

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

In the Matter of)	
)	Facility ID No. 81605
Bible Broadcasting Network, Inc.)	NAL/Acct. No. MB20041810042
)	FRN: 0006373559
Licensee of Translator Stations)	File No. BRFT-20030728AGU
W209AX, Fairmont, West Virginia)	
and)	Facility ID No. 5086
W244BB, Princeton, West Virginia)	NAL/Acct. No. MB20041810043
)	File No. BRH-20030728AGV
)	

FORFEITURE ORDER

Adopted: June 5, 2008

Released: June 6, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of five hundred dollars (\$500), to Bible Broadcasting Network, Inc. (“Licensee”), licensee of Translator Stations W209AX, Fairmont, West Virginia, and W244BB, Princeton, West Virginia (“Station” or collectively, “Stations”), for its willful violation of Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file license renewal applications for the Stations.

II. BACKGROUND

2. On August 3, 2004, the Bureau issued two Notices of Apparent Liability for Forfeiture (“NAL”) each in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for these violations.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on September 2, 2004.

3. As noted in the NAL, Licensee’s renewal applications for the current Stations’ license term were due on June 2, 2003, four months prior to the October 1, 2003, expiration date.³ Licensee did not file the application until July 28, 2003. Licensee claimed that the untimely filing of the renewal applications were inadvertent and requested a waiver of Section 73.3539 of the Rules to permit the acceptance of the renewal applications. On August 3, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$3,000 for willfully and repeatedly violating Section 73.3539 of the Rules for Licensee’s failure to timely file the Stations’ license renewal applications, and dismissed Licensee’s

¹ 47 C.F.R. § 73.3539.

² *Letter to Bill Freeman from Peter Doyle*, reference 1800B3-SC (MB July 15, 2004).

³ *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

waiver request, finding that such a request was not necessary in order to permit the Commission to accept and consider the renewal applications.⁴ In response, Licensee filed the subject Request.⁵

4. In support of its Request, Licensee states that its failure to timely file the renewal application was unintentional. It explains that it timely filed a joint license renewal application for its FM translator stations in Virginia, but only after the filing deadline passed did it realize that it had failed to include the West Virginia translator stations in that application. It states that the renewal applications for the Stations were submitted on the same day that the omission was discovered. Licensee claims that the Commission improperly imposed a forfeiture for untimeliness, arguing that Section 1.80 of the Rules prescribes a forfeiture for failure to file a required form, rather than failure to timely file a required form. It further asserts that its failure to timely file the license renewal applications was neither willful nor repeated. Licensee also argues that the Commission improperly dismissed Licensee's request for waiver of Section 73.3539 of the Rules, asserting that if the Commission had waived the Rule, it could not have found Licensee apparently liable for its violation. While Licensee does not claim inability to pay, it states that the Commission should take into account the fact that Licensee is a noncommercial educational broadcaster. Licensee asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

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 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.⁹

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. As the Commission has held, however, violations resulting from inadvertent error are willful violations.¹⁰ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.¹¹ Licensee has failed to justify why departure from this precedent is warranted.

⁴ The Commission granted the above-referenced license renewal applications on August 3, 2004.

⁵ Licensee states that its Request should also be considered as a petition for reconsideration of the Commission's dismissal of its request for waiver of Section 73.3539 of the Rules.

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 *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *See 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"); *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").

¹¹ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. *See also Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811,

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7. We also reject Licensee's argument that Section 1.80 of the Rules constrains the Commission to impose forfeiture orders to instances in which applications are not filed at all, as opposed to untimely-filed applications. It is well-settled that the Commission may impose a forfeiture for a late-filed renewal application.¹² We also find that the Commission properly dismissed Licensee's Section 73.3539 waiver request. A party seeking a waiver must demonstrate that deviation from a general rule is warranted by special circumstances and will serve the public interest.¹³ As discussed above, inadvertent error does not excuse Licensee's Rule violation or provide a basis for waiver. We also reject Licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status.¹⁴

8. 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 willfully¹⁵ and repeatedly¹⁶ violated Section 73.3539 of the Rules. However, given the Commission's recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250 for each Station.¹⁷

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, that the Request filed by Bible Broadcasting Network, Inc., when treated as a petition for reconsideration, IS DENIED. IT IS FURTHER 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,¹⁸ that Bible Broadcasting Network, Inc., SHALL FORFEIT to the United States the sum of \$250 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules with respect to Translator Station W209AX, Fairmont, West Virginia, and an additional forfeiture of \$250 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules with respect to Translator Station W244BB, Princeton, West Virginia.

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13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹² See, e.g., *Good News Translator Assoc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

¹³ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

¹⁴ See *Boulder Community Broadcast Assoc., Inc.*, Forfeiture Order, 208 WL 2219994 (EB 2008) (finding that licensee's noncommercial educational status alone was an insufficient basis to reduce forfeiture amount); *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) (same).

¹⁵ 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. See *Southern California*, 6 FCC Rcd at 4387-88 (1991).

¹⁶ 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).

¹⁷ See n.12, supra.

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

10. 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).¹⁹

11. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Bible Broadcasting Network, Inc., 11530 Carmel Commons Boulevard, Charlotte, North Carolina, 28226, and to its counsel, Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Ave., N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ See 47 C.F.R. § 1.1914.