

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

In the Matter of	)	
	)	
<b>BIBLE BROADCASTING NETWORK, INC.</b>	)	FRN: 0006373559
	)	
Licensee of FM Translator Stations	)	Facility ID No. 81605
W209AX, Fairmont, West Virginia	)	NAL/Acct. No. MB-20041810042
	)	File No. BRFT-20030728AGU
and	)	
	)	Facility ID No. 5086
W244BB, Princeton, West Virginia	)	NAL/Acct. No. MB-20041810043
	)	File No. BRH-20030728AGV

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 28, 2011**

**Released: March 1, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. Bible Broadcasting Network, Inc. (“BBN”), licensee of the captioned FM translator stations (collectively, “Stations”), filed a Petition for Reconsideration (the “Petition”) of the *Forfeiture Order* issued to BBN on June 6, 2008, for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file license renewal applications.<sup>1</sup> In this Memorandum Opinion and Order, we deny the Petition and affirm the forfeitures issued by the Media Bureau, Audio Division (“Bureau”) in the total amount of five hundred dollars<sup>2</sup> (\$500) to BBN.

**II. BACKGROUND**

2. On August 3, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture each in the amount of one thousand five hundred dollars (\$1,500) to BBN with respect to FM translator stations W209AX, Fairmont, West Virginia, and W244BB, Princeton, West Virginia (collectively, “Stations”), for willfully and repeatedly violating Section 73.3539 of the Rules by failing to timely file license renewal applications for the Stations.<sup>3</sup> As noted in the NALs, BBN’s renewal applications for the Stations were due on June 2, 2003, four months prior to the October 1, 2003 expiration date for the Stations’ licenses.<sup>4</sup> However, BBN did not file the applications until July 28, 2003.

3. In response to the NALs, BBN filed a “Request for Reduction of Proposed Forfeiture” on September 2, 2004, arguing that: (1) its failure to file the renewal applications was not willful but unintentional; (2) the Commission improperly imposed the forfeitures for untimeliness, claiming that Section 1.80 of the Rules prescribes a forfeiture for failure to file a required form, rather than failure to

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> The total \$500 forfeiture consists of \$250 forfeitures for each of the Stations.

<sup>3</sup> *Letter to Gary Smithwick, Esq. from Peter Doyle*, reference 1800B3-ALM (MB Aug. 3, 2004) (“NALs”).

<sup>4</sup> *Id.*

timely file a required form; (3) its failure to timely file the license renewal applications was neither willful nor repeated as required by Section 503(b) of the Communications Act of 1934, as amended (“Act”);<sup>5</sup> (4) the Commission improperly dismissed its request for waiver of Section 73.3539 of the Rules, because if the Commission had waived the Rule, it could not have issued the forfeitures to BBN for its violations; and (5) although it did not claim an inability to pay the forfeiture amounts, the Commission should take BBN’s noncommercial educational broadcaster (“NCE”) status into consideration as justification for cancelling the forfeitures. On June 6, 2008, the Bureau issued a *Forfeiture Order* rejecting these arguments and finding that BBN had willfully and repeatedly violated Section 73.3539 of the Rules by failing to timely file license renewal applications for the Stations.<sup>6</sup> In the *Forfeiture Order*, the Bureau reduced the forfeitures issued to BBN *sua sponte* to two hundred and fifty dollars (\$250) for each Station. In response to the *Forfeiture Order*, BBN timely filed its Petition on July 7, 2008.

4. In its Petition, BBN reiterates its arguments regarding the willfulness of its failure to timely file renewal applications for the Stations, the Commission’s authority to issue forfeitures for failure to timely file required forms, its request for waiver of Section 73.3539 of the Rules, and the use of BBN’s NCE status as justification for further reduction or cancellation of the *Forfeiture Order*.<sup>7</sup> BBN further reasserts that its failure to timely file the license renewal applications was neither willful nor repeated as required by Section 503(b) Act,<sup>8</sup> and it argues that there is an unreasonable disparity of sanctions issued by the Bureau, citing *Logos Broadcasting Corporation*.<sup>9</sup> BBN claims the mere admonishment of the licensee in *Logos Broadcasting* for making false certifications to the Commission renders the assessment of the forfeitures at issue here arbitrary and capricious. Finally, BBN complains that the Commission relied on only its own precedent, not court precedent, in deciding to issue the *Forfeiture Order*. BBN asserts that the above reasons warrant cancellation of the forfeitures.

### III. DISCUSSION

5. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises changed circumstances or additional facts not known or existing at the time of the petitioner’s last opportunity to present such matters.<sup>10</sup> Here, BBN’s Petition largely restates its earlier arguments. We have previously considered and rejected BBN’s arguments regarding the meaning of the term “willful” under the Rules and the Act, the Commission’s authority to issue forfeitures for failure to timely file required forms, BBN’s request for waiver of Section 73.3539 of the Rules, and the use of BBN’s NCE status as justification for further reduction of the forfeiture amounts or cancellation of the *Forfeiture Order*. We will not grant reconsideration “to debate matters upon which the Commission has already deliberated and spoken.”<sup>11</sup>

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743 (MB 2008) (“*Forfeiture Order*”).

<sup>7</sup> Petition at 2-6.

<sup>8</sup> Petition at 3-4, 6.

<sup>9</sup> *Logos Broadcasting Corporation*, Letter, 23 FCC Rcd 10202 (MB 2008) (“*Logos Broadcasting*”). See Petition at 6-7.

<sup>10</sup> See 47 C.F.R. § 1.106; *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) (“*Lorain Journal*”); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

<sup>11</sup> *Lorain Journal*, 37 FCC at 686.

6. The forfeiture amounts for these violations were assessed in accordance with Section 503(b) of the Act,<sup>12</sup> Section 1.80 of the Rules,<sup>13</sup> and the Commission's *Forfeiture Policy Statement*.<sup>14</sup> 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.<sup>15</sup>

7. As an initial matter, we disagree with BBN that our reliance on Commission precedent undermines our decisions regarding the Stations. Section 0.445 of the Rules specifically contemplates the citation of published Commission and staff-level decisions as precedent.<sup>16</sup> We find BBN's argument characterizing Commission decisions as mere administrative precedent unpersuasive and without support.

8. Additionally, we disagree with BBN's contention that its violations of Section 73.3539 the Rules were not repeated as contemplated by Section 503(b)(1)(B) of the Act.<sup>17</sup> Section 312(f)(2) defines repeated as "commission or omission of any act more than once or, if continuous, for more than one day."<sup>18</sup> The legislative history of Section 312(f)(2) of the Act clarifies that this definition of repeated applies to both Sections 312 and 503(b) of the Act.<sup>19</sup> Previously, we have issued forfeiture orders to licensees for repeated violations of Section 73.3539 of the Rules where a licensee failed to timely file renewal applications for multiple stations.<sup>20</sup> BBN has failed to justify why departure from this precedent is warranted with respect to its violations. The Act requires that violations be either willful or repeated.<sup>21</sup> Here, we find that BBN's violations were willful and repeated.

9. Finally, BBN asserts that the disparity between the sanctions issued for these violations and the sanctions issued for violations of Section 1.17 of the Rules<sup>22</sup> in another decision provide it with grounds for cancellation of the *Forfeiture Order*. BBN contends that the Commission cannot justify issuing forfeitures for failure to timely file license renewal applications when it "merely admonished a licensee that made false certifications to the Commission."<sup>23</sup> However BBN mischaracterizes the decision. In *Logos Broadcasting*, the Bureau admonished a licensee for making false certifications to the Commission in violation of Section 1.17 of the Rules.<sup>24</sup> The statute of limitations prevented the Bureau from issuing a forfeiture to the licensee in *Logos Broadcasting*.<sup>25</sup> Had the statute of limitations not run,

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<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. § 1.80.

<sup>14</sup> *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).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> 47 C.F.R. § 0.445(e); *see also Saga Communications of New England, L.L.C.*, Memorandum Opinion and Order, 25 FCC Rcd 3289, 3292 (EB 2010) (stating that it is "well established that the Commission may rely on its precedents in the absence of controlling court opinions to the contrary").

<sup>17</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>18</sup> 47 U.S.C. § 312(f)(2).

<sup>19</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>20</sup> *See, e.g., Morgan County Broadcasting Co., Inc.*, Forfeiture Order, 24 FCC Rcd 11927, 11928 (MB 2009).

<sup>21</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>22</sup> 47 C.F.R. § 1.17.

<sup>23</sup> Petition at 6-7.

<sup>24</sup> *Logos Broadcasting*, 23 FCC Rcd at 10212.

<sup>25</sup> *Id.* at 10206 ("the statute of limitations prohibits us from initiating a forfeiture in this case").

the Bureau would have issued a notice of apparent liability for the violations identified, which included violations of Section 1.17 of the Rules.<sup>26</sup> We find that *Logos Broadcasting* has no bearing on this case.

10. Furthermore, it is well-established that the Commission enjoys “broad discretion in determining whether to impose sanctions in a given case.”<sup>27</sup> The discretion exercised in Commission decision-making is reviewable by a court on the grounds that it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”<sup>28</sup> BBN has failed to show that the Commission abused its discretion in issuing the *Forfeiture Order*.

11. We have considered BBN’s Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that BBN willfully and repeatedly violated Section 73.3539 of the Rules. In light of the Bureau’s earlier *sua sponte* reduction of the forfeiture amounts from \$1,500 to \$250 for each Station, we find no other mitigating circumstances that warrant cancellation or further reduction of the forfeitures. We find that the *Forfeiture Order* issued to BBN is reasonable and consistent with previous decisions for failure to timely file license renewal applications for translator stations.

#### IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Bible Broadcasting Network, Inc. on July 7, 2008, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>26</sup> *Id.* at 10206.

<sup>27</sup> *Family Ministries, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1419 (2003) (citing *Lorain Journal*).

<sup>28</sup> 5 U.S.C. § 706(2)(A); *see, e.g., Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 89 (2d Cir. 2000).