



Federal Communications Commission
Washington, D.C. 205543

April 12, 2011

In Reply Refer to:
1800B3-MJD
NAL/Acct No. MB 200741410448
FRN: 0013625629

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Stanley Monteith, Station Manager
Santa Cruz Educational Broadcasting Foundation
P.O. Box 13
Santa Cruz, CA 95062

In re: KFER(FM), Santa Cruz, CA
Facility ID No. 59064
File No. BRED-20060127AMP

Dear Mr. Monteith:

We have before us a December 27, 2007, Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) filed by Santa Cruz Educational Broadcasting Foundation (“SCEB”), licensee of Station KFER(FM), Santa Cruz, California (“Station”). SCEB requests cancellation of a December 7, 2007, Notice of Apparent Liability for a Forfeiture (“NAL”)¹ in the amount of seven thousand dollars (\$7,000) for violation of Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”).² The violations involve SCEB’s failure to file a timely license renewal application for the Station and its unauthorized operation of the Station after its authorization had expired. By this action, we cancel the *NAL* and admonish SCEB for violating Sections 73.3539 of the Rules and 301 of the Act.

Background. As noted in the *NAL*, the Station’s renewal application was due on August 1, 2005, four months prior to the December 1, 2005, license expiration date. Licensee did not file the renewal application until January 27, 2006, almost eight weeks after the Station’s license expired.³ In response to the *NAL*, SCEB filed the subject Request, stating that it is financially unable to pay the proposed forfeiture and requesting that it be cancelled.

Discussion. 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

¹ *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21033 (MB 2007). The Commission granted the license renewal application on December 7, 2007.

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

³ On February 8, 2006, the Licensee filed a request for special temporary authorization (“STA”) to continue Station operations pending consideration of the late-filed renewal application. The staff granted the STA request on February 10, 2006.

⁴ 47 U.S.C. § 503(b).

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

SCEB requests that that the forfeiture be reduced or cancelled based on the financial condition of the Station.⁸ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the party's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.⁹

In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁰ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹¹ In support of its Request, SCEB submits copies of its 2004, 2005 and 2006 federal income tax returns, specifying gross revenues in the amounts of \$6,599, \$6,812 and \$6,610, respectively.¹²

We have examined SCEB's response to the *NAL* pursuant to the statutory factors above in conjunction with the *Policy Statement*. As a result of our review, we conclude that SCEB willfully violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Act. However, after reviewing SCEB's claim and the supporting documentation, we believe that payment of the \$7,000 forfeiture, or any reduction thereof consistent with Commission precedent,¹³ would pose a financial hardship in view of SCEB's documented gross income. Accordingly, we cancel the proposed forfeiture.¹⁴ Nevertheless, we find that it is appropriate to admonish SCEB for its willful violation of Section of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

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 Request, p. 2.

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 *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹¹ *Id.*


¹² See Request, Attachments 1-3.

¹³ *Grace Baptist Church*, Forfeiture Order, 25 FCC Rcd 7473 (MB 2010) (forfeiture reduced from 11.4 percent of licensee's average total revenue to 5 percent based on licensee's ability to pay); *Care Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010) (forfeiture reduced from 11 percent of licensee's average total revenue to 5 percent based on licensee's ability to pay).

¹⁴ *Mr. Richard Marburger*, Letter, 24 FCC Rcd 13622 (MB 2009) (forfeiture cancelled because of licensee's inability to pay); *M. Scott Johnson, Esq.*, Letter, 24 FCC Rcd 11292 (MB 2009) (same); *Henry A. Solomon, Esq.*, Letter, 24 FCC Rcd 5505 (MB 2009) (same).

Conclusion. In view of the foregoing, the Notice of Apparent Liability (NAL/Acct. No. MB200741410448) for violation of Section 73.3539 of the Commission's Rules and Section 301 of the Communication Act of 1934, as amended, is hereby CANCELLED. SCEB is instead hereby ADMONISHED for its willful violation of those provisions.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle". The signature is written in a cursive style with a stylized "H" and "D".

Peter H. Doyle, Chief
Audio Division
Media Bureau