

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

In the Matter of	)	
	)	
<b>GFR, Inc.</b>	)	Facility ID No. 37510
Licensee of Station	)	NAL/Acct. No. MB20051810034
WTOT-FM, Graceville, Florida	)	File No. BRH-20040108ALF
	)	FRN 0005004155

**FORFEITURE ORDER**

**Adopted: May 18, 2009**

**Released: May 19, 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 one thousand five hundred dollars (\$1,500) to GFR, Inc. (“Licensee”), licensee of Station WTOT-FM, Graceville, Florida (the “Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file a license renewal application.<sup>1</sup>

**II. BACKGROUND**

2. On March 24, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture to Licensee in the amount of one thousand five hundred dollars (\$1,500) for violations at Station WTOT-FM.<sup>2</sup> Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on April 25, 2005.

3. Licensee’s renewal application for the Station for the current license term should have been filed on October 1, 2003, four months prior to the February 1, 2004, expiration date.<sup>3</sup> Commission records show that Licensee tendered WTOT-FM’s application on September 30, 2003, without the required filing fee. On January 8, 2004, Licensee re-filed its renewal application with the proper fee and it was accepted. On March 24, 2005, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for failure to timely file Station WTOT-FM’s renewal application.<sup>4</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that: (1) its failure to file properly the renewal application was inadvertent; (2) it immediately took corrective action upon learning that the Station license had expired; (3) it has a history of overall compliance with the Rules; and (4) payment of the

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> Letter to Mr. Edgar Cearley from Peter H. Doyle, Chief, Audio Division, Media Bureau, ref. 1800B3 (MB March 24, 2005).

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> The WTOT-FM renewal application was granted on March 24, 2005.

forfeiture would severely restrict its ability to operate the Stations. 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,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</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>8</sup>

6. Licensee does not dispute that it failed properly to file a timely renewal application for Station WTOT-FM, but states that the violation was unintentional. Specifically, it states that its failure to properly file the renewal application was because it filed without the advice of counsel, and it failed to realize that it was required to pay the fee because it was unfamiliar with the filing requirements.<sup>9</sup> As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>10</sup> 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.<sup>11</sup>

7. Licensee next asserts that a reduction of the forfeitures is warranted because it took corrective action and made full disclosure following the discovery of the application's deficiencies.<sup>12</sup> We reject this argument. While we recognize Licensees' efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>13</sup>

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> Request at 2.

<sup>10</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*"); *see also 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").

<sup>11</sup> *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).

<sup>12</sup> Request at 2.

<sup>13</sup> *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). *See also Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

8. In addition, we reject Licensee's argument regarding its history of compliance with the rules. Licensee, by its own admission, failed to file properly its application for Station WTOT-FM, as did commonly owned MFR, Inc., licensee of Stations WJAQ(FM) and WTOT(AM), Marianna, Florida.<sup>14</sup> Based on these combined offenses, we cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.<sup>15</sup>

9. Regarding Licensee's claim of financial hardship, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay 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 ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status. Licensee claims that its stations have operated at increasing losses over the years and provided us with income statements for the years 2003 and 2004 to support this claim. However, these statements omit a line item for the Station's income, and only include the Station's expenditures.<sup>16</sup> Without documentation of income, we do not have sufficient information to assess Licensee's claim of inability to pay.<sup>17</sup> Accordingly, we decline to cancel or reduce the proposed forfeiture on this basis.<sup>18</sup>

10. 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 willfully<sup>19</sup> and

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<sup>14</sup> See Request at 2, Licensee notes its affiliation with MFR, Inc. The staff issued a \$12,000 NAL to MFR, Inc., for its violation of Section 73.3526 of the Rules. *Letter to Kathleen A. Kirby, Esq. from Peter H. Doyle, Chief, Audio Division, Media Bureau*, ref. 1800B3 (MB March 24, 2005). We are this same date issuing a *Forfeiture Order* affirming the forfeiture amount for the violations at WJAQ(FM) and WTOT(AM).

<sup>15</sup> *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination). See also *Petracom of Texarkana, L.L.C.*, Forfeiture Order, 19 FCC Rcd 8096 (EB 2004) (citing *CCN, Inc., et al.*, 13 FCC Rcd 13599, 13599-600 (1998); *Hill Country Real Estate Development Corp.*, 18 FCC Rcd 21079, 21080 (Enf. Bur. 2003); *Rio Grande Transmission, Inc.*, 16 FCC Rcd 17040, 17042-43 (Enf. Bur. 2001); *Mega Communications of St. Petersburg, Licensee, L.L.C.*, 16 FCC Rcd 15948, 15949 (Enf. Bur. 2001)).

<sup>16</sup> Licensee filed a joint statement including all three stations. However, the attached income statements only show income for Stations WTOT(AM) and WJAQ(FM). See Request, Attachment at 7-9.

<sup>17</sup> See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

<sup>18</sup> See *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (rejecting licensee's financial hardship argument, finding that a one-page document summarizing its station budget and no information about licensee's finances was an insufficient basis on which to assess the licensee's inability to pay); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821 (MB 2008) (same).

<sup>19</sup> 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.

repeatedly<sup>20</sup> violated Section 73.3539 of the Rules and Section 301 of the Act,<sup>21</sup> and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### 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 Commission's Rules,<sup>22</sup> that GFR, Inc., SHALL FORFEIT the sum of one thousand five hundred dollars (\$1,500) to the United States for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

12. 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.<sup>23</sup> 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).<sup>24</sup>

13. 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: GFR, Inc., P.O. Box 569, Marianna, Florida, and to its counsel, Kathleen A. Kirby, Esq., Wiley Rein & Fielding, LLP, 1776 K Street, N.W. Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>20</sup> 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).

<sup>21</sup> 47 U.S.C. § 301.

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>23</sup> 47 U.S.C. § 504(a).

<sup>24</sup> *See* 47 C.F.R. § 1.1914.