

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

In the Matter of	)	
	)	Facility ID No. 71654
<b>West Texas A&amp;M University</b>	)	NAL/Acct. No. MB-200741410181
	)	FRN: 0010669588
Licensee of Station KWTS(FM)	)	File No. BRED-20050929AIO
Canyon, Texas	)	

**FORFEITURE ORDER**

**Adopted: July 8, 2010**

**Released: July 9, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600) to West Texas A&M University (“Licensee”), licensee of Station KWTS(FM), Canyon, Texas (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On February 12, 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.<sup>2</sup> As noted in the NAL, Licensee’s renewal application for the current Station license term should have been filed on April 1, 2005, four months prior to the Station’s August 1, 2005, license expiration date, but was not.<sup>3</sup> On September 29, 2005, Licensee filed its renewal application and on March 23, 2006, more than seven months after the Station’s license had expired, Licensee filed a request for Special Temporary Authorization (“STA”).<sup>4</sup> Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 14, 2007.

3. In its Request, Licensee states that cancellation or reduction of the forfeiture amount is warranted because: (1) its failure to timely file the renewal application was inadvertent; (2) payment of the proposed forfeiture will cause it financial hardship; and (3) it has a history of compliance with the Rules.

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

<sup>2</sup> *West Texas A&M University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2727 (MB 2007). The Commission granted the above-referenced license renewal application on February 12, 2007.

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

<sup>4</sup> File No. BRED-20050929AIO. The staff granted the STA request on April 3, 2006. See *Letter to Mr. Randy Ray*, Ref. 1800B3 (MB Apr. 3, 2006).

### III. DISCUSSION

4. 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 determining the appropriate forfeiture amount, 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>

5. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional.<sup>9</sup> Licensee claims that it failed to timely file due to confusion in its first time using the Commission's Consolidated Data Base System, which it argues is "complicated and in some respects misleading."<sup>10</sup> Specifically, it states that well in advance of the renewal deadline, Mr. Ray, its representative, prepared the forms electronically, and believed that the term "valid" meant that he had successfully filed them. Later, after seeking the advice of a Commission staff member, Mr. Ray learned that the renewal had not been filed because he did not complete the filing process. With the staff member's help, Mr. Ray filed the renewal application on September 29, 2005, almost six months late.<sup>11</sup>

6. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>12</sup> We have declined to reduce or cancel forfeitures in similar circumstances.<sup>13</sup> Moreover, the Commission has specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or

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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 3-4 and 8-9.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> Licensee also claims that it relied on the staff member's advice, which caused it to operate the station without authorization. Such statements, if made, are not binding on the Commission, nor do they prevent us from enforcing our regulations. See *Nine Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at Bismarck, North Dakota*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11277, 11283 (1995) (licensees who relied on Commission staff advice to their detriment were given no relief).

<sup>12</sup> 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, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>13</sup> 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) ("ignorance of or unfamiliarity with the Commission's requirements is not a mitigating factor and does not warrant a forfeiture reduction"); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006) ("negligence does not mitigate a Commission rule violation").

cancellation of a forfeiture.<sup>14</sup> Accordingly, we find this argument without merit.

7. Next, Licensee argues that the forfeiture should be reduced or cancelled because it would cause significant financial hardship to the Station. 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. Here, Licensee did not submit federal tax returns, financial statements or any documentation setting forth its finances in support of its Request. 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.<sup>15</sup>

8. Finally, Licensee notes that it has had an unblemished record of compliance with the Rules since obtaining authority to operate in 1980.<sup>16</sup> Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$7,000 to \$5,600.<sup>17</sup>

9. 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>18</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>19</sup> violated Section 301 of the Act. However, given Licensee’s history of compliance with the Rules, we reduce the forfeiture amount to \$5,600.

#### 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,<sup>20</sup> that West Texas A&M University SHALL FORFEIT to the United States the sum of five thousand, six hundred dollars (\$5,600)

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<sup>14</sup> See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

<sup>15</sup> See *Colby Community College*, Forfeiture Order, 24 FCC Rcd 3568 (MB 2010)(rejecting licensee’s financial hardship argument, finding that licensee failed to provide any documentation in support of an inability to pay claim); *Oberlin College Student Network, Inc.*, Forfeiture Order, DA 10-1196 (MB rel. June 29, 2010) (same).

<sup>16</sup> Licensee also claims that the forfeiture guidelines are not binding and that they should not be applied to it as a Class D station, which is a secondary service. Licensee is apparently under the misapprehension that its station is not a full-power station because of its non-profit status as an NCE station. Commission records show that Station KWTS(FM) is a Class A full power station, not a Class D station. Licensee is also under the misapprehension that the Rules do not apply to secondary services, or to inadvertent violations.

<sup>17</sup> See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (reducing forfeiture amount based on licensee’s history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536, 1537 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

<sup>18</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.

<sup>19</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>20</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

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.<sup>21</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>22</sup> Licensee will also send electronic notification on the date said payment is made to [Kelly.Donohue@FCC.gov](mailto:Kelly.Donohue@FCC.gov) and [Victoria.McCauley@FCC.gov](mailto:Victoria.McCauley@FCC.gov). 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.<sup>23</sup>

12. 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: Randy Ray, West Texas A&M University, P.O. Box 60747, Canyon, Texas 79016, and to its counsel, Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Rd., Silver Spring, MD 20904

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> See 47 C.F.R. § 1.1914.

<sup>23</sup> *Id.*