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

In the Matter of	)	
	)	Facility ID No. 12220
COLBY COMMUNITY COLLEGE	)	NAL/Acct. No. MB-200641410117
	)	FRN: 008345886
Licensee of Station KTCC(FM)	)	File No. BRED-20050829AAQ
Colby, Kansas	)	

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 seven thousand dollars ($7,000) to Colby Community College ("Licensee"), licensee of Station KTCC(FM) ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") by failing to timely file a license renewal application and engaging in unauthorized operation of the Station.[1]

II. BACKGROUND

2. On February 16, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("*NAL*") in the amount of seven thousand dollars ($7,000) to Licensee for these violations.[2] As noted in the *NAL*, Licensee's renewal application for the Station's license term was due on February 1, 2005, four months prior to the June 1, 2005, expiration date.[3] Licensee did not file the application until August 29, 2005, when it tendered both the captioned license renewal application and a request for special temporary authority ("STA") to continue operations pending consideration of the untimely renewal application. The staff granted the STA on September 29, 2005, and it expired on March 28, 2006. Licensee failed to timely seek an extension of the STA prior to its expiration, and it did not file for further authority to continue the Station's operations until May 2, 2006.[4]

3. In response to the *NAL*, Licensee submitted two letters: one from Mr. Corey Sorenson, radio broadcasting instructor at the college ("Sorenson Letter"), and another from Dr. Lynn Kreider, President of the college ("Kreider Letter") on March 19, 2007. In his letter, Mr. Sorenson states that that forfeiture should be reconsidered because: (1) Licensee's untimely renewal was in part caused by his predecessor's failure to document the license renewal process, as well as his own unfamiliarity with the

[1] 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

[2] *Colby Community College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3266 (MB 2007). The Commission granted the above-referenced license renewal application on February 16, 2007.

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

[4] The staff granted the second STA on May 3, 2006, to expire on November 3, 2006. Licensee timely filed for an extension of this STA on August 18, 2006.This request for extension was dismissed at the time the renewal was granted.

process, and (2) it would be a financial hardship for Licensee to pay the forfeiture amount. Dr. Kreider likewise argues in her letter that the forfeiture would be financially burdensome for Licensee.

III. DISCUSSION

4. 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]

5. In his letter, Mr. Sorenson requests that the forfeiture be reconsidered in light of the situation he faced when he began his employment at the college. He states that he "was not given any training on what needed to be done with regard to FCC filing, as no one at the college knew what the processes or requirements were." [9] Mr. Sorenson also states that he began the renewal process in January 2005 but "ran into some problems because there were no records for [Licensee's] CORES password from the previous instructor."[10] He adds that he "filled out the licensee renewal" but "had misread the instructions and mistakenly thought [he] was finished."[11]

6. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.[12] 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.[13] Although we sympathize with the challenges described by Mr. Sorenson, Colby Community College, as the licensee, was ultimately responsible for

[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] Sorenson Letter at 1.

[10] *Id*.

[11] *Id*.

[12] *See PJB Communications of Virginia, Inc*., Memorandum Opinion and Order, 7 FCC Rcd 2088, 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, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

[13] *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (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).

ensuring it complied with the Commission's Rules by filing a timely renewal application.[14] Accordingly, we find this argument without merit.

7. Licensee also suggests that the forfeiture issued for unlawful operation of the Station be reduced because it was not operating for several months after its license expired. Licensee notes that the Station "powered down the week of finals in May 2005 and did not power back up until the STA was approved late September 2005."[15] However, as noted in the *NAL* and acknowledged by Licensee, the Station engaged in unauthorized operation from March 28, 2006, when the initial STA expired, until May 3, 2006, when an extension to the STA was granted. This period is sufficient to warrant the $4,000 forfeiture amount for unauthorized operation of the Station.[16] We therefore reject this argument.

8. Licensee also argues that the forfeiture should be cancelled because it "would have a devastating effect on [the Station]. . . ."[17] The Commission will not consider reducing or cancelling 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. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.[18] Licensee has not submitted any such documentation. Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

9. We have considered Licensee's response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully[19] violated Section 73.3539 of the Rules and willfully and repeatedly[20] violated Section 301 of the Act[21] and

[14] *See, e.g., Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008), *citing Request for Waiver by Center City Schools*, Order, 17 FCC Rcd 22424 (2003)("it is the applicant who has responsibility ultimately for the timely submission of the application.").

[15] Sorenson Letter at 2. Under Section 73.561 of the Rules, NCE stations licensed to educational institutions are not required to broadcast on days designated on the official school calendar as vacation or recess periods. *See* 47 C.F.R. § 73.561.

[16] *See, e.g.*, *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21033 (MB 2007) (finding that license was liable for a $4,000 forfeiture for unauthorized operation of station from December 1, 2005 to January 27, 2006). We also note that in the *NAL*, we reduced the forfeiture amount for unauthorized operation of the Station from $10,000 to $4,000.

[17] Sorenson Letter at 2. In her letter, Dr. Kreider makes a slightly different argument, and states, "I am not suggesting that Colby Community College cannot pay the forfeiture amount. However, doing so will divert these funds from our broader purpose." Kreider Letter at 1.

[18] *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 after review of submitted federal tax returns demonstrated a financial hardship).

[19] 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.

[20] Section 312(f)(2) 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)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

[21] 47 C.F.R § 73.3539; 47 U.S.C. § 301.

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,[22] that Colby Community College SHALL FORFEIT to the United States the sum of seven thousand dollars ($7,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

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 to Section 504(a) of the Act.[23] 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).[24] 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.[25]

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent, by First Class Certified Mail, Return Receipt Requested, to Mr. Corey Sorenson and Dr. Lynn Kreider, Colby Community College, 1255 South Range Avenue, Colby, Kansas 67701.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

[22] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

[23] 47 U.S.C. § 504(a).

[24] *See* 47 C.F.R. § 1.1914.

[25] *Id.*