

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

In the Matter of)	
)	Facility ID No. 52749
Pittsfield Public School Committee)	NAL/Acct. No. MB200741410396
)	FRN: 0014894042
Licensee of Station WTBR-FM)	File No. BRED-20060418ABG
Pittsfield, Massachusetts)	

FORFEITURE ORDER

Adopted: October 19, 2010

Released: October 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 seven thousand dollars (\$7,000) to Pittsfield Public School Committee ("Licensee"), licensee of station WTBR-FM, Pittsfield, Massachusetts ("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.¹

II. BACKGROUND

2. On October 17, 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 December 1, 2005, four months prior to the Station's April 1, 2006, license expiration date.³ Licensee did not file the application until April 18, 2006, and provided no explanation for its failure to timely file its renewal application or to seek special temporary authorization to operate the station after its license had expired. Licensee submitted a response ("Response") to the NAL on November 16, 2007.

3. In its Response, Licensee asserts that the proposed forfeiture should be cancelled because: (1) Licensee has taken steps to develop policies and procedures to ensure that all future filings with the Commission will be done in a timely manner; and (2) it has no operating budget and is, therefore, financially unable to pay the proposed forfeiture.

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

² *Pittsfield Public School Committee*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18565 (MB 2007). The Commission granted the license renewal application on October 17, 2007.

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

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the 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. Licensee does not dispute that it failed to file a timely renewal application, but argues that the forfeiture should be reduced or cancelled because it has taken steps to develop policies and procedures to ensure that all future Commission filings are timely filed. We reject this argument. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸

6. Licensee next contends that the proposed forfeiture should be cancelled or reduced because it is unable to pay the forfeiture amount. Specifically, the Licensee claims that it has no operating budget and is thus, financially unable to pay the forfeiture. 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 some other reliable and objective documentation that accurately reflect the licensee's current financial status.⁹ Here, Licensee did not submit federal tax returns, financial statements or any documentation setting forth its finances in support of its Response. 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.¹⁰

7. 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

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

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 *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). *See also Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962).

⁹ *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).

¹⁰ *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, 25 FCC Rcd 8240 (MB 2010) (same).

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).

violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Act,¹² and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

8. 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 Pittsfield Public School Committee, 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 willfully and repeatedly violating Section 301 of the Act.

9. 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, 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 Rebecca.Brown@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

10. 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 Pittsfield Public School Committee, c/o Doug McNally, P. O. Box 1187, Pittsfield, Massachusetts 01202, and to its counsel, Frank G. Lamancusa, Esq., Bingham McCutchen LLP, 2020 K Street, N. W., Washington, D. C. 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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).

¹⁵ *See* 47 C.F.R. § 1.1914.

¹⁶ *Id.*