

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

In the Matter of)	
)	
Applegate Media, Inc.)	Facility ID No. 17468
)	NAL/Acct. No. MB-200741410462
)	FRN: 0005026166
Licensee of KAPL(AM))	File No. BR-20060302ACL
Phoenix, Oregon)	

FORFEITURE ORDER

Adopted: October 8, 2010

Released: October 12, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600) to Applegate Media, Inc. ("Licensee"), licensee of KAPL(AM), Phoenix, Oregon ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a renewal application for the Station, 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.¹

II. BACKGROUND

2. On December 20, 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 October 1, 2005, four months prior to the February 1, 2006, license expiration date.³ Licensee did not file the application until March 2, 2006, and provided no explanation for the untimely filing of the renewal application.⁴ Licensee submitted a response ("Response") to the NAL on January 10, 2008.

3. In its Response, Licensee asserts that the proposed forfeiture should be reduced because Licensee has a history of overall compliance with the Rules.⁵

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

² *Applegate Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21801 (MB 2007). The Commission granted the license renewal application on December 20, 2007.

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

⁴ On February 28, 2006, the Licensee filed a request for special temporary authority ("STA") to continue Station operations, pending consideration of the late-filed renewal application. The staff granted the STA Request on March 8, 2006. *Letter to Peter Gutmann, Esq.*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Mar. 8, 2006). In the STA Request, the Licensee indicated that it inadvertently failed to file a timely license renewal application for KAPL(AM) due to a change in station managers and administrative assistant.

⁵ Response at 1.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ 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.⁹

5. Licensee notes that it has a history of overall compliance with the Rules. Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$7,000 to \$5,600.¹⁰

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 willfully¹¹ violated Section 73.3539 of the Rules and willfully and repeatedly¹² violated Section 301 of the Act. However, given Licensee's history of overall compliance with the Rules, we reduce the forfeiture amount to \$5,600.

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,¹³ that Applegate Media, Inc. SHALL FORFEIT to the United States the sum of five thousand, six hundred dollars (\$5,600) 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.

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.¹⁴ Payment of the forfeiture must be made by check or similar instrument,

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 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.

¹¹ 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 (1991).

¹² 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).

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

¹⁴ 47 U.S.C. § 504(a).

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).¹⁵ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Joshua.Parker@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. 20554.¹⁶

9. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested, to Applegate Media, Inc., P.O. Box 1090, Jacksonville, Oregon 97530, and to its counsel, Peter Gutmann, Esq., Womble Carlyle Sandridge & Rice, PLLC, 1401 I Street NW, Seventh Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁵ See 47 C.F.R. § 1.1914.

¹⁶ *Id.*