

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

In the Matter of	)	
	)	
San Juan Unified School District	)	Facility ID No. 58888
	)	NAL/Acct. No. MB-2007414140217
	)	FRN: 0001538537
Licensee of Station KYDS(FM)	)	File No. BRED-20051004ABQ
Sacramento, California	)	
	)	

FORFEITURE ORDER

Adopted: March 10, 2010

Released: March 11, 2010

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 five hundred dollars (\$1,500) to San Juan Unified School District ("Licensee"), licensee of Station KYDS(FM), Sacramento, California ("Station"), for its willful 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 14, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for willfully violating Section 73.3539 of the Rules, based on the fact that it failed to timely file a renewal application for the Station.² As noted in the NAL, Licensee's renewal application for the Station's license term was due on August 1, 2005, four months prior to the December 1, 2005, expiration date.³ Licensee did not file the application until October 4, 2005, and provided no explanation for the untimely filing of the renewal application. In response to the NAL, Licensee submitted a letter ("Letter") on March 19, 2007.

III. DISCUSSION

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act

¹ 47 C.F.R. § 73.3539.

² *San Juan Unified School District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2918 (MB 2007). The Commission granted the above-referenced license renewal application on February 14, 2007.

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

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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).

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.⁷

4. In its Letter, Licensee states that its failure to timely file the renewal application was unintentional and that as such, the forfeiture should be cancelled. Edward D. Santillanes, the teacher/advisor for the Station, explains that the Licensee began the renewal process in April of 2005 but found the process confusing.⁸ Mr. Santillanes further states that he and students from school continued to work on the renewal throughout the summer and fall terms of 2005, but that the “application was already in arrears” by the time the school year began.⁹

5. We reject this argument. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements 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 (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹¹ While we understand that the Licensee’s staff was unfamiliar with the renewal process, a licensee is ultimately responsible for ensuring it complied with the Commission’s Rules by filing a timely renewal application.¹²

6. We have considered Licensee’s Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹³ violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Letter at 1.

⁹ *Id.* at 1-2.

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

¹² See, e.g., *Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008) (citing *Request for Waiver by Center City School*, Order, 17 FCC Rcd 22424, 22426 (WCB 2002) (“it is the applicant who has responsibility ultimately for the timely submission of its application.”)).

¹³ 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.

IV. ORDERING CLAUSES

7. 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 San Juan Unified School District SHALL FORFEIT to the United States the sum of one thousand five hundred dollars (\$1,500) to for willfully violating Section 73.3539 of the Commission's Rules.

8. 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 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 Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

9. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, to Ed Santillanes, San Juan Unified School District, 4300 El Camino Ave, Sacramento, CA 95821.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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.

¹⁷ See 47 C.F.R. § 1.1914.