

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

In the Matter of)	
)	Facility ID No. 37781
Little Miami Local Schools)	NAL/Acct. No. MB-200741410102
)	FRN: 0011373347
Licensee of Station WLMH(FM))	File No. BRED-20040811AAY
Morrow, Ohio)	

FORFEITURE ORDER

Adopted: April 5, 2010

Released: April 6, 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 Little Miami Local Schools (“Licensee”), licensee of Station WLMH(FM), Morrow, Ohio (“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 28, 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. As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on June 1, 2004, four months prior to the October 1, 2004, expiration date.² Licensee did not file the application until August 11, 2004, and provided no explanation for the untimely filing of the renewal application.³ In response to the NAL, Licensee submitted a letter (“Letter”) on March 20, 2007.

3. In its Letter, Licensee asserts that the proposed forfeiture should be cancelled because: (1) its failure to timely file its renewal application was inadvertent, (2) paying the forfeiture would present a financial hardship, and (3) Licensee is a non-commercial entity.

III. DISCUSSION

4. 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

¹ 47 C.F.R. § 73.3539.

² See 47 C.F.R. §§ 73.1020, 73.3539(a).

³ *Little Miami Local Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4009 (MB 2007). The Commission granted the above-referenced license renewal application on February 28, 2007.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

Commission's *Forfeiture Policy Statement*.⁶ 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.⁷

5. 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. Wayne Lyke, the Station's General Manager, explains he "had no knowledge of the necessity to file for licensure four (4) months prior to the expiration of said license," adding he only learned that the renewal was overdue when he read about the renewal cycle in the local newspaper.⁸ Mr. Lyke further states that his "formal training for radio was in a mass media course in college" and he "had no idea what [his] relationship with the FCC was."⁹

6. 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 Moreover, the Commission has long held that "licensees are responsible for the acts and omissions of their employees and independent contractors,"¹² and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."¹³ While we understand that Licensee's staff was unfamiliar with the online renewal process, Little Miami Local Schools, as the licensee, was ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.¹⁴

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).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Letter at 1.

⁹ *Id.*

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 *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

¹³ See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹⁴ 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.")).

7. Licensee states that the Station has “very limited resources and a fine of \$1,500 could be extremely detrimental to our program and ability to serve our students . . . and the public”¹⁵ This is essentially an argument to support a claim of financial hardship.¹⁶ The Commission will not consider reducing or canceling a forfeiture in response to financial hardship 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.¹⁷ Licensee has not provided any such documentation and we therefore will not reduce the forfeiture based on financial hardship.

8. Licensee also argues that the forfeiture amount should be cancelled because it operates a non-commercial station.¹⁸ It is established Commission policy that there is no proposed forfeiture exemption or reduction based on the noncommercial status of a station.¹⁹ We therefore decline to reduce the forfeiture amount based on the Station’s noncommercial status.

9. 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 willfully²⁰ violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

10. 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,²¹ that Little Miami Local Schools 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.

11. 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

¹⁵ Letter at 1-2.

¹⁶ See *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (rejecting licensee's argument that it should not be required to pay the proposed forfeiture because it would divert funds that would otherwise be used to create public interest programming), *modified*, 23 FCC Rcd 15959 (Oct. 28, 2008).

¹⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount based on financial hardship).

¹⁸ Letter at 1.

¹⁹ See, e.g., *Des Moines Independent Community School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869, 3871 (MB 2009), *citing Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743, 8745 (MB 2008) (rejecting licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status). See also *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) (“Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station.”).

²⁰ 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.

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

to Section 504(a) of the Act.²² 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).²³ 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. 20554.²⁴

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Wayne Lyke, Little Miami Local Schools, 3001 East US 22 & SR 3, Morrow, Ohio 45152.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² 47 U.S.C. § 504(a).

²³ See 47 C.F.R. § 1.1914.

²⁴ *Id.*