

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

In the Matter of)	
)	Facility ID No. 27100
Schweitzer Media, Inc.)	NAL/Acct. No. MB-200741410176
)	FRN: 0003766490
Licensee of Station KNDC(AM))	File No. BR-20060713ADL
Hettinger, North Dakota)	

FORFEITURE ORDER

Adopted: March 8, 2011

Released: March 9, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Schweitzer Media, Inc. (“Schweitzer Media”), licensee of Station KNDC(AM), Hettinger, North Dakota (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application, 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. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day or the fourth full calendar month prior to the expiration date of the license sought to be renewed.”² Schweitzer Media’s license renewal application should have been filed by December 1, 2004, four months prior to the Station’s license expiration date of April 1, 2005. On July 12, 2006, Schweitzer Media sought special temporary authorization (“STA”) to continue Station operations,³ and on July 13, 2006, it filed a renewal application for the Station. The staff granted the STA Request on July 24, 2006.⁴ The staff granted a request for extension of the STA on January 19, 2007, which allowed the station to continue authorized operations during the pendency of the renewal process.

3. On January 31, 2007, the Media Bureau, Audio Division (“Bureau”) granted the Station’s license renewal application and reinstated the call sign for the Station. Subsequently, on March 1, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Schweitzer Media for its willful violation of Section 73.3539 of the Rules and Section

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

² 47 C.F.R. § 73.3539(a).

³ File No. BLSTA-20060712AGK (“STA Request”).

⁴ *Letter to Media Associates, Inc.*, Ref. 1800B3-LD (MB July 24, 2006).

301 of the Act.⁵ Schweitzer Media timely filed a “Petition for Partial Reconsideration” (“Response”) on April 2, 2007.

4. In its Response, Schweitzer Media argues that the Bureau cannot issue a forfeiture for the violations at issue because the NAL was issued beyond the statute of limitations set forth in Section 503(b)(6) of the Act. Schweitzer Media further asserts that, if the NAL was properly issued within the statute of limitations, the forfeiture should be reduced based on its history of compliance with the Rules.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission’s *Forfeiture Policy Statement*.⁸ 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.⁹

6. Section 503(b)(6) of the Act states that: “No forfeiture penalty shall be determined or imposed against any person... if the violation charged occurred: (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of such license, whichever is earlier.” Schweitzer Media claims that this Section bars the Bureau from imposing a forfeiture in this case because the violations at issue in the NAL occurred prior to the commencement of its current license term.¹⁰ To reach such a conclusion, Schweitzer Media argues that the “earlier” event cuts off the statute of limitations and is the first event to occur, namely, the passage of one year or the grant of a new license period.¹¹ Here, it claims that the renewal of the Station license on January 31, 2007, was the “earlier” event to “cut off the statute of limitations.”¹²

7. We disagree with Schweitzer Media’s reading of the Act. Section 503(b)(6) allows for the issuance of a forfeiture for violations occurring *before* the renewal grant *if* the NAL is issued within one year of the date of the violation.¹³ Staff precedent supports this reading. In *Detroit Public Schools*, a licensee argued that the statute of limitations was triggered by the first condition to be met under Section 503(b)(6) and that the Bureau therefore could not issue an NAL for violations that occurred more than

⁵ *Schweitzer Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4095 (MB 2007).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 U.S.C. § 503(b)(6).

¹¹ Response at 3-5.

¹² *Id.* at 5.

¹³ Indeed, the cases cited by Schweitzer Media are consistent with this interpretation. See *AMFM Radio Licenses, LLC*, Order, 19 FCC Rcd 10775 (2004) (cancelling NAL where violations occurred prior to subsequent license renewal *and* more than one year before issuance of NAL) *KNFL, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 21465 (EB 2000) (issuing an NAL to licensee for violations occurring nearly two years prior to the issuance of the NAL; violations straddled the licensee’s license renewal grant; EB issued NAL only for violations occurring after license renewal); *WS Communications, L.L.C.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12404 (EB 2000) (same).

one year prior to the issuance of the NAL.¹⁴ The Bureau rejected this claim and clarified that the “earlier” event refers to the event that occurred at the earliest point in the past.¹⁵ Here, Schweitzer Media’s Section 73.3539 violation continued until its renewal was filed on July 12, 2006, and its unauthorized operation of the Station continued through July 23, 2006, the day before the staff granted Schweitzer Media’s STA Request. Subsequently, the Bureau renewed Schweitzer Media’s license on January 31, 2007. When the Bureau granted Schweitzer Media’s license renewal application, Schweitzer Media’s prior renewal grant on April 25, 1997,¹⁶ ceased to be relevant for the purposes of Section 503(b)(6). At that point, the Bureau had one year – specifically until July 12, 2007 (for the Section 73.3539 violation), and July 23, 2007 (for the unauthorized operations) – to issue an NAL for violations occurring before the January 31, 2007, renewal grant. The NAL was issued on March 1, 2007, months before the statute of limitations would have expired.

8. In addition, we reject Schweitzer Media’s argument that its history of compliance warrants further reduction in the forfeiture amount.¹⁷ Michael J. Schweitzer is the sole shareholder of Schweitzer Media.¹⁸ Schweitzer is also the majority shareholder of Media Associates, Inc. (“Media Associates”), licensee for Station KBJM(AM) (“KBJM”), Lemmon, South Dakota.¹⁹ On the same day the Bureau issued the NAL in this case, it also issued an NAL to Media Associates regarding KBJM for the same violations.²⁰ We therefore cannot find that Schweitzer Media’s history of compliance warrants reduction of the forfeiture amount.²¹

9. 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 willfully²² violated

¹⁴ *Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688, 13692 (MB 2006).

¹⁵ *Id.* (holding that a 2006 NAL for violations that occurred in 2004 was within the statute of limitations because the earlier date was the commencement of the current license term in 1996); see also *John Crigler, Esq.*, Letter, DA 11-233 (MB Feb. 8, 2011) (“Accordingly, we cancel the proposed forfeiture because it was imposed for violations occurring prior to the commencement date of the current license term *and* more than one year prior to the issuance of the NAL”) (emphasis added).

¹⁶ See File No. BR-19970103WA.

¹⁷ Response at 2-3.

¹⁸ See Ownership Report for Commercial Broadcast Station, File No. BOA-20060713ADK, *and* File No. BOA-20060713ADM. Schweitzer owns 75 percent of the outstanding shares of Media Associates, Inc. He owns 100 percent of the outstanding shares of Schweitzer Media, Inc. Schweitzer also serves as the president of both corporations and holds voting rights proportional to his ownership interest in the two corporations.

¹⁹ *The Minority Voice, Inc.*, Forfeiture Order, DA 11-266 (MB Feb. 10, 2011) (rejecting licensee’s history of compliance claim where licensee was wholly owned by James Rouse; Rouse had also been issued an NAL for his operation of a separate station during the same license period); see also *James Rouse*, Forfeiture Order, DA 11-265 (MB Feb. 10, 2011).

²⁰ See *Paulino Bernal Evangelism KBRN(AM)*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (“[O]ffenses need not be ‘prior’ to be considered in determining whether there is a history of overall compliance”).

²¹ *Urban Radio, III, LLC*, Forfeiture Order, 24 FCC Rcd 8215, 8217 n. 14 (MB 2009) (“Findings of violations, or apparent violations, by parent, sister or commonly controlled companies are imputed to, and also negate the past history claim, of the company under investigation”).

²² 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. *Southern*

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Section 73.3539 of the Rules and willfully and repeatedly²³ violated Section 301 of the Act. We find that the forfeiture issued here is reasonable and that no cancellation or further reduction is warranted.

IV. ORDERING CLAUSES

10. 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,²⁴ that Schweitzer Media, Inc. SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) 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.

11. 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.²⁵ 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).²⁶ Licensee will also send electronic notification on the date said payment is made to kelly.donohue@fcc.gov and seth.williams@fcc.gov. 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, DC 20554.²⁷

12. 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: Schweitzer Media, Inc., P.O. Box 540 Lemmon, SD 57638, and to its counsel, Dan J. Alpert, Esquire, 2120 N. 21st Road, Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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California Broadcasting Co., Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("Southern California").

²³ 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).

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

²⁵ 47 U.S.C. § 504(a).

²⁶ *See* 47 C.F.R. § 1.1914.

²⁷ *Id.*