

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

In the Matter of	)	Facility ID No. 478
	)	NAL/Acct. No. MB200741410108
Adrian College	)	FRN: 0010619799
	)	File No. BRED-20050426AAP
Licensee of WVAC-FM	)	
Adrian, Michigan	)	
	)	

FORFEITURE ORDER

Adopted: June 1, 2011

Released: June 2, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of two hundred fifty dollars (\$250) to Adrian College (“Licensee”), licensee of Class D noncommercial educational radio station WVAC-FM, Adrian, Michigan (“Station”), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station.¹ We also admonish Licensee for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station.²

II. BACKGROUND

2. On February 28, 2007, the Media Bureau (“Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.³ Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on October 9, 2007.

3. As noted in the NAL, Licensee’s renewal application for the current Station license term should have been filed by June 1, 2004, four months prior to the October 1, 2004, license expiration date,⁴ but was not. Licensee did not file the license renewal application until April 26, 2005. Licensee did not file a request for special temporary authority (“STA”) to continue Station operations pending consideration of the late-filed renewal application. On January 31, 2007, the Bureau granted Licensee’s renewal application and advised Licensee of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station’s renewal application and for unauthorized operation of the Station. In response, Licensee filed the subject Request.

4. In its Request, Licensee states that the NAL should be cancelled or reduced because: (1) recent Commission precedent indicates that Class D station forfeitures are less than those of full-power

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 73.3539.

³ See *Adrian College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4021 (MB 2007).

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a).

stations for the same violations; (2) Licensee acted in good faith by voluntarily disclosing its failure to timely file;⁵ (3) Licensee has a history of overall compliance; and (4) the Station is unable to pay.⁶

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,⁷ Section 1.80(b)(4) of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ 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.¹⁰

6. As an initial matter, we note that the violation of Section 73.3539 of the Rules is time-barred. Section 503(b)(6) of the Act limits the Commission's ability to issue forfeitures.¹¹ When the Commission renews a license after a violation occurs but before issuing an NAL to the licensee, as was the case here,¹² the Commission can only issue a forfeiture for violations occurring within the year prior to the issuance of the NAL.¹³ Here, because the Commission issued the NAL on February 28, 2007 (nearly a month after the renewal grant), it was barred from issuing a forfeiture to Licensee for violations occurring before February 28, 2006. The late-filed renewal application was filed on April 26, 2005. As such, imposition of a forfeiture for this violation is beyond the reach of the statute of limitations. Therefore, we will cancel the portion of the forfeiture with respect to Licensee's violation of Section 73.3539 of the Rules. However, the unauthorized operation of the Station continued through January 31, 2007, when staff granted Licensee's license renewal application.¹⁴ With respect to Licensee's violation of Section 301 of the Act, the NAL was issued within the period required by Section 503(b)(6) of the Act.

7. Licensee first claims that the forfeiture should be reduced or cancelled because the Station is a Class D station operating with an effective radiated power of 87 watts.¹⁵ Given the

⁵ As noted in the *NAL*, Licensee represented in its license renewal application that it misunderstood the term "pending" in the Commission's CDBS electronic filing system to mean that the application had been accepted and was pending approval. *See NAL*, 22 FCC Rcd at 4021-4022.

⁶ Request at 1-2, 3, 4 and 4-5, respectively.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 C.F.R. § 1.80(b)(4).

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 U.S.C. § 503(b)(6) ("No forfeiture penalty shall be determined or imposed against any person...if the violation charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of license, whichever is earlier"). *See Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2008) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

¹² The Station's license renewal was granted on January 31, 2007. *See* File No. BRED-20050426AAP. The NAL was issued on February 28, 2007.

¹³ *See WDVX(FM), Clinton, Tennessee*, Letter, 26 FCC Rcd 1186 (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 Licensee did not seek STA to operate.

¹⁵ Request at 2.

Commission's recent precedent assessing forfeitures in the amount of \$250 against a licensee of a Class D FM station for violating Section 301 of the Act,¹⁶ we will reduce the forfeiture amount from \$4,000 (the amount set forth in the NAL for the Section 301 violation) to \$250.

8. Licensee next asserts that the forfeiture should be reduced because it disclosed its Rule violations voluntarily.¹⁷ However, Licensee was required to file its license renewal application in order to continue Station operations. Therefore, its submission, by its nature, was not "voluntary."¹⁸ Moreover, the expiration of the Station's license was a matter of Commission record; had Licensee not submitted the renewal application, the Commission would have notified it that the Station's license had expired.¹⁹ Accordingly, we dismiss this argument.

9. Licensee also claims that the NAL should be cancelled or reduced because of its past adherence to the Rules. We note that a reduction of the proposed forfeiture based on Licensee's status as a Class D station exceeds that which would be accorded Licensee for a "history of compliance."²⁰ Therefore, we decline to further reduce the proposed forfeiture on these grounds.

10. Lastly, regarding Licensee's claim of financial hardship, the Commission will not consider reducing or canceling a forfeiture due 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 (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status.²¹ Here, Licensee has failed to provide us with any documentation regarding its finances. Licensee therefore has provided an insufficient basis on which to assess its ability to pay, and we reject this argument.²²

11. We have considered the Request and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²³

¹⁶ See *School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896 (MB 2008) (issuing NAL in the amount of \$500 for Class D station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

¹⁷ Request at 3.

¹⁸ See *New Inspiration Broadcasting Co., Inc.*, Forfeiture Order, 24 FCC Rcd 3205 (MB 2009) (rejecting licensee's assertion that its disclosure of its public file violations was voluntary, noting that since 2007, the Commission has declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure).

¹⁹ See *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4142 (MB 2009) (rejecting the argument that voluntary disclosure of a violation of the Rules regarding filing timely renewal applications warrants reduction of a proposed forfeiture).

²⁰ See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (20 percent forfeiture reduction accorded for "history of compliance"), citing *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (issuing forfeiture for licensee's public file violations, but reducing forfeiture amount by 20 percent based on licensee's history of compliance); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1228 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536 (MB 2009) (same).

²¹ See *NAL*, 22 FCC Rcd at 4024; see also *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 based on financial hardship).

²² See *Heidelberg College*, Forfeiture Order, 24 FCC Rcd 11923, 11925 (MB 2009) (citing *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim).

²³ 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) (continued....)

violated Section 73.3539 of the Rules and willfully and repeatedly²⁴ violated Section 301 of the Act.²⁵ However, as described above, we reduce the forfeiture amount to \$250.

IV. CONCLUSION

12. Accordingly, IT IS ORDERED, that, 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,²⁶ Adrian College SHALL FORFEIT to the United States the sum of two hundred fifty dollars (\$250) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended. Adrian College is hereby ADMONISHED for its violation of Section 73.3539 of the Commission's Rules.

13. 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 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 Maureen.McCarthy@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, DC 20554.²⁹

(Continued from previous page) _____

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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

²⁴ 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).

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

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

²⁷ 47 U.S.C. § 504(a).

²⁸ *See* 47 C.F.R. § 1.1914.

²⁹ *Id.*

14. 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 Adrian College c/o Mr. Stephen Shehan, 110 South Madison, Adrian, MI, 49221 and to its counsel, Matthew H. McCormick, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th St., 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau