

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

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

MEMORANDUM OPINION AND ORDER

Adopted: March 21, 2011

Released: March 22, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (“Petition”) filed by West Texas A&M University (“University”), licensee of the Class A station KWTS(FM), Canyon, Texas (“Station”). The University filed this Petition in response to a *Forfeiture Order* issued to the University for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license 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 For the reasons set forth below, we deny reconsideration with respect to the arguments made in the University’s Petition. We affirm the forfeiture issued by the Media Bureau, Audio Division (“Bureau”) with respect to the violation of Section 301 of the Act in the amount of three thousand two hundred dollars (\$3,200). However, we cancel the forfeiture with respect to the University’s violation of Section 73.3539 of the Rules because the violation occurred beyond the statute of limitations period set forth in Section 503(b)(6) of the Act.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for license renewal for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”² An application for renewal of the Station’s license should have been filed by April 1, 2005, four months prior to the Station’s August 1, 2005, license expiration date, but the University did not file the application until September 29, 2005.³ The station continued operating after the expiration of its license, but the University did not file a request for Special Temporary Authorization (“STA”) until March 23, 2006.⁴ On January 31, 2007, the Bureau granted the captioned renewal application, and on February 12, 2007, the Bureau issued an NAL to the

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

² 47 C.F.R. §73.3539(a).

³ *West Texas A&M University*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 2727 (MB 2007) (“NAL”).

⁴ 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).

University in the total amount of seven thousand dollars (\$7,000). The NAL proposed a forfeiture of \$3,000 for the University's willful violation of Section 73.3539 of the Rules and a forfeiture of \$4,000 for the University's willful and repeated violation of Section 301 of the Act.⁵

3. In response to the NAL, the University filed a Request for Cancellation or Reduction of Proposed Forfeiture ("Request") on March 14, 2007 arguing that: (1) its failure to timely file the license renewal application was not willful; (2) payment of the proposed forfeiture will cause it financial hardship; and (3) it has a history of compliance with the Rules. On July 9, 2010, the Bureau issued a *Forfeiture Order* to the University in the amount of \$5,600.⁶ In the *Forfeiture Order*, the Bureau rejected the University's first two claims.⁷ However, it found that the University did have a history of compliance with the Rules and reduced the forfeiture amount by 20 percent from \$7,000 to \$5,600.⁸ In response to the *Forfeiture Order*, the University timely filed its Petition on August 2, 2010.

4. In its Petition, the University reiterates its arguments that its late-filed renewal application and subsequent unauthorized operation were not willful violations of the Rules and the Act, respectively. The University claims that the renewal application was completed prior to the deadline for filing and that the Station's operator was well-aware of the deadline. It further claims that the late filing was a "purely mechanical" lack of clarity in the Commission's own CDBS system. Therefore, the University argues that its violation was not willful. The University also argues that its unauthorized operation was not willful. It claims that the Station manager believed he was operating the Station with authority based on assurances he received from a member of the Commission's staff. The University claims that imposing a forfeiture where it claims to have been acting under staff advice would be arbitrary and capricious. Finally, the University claims that imposing a forfeiture on the licensee of a Class D NCE station would not serve the public interest. The University does not claim financial hardship. Rather, it argues that, based on its history of compliance with the Rules and the Station's Class D NCE status, the Commission should either cancel or significantly reduce the *Forfeiture Order*. The University asserts that the above reasons warrant cancellation of the *Forfeiture Order* or further reduction of the forfeiture amount.

III. DISCUSSION

5. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁹ Here, the University's Petition largely restates earlier arguments regarding the willfulness of its conduct. We have previously considered and rejected the University's argument that the late filing of the Station's renewal application was not willful because the late filing occurred solely due to confusion in using the CDBS system.¹⁰ We have also addressed the University's claim that its

⁵ NAL, 22 FCC Rcd at 2728-29.

⁶ *West Texas A&M University*, Forfeiture Order, 25 FCC Rcd 9086 (MB 2010) ("*Forfeiture Order*").

⁷ *Id.* at 9087-88.

⁸ *Id.* at 9088.

⁹ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966) ("*Lorain Journal*"). See also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹⁰ Petition at 6-12. *Forfeiture Order*, 25 FCC Rcd at 9087-88; see also *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008) (issuing forfeiture to licensee claiming violation was the result of its lack of familiarity with the electronic filing system).

unauthorized operation of the station was not a willful violation of the Act.¹¹ We will not grant reconsideration “to debate matters upon which the Commission has already deliberated and spoken.”¹²

6. The forfeiture amount for this violation was assessed in accordance with Section 503(b) of the Act,¹³ Section 1.80 of the Rules,¹⁴ and the Commission’s *Forfeiture Policy Statement*.¹⁵ 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.¹⁶

7. First, we disagree with the University’s assertion that the Commission should further reduce the forfeiture based on the Station’s history of compliance or the Station’s status as a Class D NCE station without significant revenue generating potential.¹⁷ We note initially that the University is incorrect in asserting that the Station is a Class D station; it is a Class A station.¹⁸ Furthermore, NCE licensee status is not grounds for the cancellation or reduction of a forfeiture.¹⁹ Finally, the Bureau reduced the forfeiture amount by 20 percent from \$7,000 to \$5,600 in the *Forfeiture Order*.²⁰ This reduction is consistent with previous reductions for licensees with a history of compliance.²¹ The University cannot justify further reduction of the *Forfeiture Order* based on the Station’s status as an NCE station, and we find that the Bureau’s earlier reduction of the forfeiture amount is reasonable and consistent with staff precedent.

8. Furthermore, it is well-established that the Commission enjoys “broad discretion in determining whether to impose sanctions in a given case.”²² The discretion exercised in Commission decision-making is reviewable by a court on the grounds that it was “arbitrary, capricious, an abuse of

¹¹ Petition at 12. *Forfeiture Order*, 25 FCC Rcd at 9087 n. 11 (citing *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) (upholding sanction where licensees relied on Commission staff advice to their detriment)).

¹² *Lorain Journal*, 37 FCC Rcd at 686.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *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).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ Petition at 12-14.

¹⁸ The University refers to the Station as a Class D NCE station several times throughout its Petition. The Station is in fact a Class A station. See File No. BLED-19980909KA. The distinction is relevant because Bureau precedent supports significant reductions in forfeiture amounts for translator, LPFM, and Class D stations. See *Centerville City Schools Board of Education*, Forfeiture Order, 25 FCC Rcd 3855, 3857 (MB 2010).

¹⁹ See *Des Moines Independent Community School District*, Forfeiture Order, 24 FCC Rcd 3869, 3871 (MB 2009); see also *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) (“Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station”).

²⁰ *Forfeiture Order*, 25 FCC Rcd at 9088.

²¹ See e.g., *Communications Systems, Inc.*, Forfeiture Order, 25 FCC Rcd 12516 (MB 2010) (reducing forfeiture by 20 percent from \$1,500 to \$1,200 based on history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (2009) (reducing forfeiture by 20 percent from \$9,000 to \$7,200 based on history of compliance).

²² *Family Ministries, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1419 (2003) (citing *Lorain Journal*).

discretion, or otherwise not in accordance with law.”²³ The University has failed to show that the Commission abused its discretion in issuing the *Forfeiture Order*.

9. Section 503(b)(6) of the Act limits the Commission’s ability to issue forfeitures.²⁴ When the Commission renews a licensee’s license after a violation occurs but before issuing an NAL, as was the case here,²⁵ the Commission can only issue a forfeiture for violations occurring within the year prior to the issuance of the NAL.²⁶ Here, because the Commission issued the NAL on February 12, 2007 (nearly two weeks after renewal grant), it was barred from issuing a forfeiture to the University for violations occurring before February 12, 2006. The late-filed renewal application was filed on September 29, 2005. As such, the University’s violation of Section 73.3539 of the Rules is beyond the reach of the statute of limitations. Therefore, we will cancel the forfeiture with respect to the University’s violation of Section 73.3539 of the Rules. The cancellation will result in a reduction in the total forfeiture amount of \$2,400 (the base amount for the 73.3539 violation set forth in the NAL less the 20 percent reduction given in the *Forfeiture Order*). However, the unauthorized operation of the Station continued through April 3, 2006, when the staff granted the University’s STA request. With respect to the University’s violation of Section 301 of the Act, the NAL was issued within the period required by Section 503(b)(6) of the Act. We thus find the forfeiture issued for the University’s violations of Section 301 of the Act in the amount of \$3,200 (the base amount set forth in the NAL amount less the 20 percent reduction) is appropriate.

10. We have considered the University’s Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that the University willfully violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Act. We find that the forfeiture imposed for violation of Section 73.3539 of the Rules is inappropriate because it violates the statute of limitations set forth in Section 503(b)(6) of the Act. Otherwise, we find the *Forfeiture Order* reasonable and consistent with previous decisions regarding similar violations.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, that the aforementioned Petition for Reconsideration filed by West Texas A&M University on August 2, 2010, IS DENIED.

12. IT IS FURTHER ORDERED, that the forfeiture related to the University’s violation of Section 73.3539 of the Rules for failure to timely file a license renewal application, IS CANCELLED, but the University IS ADMONISHED for its violation.

13. IT IS FURTHER ORDERED, that West Texas A&M University SHALL FORFEIT to the United States the sum of three thousand two hundred dollars (\$3,200) for its violation of Section 301 of the Act by operating station KWTS(FM), Canyon, Texas without authorization.

²³ 5 U.S.C. § 706(2)(A); *see, e.g., Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 89 (2d Cir. 2000).

²⁴ 47 U.S.C. § 503(b)(6)(A). The relevant language says no forfeiture shall issue to a person holding a broadcast station license “if the violation charged occurred -- more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or prior to the date of commencement of the current term of such license, whichever is earlier.” *See also Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2006) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

²⁵ The Station’s license renewal was granted on January 31, 2007. *See* File No. BRED-20050929AIO. The NAL was issued on February 12, 2007. *See* NAL, 22 FCC Rcd at 2727.

²⁶ *See John Crigler, Esq.*, Letter, DA 11-233 (MB Feb. 8, 2011) (cancelling proposed forfeiture where licensee’s renewal application was granted after violations occurred but prior to the issuance of an NAL and the violations occurred more than one year prior to issuance of the NAL).

14. 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.²⁷ 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).²⁸ Licensee will also send electronic notification on the date said payment is made to kelly.donohue@fcc.gov and seth.williams@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. 20554.²⁹

15. IT IS FURTHER ORDERED, that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: West Texas A&M University, P.O. Box 60747, Canyon, TX 79013, 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

²⁷ 47 U.S.C. § 504(a).

²⁸ See 47 C.F.R. § 1.1914.

²⁹ *Id.*