

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

| | | |
|-----------------------------------|---|-------------------------------|
| In the Matter of |) | |
| |) | Facility ID No. 62106 |
| St. Bonaventure University |) | NAL/Acct. No. MB-201141410003 |
| |) | FRN: 0020240347 |
| Licensee of Station WSBU(FM) |) | File No. BRED-20101007AAM |
| St. Bonaventure, New York |) | |

FORFEITURE ORDER

Adopted: February 15, 2012

Released: February 15, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to St. Bonaventure University (“Licensee”), licensee of Station WSBU(FM), St. Bonaventure, New York (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file license renewal applications and engaging in unauthorized operation of the Station.¹

II. BACKGROUND

2. On September 26, 2011, the Media Bureau (“Bureau”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$7,000 to Licensee for these violations.² Licensee submitted a letter in response to the NAL (“Response”) on October 17, 2011.

3. As noted in the NAL, Licensee’s renewal application for the Station was due on February 1, 2006, four months prior to the June 1, 2006, license expiration date. According to Commission records, no such application was filed, and the Station’s license expired on June 1, 2006. Consequently, on September 28, 2010, the Bureau wrote to Licensee, indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station’s call letters had been deleted from the Commission’s data base. Licensee was advised that any operation of the Station was then unauthorized and must cease immediately.³ Upon receipt of the *License Expiration Letter*, on October 4, 2010, Licensee filed a license renewal application for the Station as well as a request for special temporary authority (“STA”) to continue Station operations pending consideration of the untimely filed renewal application.⁴ The Bureau granted the STA on October 13, 2010, and it was to expire on

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

² *St. Bonaventure University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 11-1603 (MB rel. Sept. 26, 2011).

³ *Letter to St. Bonaventure University*, Ref. 1800B3-KAW (MB Sep. 28, 2010) (“*License Expiration Letter*”).

⁴ See File No. BLSTA-20101004ACF.

April 13, 2010.⁵ On September 26, 2011, the Bureau issued the *NAL* in the amount of \$7,000 for apparent violations of Sections 73.3539 of the Rules and 301 of the Act.⁶ In response, Licensee filed the subject Response, arguing that: 1) these violations were inadvertent, as Licensee had no notice of the filing deadline or the lapsed license; 2) Licensee self-reported the issue and has taken corrective measures; and 3) Licensee operated the Station as a not-for-profit entity. Licensee asserts that these reasons warrant a cancellation or significant reduction of the assessed forfeiture.⁷

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ 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.¹¹

5. Licensee first asserts that these violations were inadvertent. Specifically, Licensee argues that the Station is an entirely student-run organization with a yearly staff turnover, making it difficult for Licensee to monitor license renewal periods.¹² Moreover, Licensee claims that the license had already lapsed when the current staff advisor, Dr. Keener, assumed his position, and he did not receive a Commission reminder of the renewal application filing deadline.¹³ As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁴ Therefore, Licensee's unfamiliarity with the Commission's renewal application deadline due to the Station's staff changes does not excuse its failure to timely file the license renewal application.¹⁵ In addition, correspondence reminding a licensee that a renewal deadline is approaching is a mere courtesy and does not in any way change the licensee's obligation to file a renewal

⁵ *Letter to Mr. Roger Keener, St. Bonaventure University*, Ref. 1800B3 (MB Oct. 13, 2010). On April 8, 2011, the Licensee filed a request for extension of the STA, which the staff dismissed on September 26, 2011, upon grant of the WSBU(FM) renewal application. See File No. BELSTA-20110408ACB.

⁶ In the same Order, the Bureau also reinstated the Station's call sign and granted the license renewal application.

⁷ Response at 1.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² Response at 1.

¹³ *Id.*

¹⁴ *Communication Systems, Inc.*, Forfeiture Order, 25 FCC Rcd 12516, 12517 (MB 2010). See also *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").

¹⁵ See *Trustee of Mount Holyoke College*, Forfeiture Order, 25 FCC Rcd 14603, 14604 (MB 2010) (holding that no forfeiture reduction was warranted where the station was completely student-run and the individuals responsible for running the station changed frequently).

application before the deadline.¹⁶ “Long-standing Commission precedent . . . states that responsibility for complying with terms of a station’s license rests solely and exclusively with the licensee.”¹⁷

6. Licensee next claims that that the proposed forfeiture should be reduced or cancelled because Licensee voluntarily self-reported the issue to the Commission.¹⁸ Furthermore, Licensee asserts that it acted as quickly as possible to remedy the situation and took corrective measures to prevent the issue in the future.¹⁹ Forfeiture reductions based on good faith efforts to comply generally involve situations where violators demonstrated they had initiated measures to correct or remedy violations prior to the Commission’s involvement.²⁰ Licensee’s disclosure, however, was compelled in response to the *License Expiration Letter* sent by the Bureau on September 28, 2010. Additionally, Licensee did not implement remedial measures until after the Commission notified Licensee that the Station’s license had expired. Accordingly, we give no weight to these arguments.

7. Finally, Licensee claims that a payment of \$7,000 forfeiture should be reduced or cancelled because the Station is a not-for-profit entity used solely for educational purposes and is financially supported entirely by the Student Government Association.²¹ It is well established Commission policy that there is no forfeiture reduction for Licensee’s status as a noncommercial, educational entity.²² Additionally, the Commission has consistently held that a *station’s* financial condition is an insufficient basis upon which to evaluate a licensee’s ability to pay.²³ Rather, the Commission is concerned only with the *licensee’s* general financial standing and its available resources to pay the forfeiture amount.²⁴ Here, Licensee presents no “other reliable and objective documentation”²⁵ to supports its claim that the forfeiture will cause it financial hardship. Thus, this argument is not credible.

8. We have considered Licensee’s Request and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²⁶

¹⁶ See *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288, 11289 (MB 2009) (holding that a Licensee’s mistaken assumption that it would receive a reminder of the filing date from the Commission did not excuse the failure to file a timely renewal application).

¹⁷ *Escalante City*, Forfeiture Order, 26 FCC Rcd 5961, 5962 (MB 2011); see also *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, 13200 (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”).

¹⁸ Response at 1.

¹⁹ *Id.*

²⁰ *Board of Regents, Northwest Missouri State University*, Forfeiture Order, 25 FCC Rcd 3119, 3121 (MB 2010).

²¹ Response at 1. Licensee indicates that the payment of the proposed forfeiture amount “would require an increase in fees charges to the students of St. Bonaventure University.” *Id.*

²² *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 3851, 3853 (MB 2010) (citing *Des Moines Independent School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869, 3871 (MB 2009) and *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion, and Order, 21 FCC Rcd 1442, 1446 (EB 2006)).

²³ See *Alamo Navajo School Board, Inc.*, Forfeiture Order, 25 FCC Rcd 17057, 17058 (MB 2010) (citing *Manchester College*, Forfeiture Order, 25 Rcd 3638 (MB 2010) and *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009)).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 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-

(continued...)

violated Section 73.3539 of the Rules and willfully and repeatedly²⁷ violated Section 301 of the Act.²⁸ For the reasons set forth above, we find that the proposed forfeiture of seven thousand dollars (\$7,000) is warranted.

IV. ORDERING CLAUSES

9. 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 St. Bonaventure University 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.

10. 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.³⁰ Payment of the 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).³¹ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Jason.Davila@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 20554.³²

(...continued from previous page)

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.

²⁷ Section 312(f)(2) 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)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

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

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

³⁰ 47 U.S.C. § 504(a).

³¹ *See* 47 C.F.R. § 1.1914.

³² *Id.*

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Mr. Richard C. Trietley, Jr., St. Bonaventure University, P.O. Box Drawer O, St. Bonaventure, NY 14778.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau