

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

In the Matter of	)	Facility ID No. 69214
	)	NAL/Acct. No. MB-200741410298
<b>The University of Southern Mississippi</b>	)	FRN: 0010694776
	)	File No. BRED-20040602AAZ
Licensee of WUSM-FM	)	
Hattiesburg, Mississippi	)	
	)	

**FORFEITURE ORDER**

**Adopted: September 17, 2010**

**Released: September 20, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of three thousand, five hundred dollars (\$3,500) to The University of Southern Mississippi (“Licensee”), licensee of radio station WUSM-FM, Hattiesburg, Mississippi (“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 violating Section 301 of the Communications Act of 1934, as amended (“Act”) for unauthorized operation of the Station after its license had expired.<sup>1</sup>

**II. BACKGROUND**

2. On March 27, 2007, the Media Bureau adopted a Notice of Apparent Liability for Forfeiture (“NAL”) proposing a forfeiture in the amount of three thousand, five hundred dollars (\$3,500) for failure to timely file the Station’s renewal application and for unauthorized operation of the Station.<sup>2</sup> As noted in the NAL, an application for renewal of the Station’s license should have been filed by February 1, 2004, four months prior to the Station’s June 1, 2004, license expiration date. Licensee did not file the license renewal application until June 2, 2004. Licensee filed a response to the NAL (“Response”) on April 26, 2007. In its Response, Licensee states that cancellation or reduction of the forfeiture amount is warranted because its failure to timely file the renewal application was inadvertent.

**III. DISCUSSION**

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,<sup>3</sup> Section 1.80(b)(4) of the Rules,<sup>4</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>5</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the

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

<sup>2</sup> *The University of Southern Mississippi*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5609 (MB 2007) (“*Southern Mississippi*”). The Station’s license renewal application was granted on March 27, 2007.

<sup>3</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</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).

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>6</sup>

4. Licensee contends that the forfeiture amount should be cancelled or reduced because its failure to timely file was inadvertent. Specifically, Licensee claims that it believed it had correctly filed the renewal application on January 26, 2004, and learned of its late renewal from a June 2, 2004, Commission notice.<sup>7</sup> It alleges that it then discovered that it had “validate[d]” the application but had not yet completed the filing process.<sup>8</sup> Our records reveal that Licensee initiated its online renewal application on January 26, 2004, but did not actually file the application until June 2, 2004.

5. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>9</sup> Moreover, the Media Bureau (“Bureau”) has specifically ruled that confusion or difficulties with the Commission’s electronic filing system are not grounds for reduction or cancellation of a forfeiture.<sup>10</sup> Accordingly, we find Licensee’s argument is meritless.

6. 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<sup>11</sup> violated Section 73.3539 of the Rules and Section 301 of the Act<sup>12</sup> and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.<sup>13</sup>

#### IV. CONCLUSION

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,<sup>14</sup> that The University of Southern Mississippi SHALL FORFEIT to the United States the sum of three thousand, five hundred

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<sup>6</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>7</sup> Response at 2.

<sup>8</sup> *Id.*

<sup>9</sup> 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”).

<sup>10</sup> See, e.g., *Bible Broadcast Church School*, Forfeiture Order, 25 FCC Rcd 1978 (MB 2010) (declining to reduce forfeiture amount based on failure to press the “File Form” button); *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008) (same).

<sup>11</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>12</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>13</sup> In the NAL, the Bureau *sua sponte* reduced the forfeiture amount for the unauthorized operation portion of the forfeiture from the base amount, \$10,000, to \$500 due to the brevity of the violation (see *Southern Mississippi*, 22 FCC Rcd at 5610).

<sup>14</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

dollars (\$3,500) for willfully violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.<sup>15</sup>

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.<sup>16</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>17</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@FCC.gov and Maureen.McCarthy@FCC.gov. Requests for payment of the full amount of this Forfeiture Order 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>18</sup>

9. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to The University of Southern Mississippi, c/o Mr. Michael Davis, 118 College Drive #118, Hattiesburg, Mississippi, 39401.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>15</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>16</sup> 47 U.S.C. § 504(a).

<sup>17</sup> See 47 C.F.R. § 1.1914.

<sup>18</sup> *Id.*