

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

In re Application of	)	
	)	
Mid-Coast Radio Project, Inc.	)	Facility ID No. 41857
	)	NAL/Acct. No. MB-20091810002
For Renewal of License for	)	FRN: 0002540631
Noncommercial Educational	)	File No. BRED-20050125AHW
Station KKFI(FM)	)	
Kansas City, Missouri	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: February 18, 2009

Released: February 19, 2009

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application (the "Application") of Mid-Coast Radio Project, Inc. (the "Licensee"), for renewal of its license for noncommercial educational ("NCE") Station KKFI(FM), Kansas City, Missouri (the "Station"). The Commission also has before it informal objections filed against the Application by Dee Schademmann on September 21, 2005 (the "Schademmann Objection"), and by Joshua C. Powers on September 26, 2005 (the "Powers Objection"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully violated Section 73.3539 of the Rules,³ by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we deny the Schademmann Objection and the Powers Objection, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of three thousand dollars (\$3,000), and we grant the Station's Application.

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 of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁴ An application for renewal of the Station's license should have been filed by October 1, 2004, four months prior to the Station's license expiration date (February 1, 2005),⁵ but was not. In fact, the Licensee did not file the Station's Application until January 25, 2005, one week before the license expiration date.

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ 47 C.F.R. § 73.3539(a).

⁵ See 47 C.F.R. §§ 73.1020, 73.3539(a).

3. The Schademann Objection states: “[I]t has been made clear to me [as the Station’s Office Administrator for a period of two years] that [the Station is] incapable of serving the public interest as stated in KKFI’s Mission, Articles of Incorporation and By-laws. Additionally, and more importantly, [the Station has] violated several FCC rules and regulations, including obscenity and reporting regulations.”⁶ Despite this reference to obscenity, the Schademann Objection fails to describe any instance in which the Station may have aired obscene programming. Although much of the Schademann Objection is devoted to issues not within the Commission’s jurisdiction, it makes the following claims with respect to alleged violations of the Rules: (a) the Station’s Emergency Alert System (“EAS”) equipment does not work properly and the Station has not maintained required EAS records;⁷ (b) tower light outages have not been reported in a timely manner;⁸ and (c) the Station failed to make public announcements concerning its license renewal application.⁹ Other portions of the Schademann Objection are based on erroneous interpretations of our Rules and/or fail to provide sufficient information to present a substantial and material question of fact as to whether a grant of the Application would serve the public interest.¹⁰

4. The Powers Objection was filed by a former General Manager of the Station and challenges the Station’s management by the Licensee’s Board of Directors.¹¹ As with the Schademann Objection, much of the Powers Objection deals with matters that are not within the Commission’s jurisdiction. The Powers Objection claims that if the Commission conducted an inspection of the Station, “I can guarantee that violations in the areas of the public file, the station log, EAS log, station ID, lack of board certified programmers, indecency and obscenity and a host of other applicable issues would be found.”¹²

5. The Commission conducted an inspection of the Station on May 22, 2007. The inspection revealed no EAS violations, no transmitter log violations and no tower lighting violations. The inspection found only three violations of the Rules, two of which were public inspection file violations that were resolved during the inspection: (a) the transmitter efficiency factor was not available,¹³ (b) the current ownership report for the Station was not in the public inspection file,¹⁴ and (c) although the

⁶ Schademann Objection at 1.

⁷ *Id.*; see 47 C.F.R. §§ 11.35 (describing requirements for operational readiness of EAS equipment) and 73.1820(a)(1)(iii) (describing requirement to maintain a log of each test and activation of the EAS system).

⁸ Schademann Objection at 2; see 47 C.F.R. § 17.48 (describing requirements to notify the Federal Aviation Administration of any observed or known extinguishment or malfunction of tower lights).

⁹ Schademann Objection at 2; see 47 C.F.R. § 73.3580(d) (describing requirements to broadcast pre-filing and post-filing announcements of a broadcast station’s license renewal application).

¹⁰ The Schademann Objection claims that the Station failed to maintain a file of listener complaints. Schademann Objection at 2. However, 47 C.F.R. § 73.3527 (unlike § 73.3526, the public inspection file rule applicable to commercial radio stations) does not require NCE stations to maintain a file of listener complaints. The Schademann Objection also cites certain practices that it categorizes as “playola/plugola”, but it fails to provide any specific information, claiming that “calls-to-action and self-promotion by various programmers and their guests . . . are too numerous to mention but can be heard on any given day.” Schademann Objection at 2; see 47 C.F.R. § 73.1212 (sponsorship identification requirements). This portion of the Schademann Objection not only appears to involve a misinterpretation of our Rules, but also lacks sufficient information to present a substantial and material question of fact.

¹¹ Powers Objection at 1 (“I witnessed what I consider to be egregious examples of misconduct, poor leadership and an overall disregard for the stated mission of the station.”).

¹² *Id.* at 4. The Powers Objection does cite one specific instance of potentially indecent language aired on the Station at 8:15 a.m., but fails to provide a date and fails to provide sufficient information to enable us to make a judgment about what the Station broadcast in this instance and its context. Powers Objection at 2.

¹³ See 47 C.F.R. § 73.267(c).

¹⁴ See 47 C.F.R. § 73.3527(e)(4). The report was printed and placed in the file during the inspection.

announcement concerning the Station's Application was in the public inspection file, no dates or times of those broadcasts were attached to the announcement.¹⁵ The inspector issued a verbal admonition for these violations to the General Manager of the Station at the conclusion of the inspection.

III. DISCUSSION

6. *Proposed Forfeiture.* In this case, the Licensee failed to timely file the Application as required by Section 73.3539(a) of the Rules. Accordingly, we hereby issue this *NAL* pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁶ 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.¹⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁸ and the Commission has so interpreted the term in the Section 503(b) context.¹⁹ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."²⁰

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.²¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering factors enumerated in Section 503(b)(2)(D) of the Act, including "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."²²

8. In this case, the Licensee filed the Application nearly four months after it was due. Taking into consideration the facts as described above and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to timely file the Application.

9. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²³ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3)

¹⁵ See 47 C.F.R. § 73.3527(e)(10). The Station's "traffic" logs showed the dates and times that the announcements were aired.

¹⁶ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

¹⁷ 47 U.S.C. § 312(f)(1).

¹⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²⁰ 47 U.S.C. § 312(f)(2).

²¹ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

²² 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

²³ 47 U.S.C. § 309(k).

there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²⁵

10. In light of the facts stated above, we deny the Schademann Objection and the Powers Objection. The Commission’s inspection of the Station on May 22, 2007 showed that neither the Schademann Objection nor the Powers Objection presents a substantial and material question of fact as to whether grant of the Station’s Application would serve the public interest. Rather, the inspection revealed two public inspection rule violations that were resolved during the course of the inspection and a transmitter power calculation violation that was unrelated to any claim made by Ms. Schademann or Mr. Powers. These violations were addressed through a verbal admonition to the Station’s General Manager.

11. We find that the Licensee’s violations of Sections 73.267(c), 73.3527(e) and 73.3539 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²⁶ Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Mid-Coast Radio Project, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000) for its apparent willful violation of Section 73.3539 of the Commission’s Rules.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Mid-Coast Radio Project, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251.

²⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁶ For example, we do not find here that the Licensee’s Station operation “was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Memorandum Opinion and Order, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁷

18. IT IS FURTHER ORDERED that the informal objections filed by Dee Schademann on September 21, 2005, and by Joshua C. Powers on September 26, 2005, ARE DENIED.

19. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Mid-Coast Radio Project, Inc. for Station KKFI(FM), Kansas City, Missouri (File No. BRED-20050125AHW) IS GRANTED.

20. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mid-Coast Radio Project, Inc., P.O. Box 32250, Kansas City, MO 64171, to Joshua C. Powers, 630 Ohio Street, Lawrence, Kansas 66044, to Dee Schademann, 5412 N.E. Barnes Avenue, Kansas City, MO 64119, and to Melodie A. Virtue, Esq., Garvey Schubert Barer, Fifth Floor, 1000 Potomac Street, N.W., Washington, DC 20007-3501.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

²⁷ See 47 C.F.R. § 1.1914.