

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

In re Application of	)	
	)	
<b>LAKE COUNTY COMMUNITY RADIO</b>	)	Facility ID No. 90952
	)	NAL/Acct. No. MB-201641410010
For Renewal of License for	)	FRN: 0017356817
Station KPFZ-FM	)	File No. BRED-20130916AAA
Lakeport, California	)	

**FORFEITURE ORDER**

**Adopted: July 15, 2016**

**Released: July 15, 2016**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Lake County Community Radio (Licensee), licensee of Station KPFZ-FM, Lakeport, California (Station), for willfully violating of Section 73.3539 of the FCC Rules (Rules)<sup>1</sup> by failing to timely file its license renewal application for the Station.

**II. BACKGROUND**

2. On May 27, 2016, the Media Bureau (Bureau) issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* in the amount of one thousand five hundred dollars (\$1,500) to Licensee for its failure to timely file the Station’s renewal application.<sup>2</sup> As noted in the *NAL*, Licensee’s renewal application was due on August 1, 2013, four months prior to the expiration date of the license.<sup>3</sup> Licensee did not file the application until September 16, 2013, and failed to provide an explanation for the untimely filing. The *NAL* further noted that the Commission would not consider further reducing or canceling the forfeiture in response to a claim of inability to pay unless the respondent submitted financial documentation supporting its claim.<sup>4</sup>

3. Licensee filed a response to the *NAL*<sup>5</sup> (Response) on June 22, 2016. In the Response, Licensee explains that “a few weeks” after submitting what it thought was a completed and timely license renewal application, “[it] received a call from [Bureau] staff indicating additional information was needed on the application.”<sup>6</sup> According to Licensee, September 16, 2013 “is about the time [it was] contacted by

<sup>1</sup> 47 CFR § 73.3539.

<sup>2</sup> *Lake County Cmty. Radio*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 16-595 (MB May 27, 2016) (*NAL*).

<sup>3</sup> See 47 CFR. §§ 73.1020, 73.3539(a).

<sup>4</sup> The Bureau specifically requested: “(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 objective documentation that accurately reflects the respondent's current financial status.” *NAL* at 3, para. 13.

<sup>5</sup> See Letter from Chloe Karl, President LCCR Board of Directors, Lake County Community Radio, to Peter H. Doyle, Chief, Audio Division, Media Bureau (June 22, 2015) (Response).

<sup>6</sup> Response at 1.

[Bureau] personnel, not the actual date of [its] submittal.”<sup>7</sup> Licensee claims that after receiving and following the advice of various Commission staffers, it “assumed everything was in order.”<sup>8</sup> Licensee indicates that the Station is in “one of the poorest counties in California” and relies entirely on local funding.<sup>9</sup> The Licensee explains that “reaching into [its] additional funds in the current economic climate would be an unfortunate burden,” and it cannot rely on additional funding from its supporters because many public donations are going towards a recent wildfire emergency.<sup>10</sup> In light of this, Licensee requests that the Commission reduce or cancel the proposed forfeiture.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the Act),<sup>11</sup> Section 1.80 of the Rules,<sup>12</sup> and the Commission’s *Forfeiture Policy Statement*, which establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>13</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>14</sup>

5. Licensee asserts that it submitted “what [it] thought was a completed and timely license renewal application” prior to September 16, 2013.<sup>15</sup> The staff has reviewed the Licensee’s account in the Commission’s database, CDBS, and determined that two separate renewal applications were begun on August 27, 2013, but neither was filed—one application is in “Valid” status and the other is in “Pending” status. The renewal application that was actually submitted was begun on Friday, September 13, 2013 and filed on Monday, September 16, 2013. Based on the explanation provided in its Response and our review of CDBS, it appears that Licensee misunderstood our electronic filing procedures and erroneously assumed that it submitted a timely filed renewal application when it began the renewal applications on August 27, 2013. Therefore, the failure to timely file the renewal application was due to Licensee’s own error.<sup>16</sup>

6. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.<sup>17</sup> Moreover, the Commission has

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 CFR § 1.80.

<sup>13</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). (*Forfeiture Policy Statement*).

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> Response at 1.

<sup>16</sup> We note that even if the renewal application was completed and properly filed on August 27, 2016, the application would have still been untimely.

<sup>17</sup> *See S. California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Comm’cns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.<sup>18</sup> Accordingly, we find this argument without merit.

7. Licensee next argues that the forfeiture amount should be reduced or cancelled because it sought and acted in accordance with advice of Commission staff.<sup>19</sup> According to Licensee, it “assumed everything was in order,” because it promptly complied when the Bureau staff requested that it provide additional information for the application on September 16, 2013, and again sometime in May of 2014.<sup>20</sup> However, Commission precedent has established that parties relying on informal discussions with Commission staff do so at their own risk, and reliance on such advice will not reduce the forfeiture amount.<sup>21</sup> Accordingly, we decline to reduce the forfeiture amount on this basis.

8. Licensee makes several arguments as to why the forfeiture should be cancelled or reduced based on financial hardship to the Station. We reject the claim of financial hardship due to Licensee’s failure to document that claim.<sup>22</sup> 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; or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status.<sup>23</sup> In this case, the *NAL* plainly described the type of documentation needed to support a claim of financial hardship.<sup>24</sup> We also note that the staff contacted Licensee’s board members by e-mail on two separate occasions—June 22, 2016, and June 30, 2016—requesting that Licensee provide documentation supporting its claim of financial hardship, but received no response.<sup>25</sup> Because Licensee has not provided any such documentation, we will not reduce the forfeiture based on financial hardship.<sup>26</sup>

9. We have considered the Licensee’s response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that the Licensee willfully violated

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<sup>18</sup> See *Ritenour Consol. School Dist.*, Forfeiture Order, 25 FCC Rcd 3266, 3267, para. 5 (MB 2010) (*Ritenour*) (rejecting applicant’s argument that it thought renewal application was timely filed because it was in “pending” status); *Muskegon Training and Educ. Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43, para. 6 (MB 2008) (same).

<sup>19</sup> Response at 1.

<sup>20</sup> *Id.*

<sup>21</sup> *Ritenour* at 3268, para. 6.

<sup>22</sup> See, e.g., *Peconic Public Broad.*, Forfeiture Order, 31 FCC Rcd 1904, 1906, para. 5 (MB March 7, 2016) (forfeiture not reduced where licensee provided no documentation regarding its ability to pay), *aff’d Peconic Public Broad.*, Memorandum Opinion and Order, DA 16-716 (MB June 23, 2016); *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536, para. 15 (EB 2006) (holding that “the argument that payment of a forfeiture would limit Evangelism’s ‘ability to generate programming in the public interest’ is, in effect, a claim of financial hardship for which licensee had not provided the required documentation”), *modified*, 23 FCC Rcd 15959 (2008).

<sup>23</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount based on financial hardship).

<sup>24</sup> See *NAL* at 3, para. 13.

<sup>25</sup> E-mail from Alexander Sanjenis, Attorney Advisor, Audio Division, Media Bureau, FCC to Chloe Karl, President LCCR Board of Directors, Lake County Community Radio (June 22, 2016, 17:32 EDT); E-mail from Alexander Sanjenis, Attorney Advisor, Audio Division, Media Bureau, FCC to Chloe Karl, President LCCR Board of Directors, Lake County Community Radio (June 30, 2016 8:21 EDT).

<sup>26</sup> See, e.g., *Westport Board of Educ.*, Forfeiture Order, 26 FCC Rcd 1088, 1089-90, para. 6 (MB 2011) (proposed forfeiture not reduced where licensee provided no documentation regarding its ability to pay).

Section 73.3539 of the Rules, and we find that there is no basis for reduction of the proposed monetary forfeiture.

10. We will grant the captioned application for renewal of the Station's license by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the violations discussed here that would preclude grant of the application.

#### IV. ORDERING CLAUSES

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 FCC's Rules,<sup>27</sup> that Lake County Community Radio SHALL FORFEIT to the United States the sum of one thousand five hundred dollars (\$1,500) for willfully violating Section 73.3539 of the FCC's Rules.

12. Payment of the proposed forfeiture must be made by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account Number in block number 23A (callsign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Penelope Dade at Penelope.Dade@fcc.gov and Alexander Sanjenis at Alexander.Sanjenis@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank–Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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<sup>27</sup> 47 U.S.C. § 503(b); 47 CFR §§ 0.283, 1.80.

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 12<sup>th</sup> Street, S.W., Washington, DC 20554.<sup>28</sup>

13. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Ms. Chloe Karl, Lake County Community Radio, P.O. Box 446, Lakeport, CA 95453.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>28</sup> *Id.*