



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

August 18, 2011

In Reply Refer to:
1800B3-MIE
FRN: 0005752100
NAL/Acct. No. MB-200541410015

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In re: KSLC(FM), McMinnville, Oregon
Facility ID: 37731
File No. BRED-20050930BQI

Petition for Reconsideration

Dear Counsel:

We have before us a July 11, 2011, Petition for Reconsideration ("Petition") filed by Linfield College ("Linfield"), licensee of Station KSLC(FM), McMinnville, Oregon ("Station"). Linfield seeks reconsideration of the Media Bureau's ("Bureau") *Forfeiture Order*¹ in the amount of eight thousand dollars (\$8,000) for Linfield's willful and repeated violation of Section 73.3527 of the Commission's Rules ("Rules")² by failing to retain all required documentation in the station's public inspection file. In this letter, we deny the Petition.

Background. On September 30, 2005, Linfield filed an application to renew the Station's license. Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify whether the documentation required by Section 73.3527 of the Rules has been placed in the station's public inspection file at the appropriate times. Linfield responded "No," and attached an Exhibit explaining that issues/programs lists from 1999, 2000, and 2001 were missing from the Station's public file.³ On October 7, 2009, the Bureau issued the *NAL* in the amount of ten thousand dollars (\$10,000) to Linfield, based on the fact that it was responsible for at least 12 missing issues/programs lists.

Linfield filed a "Response to Notice of Apparent Liability and Request for Cancellation or Reduction of Proposed Forfeiture" ("Response") requesting the cancellation or reduction of the *NAL* based on two arguments: 1) the proposed forfeiture was barred by the statute of limitations in Section 503(b)(6) of the Communications Act of 1934, as amended ("Act"),⁴ and 2) Linfield has a history of compliance with the Rules.⁵ In its June 7, 2011, *Forfeiture Order*, the Bureau stated that the statute of

¹ *Linfield College, Forfeiture Order*, 26 FCC Rcd 7949 (MB 2011) ("*Forfeiture Order*").

² 47 C.F.R. § 73.3527.

³ *Linfield College, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd 12429 (MB 2009) ("*NAL*").

⁴ 47 U.S.C. § 503(b)(6).

⁵ See *Forfeiture Order* at 2.

limitations provisions of Section 503(b)(6)(A) were not triggered in this case; however, the Bureau reduced the forfeiture amount from \$10,000 to \$8,000 based on Linfield's history of compliance with the Rules. On July 11, 2011, Linfield filed the Petition, arguing that Bureau erred in its treatment of the relevant statute of limitations because the Bureau's issuance of a new covering license on August 19, 2008, commenced a new license term prior to issuance of the *NAL* and the grant of the renewal application on October 7, 2009.

Discussion. 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 additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.⁶ Petitions for reconsideration which rely on facts not previously presented to the Commission may be granted if the Commission determines that consideration of the facts relied on is required in the public interest.⁷ As discussed below, BSCC has not met this standard.

Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁸ However, Section 503(b)(6)(A) of the Act provides that a forfeiture cannot be imposed on a person holding a broadcast license 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 such license, whichever is earlier.⁹

The Bureau renewed the Station's license and issued the *NAL* for its Section 73.3527 violation on October 7, 2009. However, prior to granting the renewal application, and during the pendency of the KSLC(FM) license renewal application, the Bureau granted an application for a license to cover modified technical facilities for the Station.¹⁰ Linfield argues that that the Bureau's grant of the modification application on August 19, 2008, created a new broadcast license term, beginning on that date and expiring on February 1, 2014. Thus, according to Linfield, pursuant to Section 503(b)(6)(A), the Bureau was precluded as of October of 2009 from issuing a notice of apparent liability for violations occurring prior to August 19, 2008. Because Linfield's public file violations only occurred from 1999 to 2001 and have been cured since 2002,¹¹ Linfield contends that the Bureau may not impose a forfeiture for its violation of Section 73.3527 of the Rules. We disagree.

First, Linfield does not cite authority supporting its assertion that the grant of a covering license application for a modification commences a new license term. In fact, relevant precedent indicates that a new license term commences only upon the grant of a license renewal application, not upon the grant of a covering license application for modification in a station's technical facilities.¹² Linfield's license to

⁶ See 47 C.F.R. § 1.106(c) and (d). See also *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).

⁷ See 47 C.F.R. § 1.106(c)(2). See also *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Scranton and Surfside Beach, South Carolina)*, Memorandum Opinion and Order, 4 FCC Rcd 2366 (MB 1989).

⁸ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

⁹ See 47 U.S.C. § 503(b)(6)(A); 47 C.F.R. § 1.80(c)(1). See also *Cumulus Licensing LLC KGEE(FM)*, Letter, 23 FCC Rcd 4471 (MB 2008) (declining, pursuant to Section 503(b)(6)(A) of the Act, to propose a forfeiture for willful and repeated Rule violations).

¹⁰ See File No. BLED-20080805AAA, covering Construction Permit File No. BMPED-20061010AAM. The License specified an expiration date of February 1, 2014.

¹¹ Application, Exhibit 11.

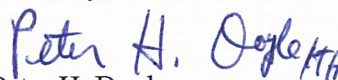
¹² See, e.g., *Radio License Holdings, LLC*, Memorandum Opinion and Order, DA 11-1228, 26 FCC Rcd ____, 2011 WL 2955122 (MB 2011) ("the Bureau issued the *NALs* and granted the license renewal applications on August 5, (continued....)

cover modifications of the Station's technical facilities does not take the place of the license renewal application for purposes of establishing a current license term. Furthermore, the 2014 expiration date given to Linfield's license to cover modified technical facilities 2014 expiration date of the covering license was a result of staff error. Licenses to cover modifications of a station's technical facilities are generally granted, even during the pendency of a license renewal application, but should be issued with the current license expiration date and the following condition acknowledging the pending renewal application: "This license is effective pursuant to 47 USC Section 307(c)(3)."¹³ This was not done here. The Commission is not bound by such staff errors¹⁴ and, therefore, the grant of the license with the erroneous 2014 expiration date does not affect the date of the commencement of the new license term.

Because the Station's license term continued until October 7, 2009, the same day the Bureau issued the *NAL*, we find that Linfield failed to show a material error in the Bureau's *Forfeiture Order*. Therefore, reconsideration is not warranted.

Conclusion/Actions. Accordingly, IT IS ORDERED, the Petition for Reconsideration filed on July 11, 2011, by Linfield College IS DENIED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Linfield College

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2004. As such, no new license term commenced until that date, and the statute of limitations provisions of Section 503(b)(6) were not triggered . . .").

¹³ See 47 U.S.C. § 307(c)(3) ("Pending any administrative or judicial hearing and final decision on such [license renewal] application and the disposition of any petition for rehearing pursuant to section 405 or section 402 of this title, the Commission shall continue such license in effect").

¹⁴ See, e.g., *Rural Vision Central, Inc.*, Order on Reconsideration, 12 FCC Rcd 21739 (1997) (holding that even though three tentative selectees may have been improperly given the opportunity to cure deficiencies in applications, that should have been dismissed as unacceptable for filing, did not compel the Commission to allow the petitioner to amend its applications after they were properly returned as unacceptable for filing, pursuant to established Commission rules and procedures); *North Texas Media, Inc. v. FCC*, 778 F.2d 28, 33 (D.C. Cir. 1985) (stating that "[t]he initial improvident grant of a [short-spacing] waiver . . . now described as an error, does not deprive the agency of authority to require future applicants to meet certain standards in order to obtain such a waiver); *Quinnipiac College*, 8 FCC Rcd 6285, 6286 (1993); *Walter P. Faber, Jr.*, 4 FCC Rcd 5492, 4593 (1989), *recon. Denied*, 6 FCC Rcd 3601 (1991), *aff'd mem.*, *Faber v. FCC*, 962 F.2d 1076 (D.C. Cir. 1992).