

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

In re Application of)	
)	
Heritage Media of Kentucky, Inc.)	Facility ID No. 200086
)	NAL/Acct. No. MB-202141410001
For Renewal of License for)	FRN: 0003786217
FM Translator Station W280FH)	File No. 0000118483
Leitchfield, Kentucky)	

FORFEITURE ORDER

Adopted: March 1, 2021

Released: March 1, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of one thousand, one hundred and twenty-five dollars (\$1,125) to Heritage Media of Kentucky, Inc. (Licensee), licensee of FM Translator Station W280FH, Leitchfield, Kentucky (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.¹

II. BACKGROUND

1. 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 of the fourth full calendar month prior to the expiration date of the license sought to be renewed."² An application for renewal of the Station's license should have been filed by April 1, 2020, the first day of the fourth full calendar month prior to the Station's license expiration date of August 1, 2020.³ The application was not filed until July 27, 2020. The Licensee provided no explanation for its untimely filing of the application.

2. Accordingly, on February 4, 2021, we released the *NAL*, which proposed a forfeiture of one thousand five hundred dollars (\$1,500).⁴ The *NAL* gave the Licensee thirty days to pay the full amount of the proposed forfeiture, or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁵

3. On February 8, 2021, the Licensee submitted a written response in which it does not dispute that it had violated section 73.3539 of the Rules but argues that the proposed forfeiture should be eliminated based on additional factors not explained in the renewal application.⁶ Licensee argues that the Station's initial license "[w]as granted a mere 13 days prior to the renewal deadline of April 1, 2020 during the initial chaos caused by the Covid-19 pandemic", that "[d]ue to a clerical error, [the Station] was not included with the timely filed application for renewal of license of its primary rebroadcast station,

¹ See 47 CFR § 73.3539.

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Heritage Media of Kentucky, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-112 (MB Feb. 4, 2021) (*NAL*).

⁵ *Id.* at 3, para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Heritage Media of Kentucky, Inc. (dated Feb. 8, 2021).

WMTL(AM), Leitchfield, KY” and that “in the haste to file the renewal application [for the Station], counsel failed to upload the necessary explanatory exhibit.”⁷ Finally, the Licensee argues that it has a history of compliance with the Rules.⁸

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁹ section 1.80 of the Rules,¹⁰ and the Forfeiture Policy Statement.¹¹ Section 503(b)(2)(E) of the Act requires that the Commission 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 other such matters as justice may require.¹²

5. We have considered the Licensee’s response in light of these statutory factors. We affirm our finding that the Licensee willfully violated section 73.3539 of the Rules. We reject Licensee’s arguments the fact that the violation was a “clerical error” should warrant a reduction in the proposed forfeiture.¹³ The Commission has held that violations resulting from inadvertent error or failure to become familiar with the Commission’s requirements are willful violations.¹⁴ Moreover, the Commission has long held that “licensees are responsible for the acts and omissions of their employees and independent contractors,”¹⁵ and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”¹⁶ However, because Licensee has a history of a compliance of with the Rules, we will reduce the proposed forfeiture to \$1,125.¹⁷

⁷ *Id.* at 2.

⁸ *Id.*

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 CFR § 1.80.

¹¹ *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ Although Licensee notes that the filing deadline, April 1, 2020, correlated to the early days of the COVID-19 pandemic, it does not directly attribute its error to the pandemic or otherwise explain how the pandemic was responsible for its failure to timely file the renewal application. Moreover, we note that over a thousand timely license renewal application were filed by licensees in Tennessee, Kentucky and Indiana, which also had a filing date of April 1, 2020. We thus reject this argument as a basis to reduce the proposed forfeiture. Likewise, although Licensee notes that the Station was only licensed for a few weeks prior to the April 1, 2020 filing deadline, it cites to no authority that this would excuse its failure to timely file the renewal application.

¹⁴ *Whidbey Island Center for the Arts*, Forfeiture Order, 25 FCC Rcd 8204 (MB 2010) (*Whidbey Island Forfeiture Order*) (citing *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting 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 Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”)).

¹⁵ *Whidbey Island Forfeiture Order*, 25 FCC Rcd at 8205, para 6.

¹⁶ *Id.*

¹⁷ *Zuma Beach FM Emergency and Cmty. Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 8222, 8228, para. 15 (MB 2018) (reducing proposed forfeiture by 25% based on history of compliance with the Rules).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to sections 0.61, 0.283, and 1.108 of the Commission's rules,¹⁸ the forfeiture issued to Heritage Media of Kentucky, Inc., on February 5, 2021, **IS HEREBY REDUCED**, and that, 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, Heritage Media of Kentucky, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$1,125 for its willful violation of section 73.3539 of the Commission's rules.

7. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹⁹ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁰

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843, or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²¹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

8. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Questions regarding payment procedures should be directed to the

¹⁸ 47 CFR §§ 0.61, 0.283, 1.108.

¹⁹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁰ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²¹ Instructions for completing the form may be obtained at <https://transition.fcc.gov/Forms/Form159/159.pdf>.

Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Mark D. Buckles, Heritage Media of Kentucky, Inc., 2160 Brandenburg Rd, Leitchfield, KY 42754, and its counsel, Dawn M. Sciarrino, Esq., Sciarrino & Schubert, PLLC, 330 Franklin Rd., Suite 135A-133, Brentwood, TN 37027.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau