt*, Ref. 1800B3 (MB September 3, 2009). The Licensee did not file for extension of or further STA after its expiration.

forfeiture will cause it financial hardship; (3) the extent and gravity of the violation does not require the imposition of a forfeiture; (4) Licensee has taken steps to develop policies and procedures to ensure that all future filings with the Commission will be done in a timely manner; and (5) it has a history of compliance with the Rules.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,⁵ Section 1.80(b)(4) of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

5. Licensee does not dispute that it failed to file a timely renewal application for the Station, but rather states that this violation was unintentional.⁹ Specifically, Licensee claims it failed to timely file because two teachers volunteering their time in operating and maintaining the Station "were unaware of the significant potential financial penalties for non-compliance" and did not possess the "willful desire to violate" any FCC filing obligations.¹⁰ Long-standing Commission precedent states that responsibility for complying with terms of a station license "rests solely and exclusively with the licensee."¹¹ Further, the Commission has held that violations resulting from inadvertent error or failure to become familiar with the Commission's requirements are willful violations.¹² Accordingly, we find this argument meritless.

6. Licensee next argues that the forfeiture should be reduced or cancelled because its payment "will result in the reduction of some services to students" and "negatively impact the finances of the board of education."¹³ This is essentially an argument to support a claim of financial hardship.¹⁴ The Commission will not consider reducing or canceling a forfeiture in response to financial hardship unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ *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 Response at 2.

¹⁰ *Id.*

¹¹ See *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, n.11 (MB 2010) ("Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization"), citing *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940 (CIB 1999). See also *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) ("[E]mployee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹² 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").

¹³ Response at 2.

¹⁴ See *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (rejecting licensee's argument that it should not be required to pay the proposed forfeiture because it would divert funds that would otherwise be used to create public interest programming), *modified*, 23 FCC Rcd 15959 (2008).

objective documentation that accurately reflect the licensee's current financial status.¹⁵ Licensee has not provided any such documentation; we therefore will not reduce the forfeiture based on financial hardship.

7. Licensee further argues that “the extent and gravity of the violations” do not warrant issuing a forfeiture order.¹⁶ In support of this argument, Licensee cites Paragraph 8 of the NAL, in which the Commission concludes that “Licensee’s violation of 73.3539 of the Rules does not constitute a ‘serious violation’ warranting designation for evidentiary hearing.”¹⁷ Licensee, however, apparently misapprehends the Commission’s finding and incorrectly states that the FCC did not consider Licensee’s violations “serious.”¹⁸ Here, Licensee operated the Station for more than three years after its license expired in April 1, 2006. Given the duration of the violations, we find them to be sufficiently serious under Section 1.80(b)(4) of the Rules¹⁹ to warrant imposing a forfeiture order on the Licensee.²⁰

8. Licensee also argues that the forfeiture should be cancelled because it has taken steps to develop policies and procedures to ensure that all future Commission filings are timely filed.²¹ Specifically, Licensee notes in support of this contention that it has given the NAL its “immediate and significant attention.”²² Further, the Licensee states it made all proper renewal filings, hired an attorney to assist the school board with the matter and “set up a protocol” for the teachers charged with maintaining the Station “to follow in connection with future FCC filing obligations.”²³ We reject this argument. While we recognize Licensee’s efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.²⁴

9. Finally, Licensee argues that since it has an unblemished record of compliance with the Rules, the forfeiture order should be cancelled.²⁵ Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$7,000 to \$5,600.²⁶

¹⁵ 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 based on financial hardship).

¹⁶ Response at 2.

¹⁷ NAL, 25 FCC Rcd at 3218.

¹⁸ Response at 2.

¹⁹ 47 C.F.R. § 1.80(b)(4).

²⁰ *West Texas A&M University*, Forfeiture Order, 25 FCC Rcd 9086, 9088-89 (MB 2010) (issuing a forfeiture order in the amount of \$5,600 to a radio station that filed its renewal application nearly two months after its license expiration date). See also *WLVV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7718 (MB 2009) (issuing forfeiture order to station that filed its renewal application two months prior to its license expiration date).

²¹ Response at 3.

²² *Id.*

²³ *Id.*

²⁴ *Pittsfield Public School Committee*, Forfeiture Order, 2010 WL 4115091 (MB 2010), *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

²⁵ Response at 2.

²⁶ See, e.g., *WLVV, 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) (continued....)

10. 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 Licensee willfully²⁷ violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301²⁸ of the Act. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$5,600.

IV. CONCLUSION

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,²⁹ that the Westport Board of Education 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 Rules³⁰ and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.³¹

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.³² 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).³³ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Jack.Komperda@fcc.gov. 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. 20554.³⁴

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(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.

²⁷ 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.

²⁸ 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).

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

³⁰ 47 C.F.R. § 73.3539.

³¹ 47 U.S.C. § 301.

³² 47 U.S.C. § 504(a).

³³ See 47 C.F.R. § 1.1914.

³⁴ *Id.*

13. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Westport Board of Education, 110 Mytle Avenue, Westport, Connecticut 06880, and to its counsel, Erik J. Ness, Esq., Shipman and Goodwin LLP, One Constitution Plaza, Hartford, CT 06103-1919.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau