

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

In the Matter of	)	
	)	Facility ID No. 18255
East Tennessee State University	)	NAL/Acct. No. MB200641410031
	)	FRN: 0001757483
Licensee of Translator Station W218BW(FX)	)	File No. BRFT-20031110AKC
Lenoir, North Carolina	)	

FORFEITURE ORDER

Adopted: March 20, 2009**Released: March 23, 2009**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250), to East Tennessee State University (“Licensee”), licensee of Translator Station W218BW(FX), Lenoir, North Carolina (“Station”), for its willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license renewal application for the Station.

II. BACKGROUND

2. On February 24, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred thousand dollars (\$1,500) to Licensee for this violation.² Licensee filed a Request for Cancellation of Proposed Forfeiture (“Request”) on March 31, 2006.

3. As noted in the NAL, Licensee’s renewal application for the current Station’s license term was due on August 1, 2003, four months prior to the December 1, 2003, expiration date.³ Licensee did not file the application until November 10, 2003, and provided no explanation for the untimely filing of the renewal application. On February 24, 2006, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Licensee failed to timely file a renewal application for the Station.⁴ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that its failure to timely file the renewal application was unintentional. It explains that it did not realize that there were different renewal cycles for stations in North Carolina and Tennessee until the renewal deadline for the Station had already passed. Licensee

¹ 47 C.F.R. § 73.3539.

² *Letter to Mitch Sandidge from Peter Doyle*, reference 1800B3 (MB Feb. 24, 2006).

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

⁴ The Commission granted the above-referenced license renewal application on February 24, 2006.

claims that this mistake was inadvertent and did not constitute a willful violation of the Rules. Licensee asserts these reasons warrant a reduction or cancellation 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,⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, it asserts that it was unaware that there were different filing deadlines for North Carolina and Tennessee stations. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.⁹ 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 (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹⁰

7. 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 willfully¹¹ and repeatedly¹² violated Section 73.3539 of the Rules. However, given the Commission's recent decisions assessing

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *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").

¹⁰ *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, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹¹ 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).

¹² 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).

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 \$250.¹³

IV. ORDERING CLAUSES

8. 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,¹⁴ that East Tennessee State University, SHALL FORFEIT to the United States the sum of \$250 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules.

9. 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.¹⁵ 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).¹⁶

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Mitch Sandidge, East Tennessee State University, Box 70630, Johnson City, Tennessee, 37614.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹³ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *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).

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

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.