

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

In the Matter of)	
)	Facility ID 52749
Pittsfield Public School Committee)	NAL/Acct. No. MB-200741410396
)	FRN: 0014894042
Licensee of Station WTBR-FM)	File No. BRED-20060418ABG
Pittsfield, Massachusetts)	

MEMORANDUM OPINION AND ORDER

Adopted: June 28, 2011

Released: June 29, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (“Petition”) filed on November 19, 2010, by Pittsfield Public School Committee (“Pittsfield”), licensee of Station WTBR-FM, Pittsfield, Massachusetts (“Station”). Pittsfield seeks reconsideration of the *Forfeiture Order*¹ issued by the Media Bureau (“Bureau”) in the amount of seven thousand dollars (\$7,000) for Pittsfield’s willful violation of Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station, and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its license expired.² In this Memorandum Opinion and Order, we grant reconsideration in part and reduce the forfeiture from seven thousand dollars (\$7,000) to five thousand six hundred dollars (\$5,600), based on Pittsfield’s history of compliance.

II. BACKGROUND

2. On October 17, 2007, the Bureau issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),³ proposing a forfeiture in the amount of seven thousand dollars (\$7,000), to Pittsfield for these violations. As noted in the *NAL*, Pittsfield’s license renewal application was due on December 1, 2005, four months prior to the Station’s April 1, 2006, license expiration date.⁴ Pittsfield 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 authority (“STA”) to operate the Station after its license had expired.

3. On November 16, 2007, Licensee submitted a response (“Response”) to the *NAL*, arguing that financial hardship and the Station’s history of compliance warranted a reduction of the proposed forfeiture.⁵ In the *Forfeiture Order*, the Bureau concluded that no mitigating circumstances warranted a

¹ *Pittsfield Public School Committee*, Forfeiture Order, 25 FCC Rcd 14555 (MB 2010) (“*Forfeiture Order*”).

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

³ *Pittsfield Public School Committee*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18565 (MB 2007)(“*NAL*”). The Commission granted the Station’s license renewal application on October 17, 2007.

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

⁵ *Forfeiture Order* at ¶ 2-3.

cancellation or reduction of the proposed \$7,000 forfeiture.⁶ In response to the *Forfeiture Order*, Licensee timely filed the Petition on November 19, 2010.⁷

4. In the Petition, Pittsfield requests that the Commission: (1) cancel the \$4,000 fine associated with the Section 301 violation, asserting that it did not engage in unauthorized operation of the Station; and (2) reduce the remaining \$3,000 penalty because of Pittsfield's inability to pay and its history of compliance.⁸

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 We find that Pittsfield has met this standard by showing that the *Forfeiture Order* did not address Pittsfield's history of compliance.

6. Pittsfield first argues that the Station did not engage in unauthorized operation because the Station was silent from April 1, 2006 (the date on which its license was due to expire), through April 18, 2006 (the date on which it filed its renewal application). We disagree. Section 301 of the Act states that no person shall transmit a radio signal without a license.¹⁰ By its own admission, Pittsfield resumed Station operations after the renewal application "was received by the Commission on April 18, 2006."¹¹ However, Pittsfield failed to request an STA to continue Station operations pending consideration of its renewal application. Thus, it operated the Station without authorization from April 18, 2006, until the renewal application was granted on October 17, 2007.¹² Therefore, we decline to cancel Pittsfield's forfeiture for unauthorized operation.

7. Next, Pittsfield requests that the Commission reduce the forfeiture amount due to financial hardship. Pittsfield maintains that the *Forfeiture Order* failed to consider financial documentation submitted with its Response.¹³ We acknowledge that the *Forfeiture Order* did not address the Declaration of Larry Kratka, the Student Advisor and Operating Manager of WTBR-FM ("Kratka Declaration").¹⁴ Thus, we will presently consider the Kratka Declaration, as well as the one-page summary of the Station's operating budget submitted with the instant Petition ("Budget Summary"). The Commission will not consider reducing or cancelling a forfeiture in response to an 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 reflects the licensee's current financial status.¹⁵ Here, both the Kratka

⁶ *Id.* at ¶ 7.

⁷ See Petition and Attachments.

⁸ *Id.* at 3-8.

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); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹⁰ 47 U.S.C. § 301.

¹¹ Petition at 3.

¹² See *Adrian College*, Forfeiture Order, 2011 WL2163165 (MB 2011) (holding that the unauthorized operation of WVAC-FM continued until the Commission granted the Licensee's renewal application); see also *Escalante City*, Forfeiture Order, 26 FCC Rcd 5961 (MB 2011) (stating that the "Licensee's unauthorized Station operations continued through March 14, 2010, the day before staff granted the renewal application").

¹³ See *Response* at 5.

¹⁴ See *Response*, Declaration of Larry Kratka, November 16, 2007.

¹⁵ See *Forfeiture Order* at ¶6.

Declaration and the Budget Summary provide information about the Station's budget, but no information regarding Pittsfield's finances. We have consistently held that information regarding a station's budget (as opposed to information regarding a licensee's financial status) is an insufficient basis upon which to evaluate a licensee's ability to pay, as it fails to meet the standard of "other reliable and objective documentation."¹⁶ Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to reduce the proposed forfeiture on the basis of inability to pay.

8. Finally, Pittsfield notes that it has had strong history of compliance with the Commission's Rules since it began operation in the 1970s.¹⁷ Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$7,000 to \$5,600.

9. We have considered Pittsfield's Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*.¹⁸ We conclude that Licensee willfully violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Act. However, given Pittsfield's history of compliance with the Rules, we reduce the forfeiture amount to five thousand six hundred dollars (\$5,600).

IV. ORDERING CLAUSES

10. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by Pittsfield Public School Committee on November 19, 2010, IS GRANTED IN PART AND DENIED IN PART.

11. IT IS ALSO 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,¹⁹ that Pittsfield Public School Committee IS LIABLE FOR A MONETARY FORFEITURE in the amount of five thousand six hundred dollars (\$5,600) for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Act.

12. 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 Memorandum Opinion and 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.²⁰ 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).²¹ Licensee will also send electronic notification on the date said

¹⁶ See *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (emphasizing that a one-page document stating the Stations' operating budget was insufficient basis on which to assess the licensee's inability to pay); see also *Manchester College*, Forfeiture Order, 25 FCC Rcd 3638, 3640 (MB 2010) (same).

¹⁷ Petition at 7.

¹⁸ See *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) ("*Forfeiture Policy Statement*").

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

²⁰ 47 U.S.C. § 504(a).

²¹ See 47 C.F.R. § 1.1914.

payment is made to kelly.donohue@fcc.gov and monica.estrada@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 20554.²²

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

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² *Id.*