



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

March 14, 2012

DA 12-404

In Reply Refer To:

1800B3-JD

NAL/Acct. No. MB-200641410324

FRN: 0001773431

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Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, VA 22041

In re: WSMC-FM
Collegedale, Tennessee
Facility ID No. 61269
File No. BRED-20040329AKC

Petition for Reconsideration

Dear Mr. Martin:

We have before us a Petition for Reconsideration ("Petition") filed on September 12, 2011, by Southern Adventist University ("SAU"), licensee of Station WSMC-FM in Collegedale, Tennessee ("Station"). The Petition requests reconsideration of a *Forfeiture Order* released on August 11, 2011,¹ issuing a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to SAU for its willful and repeated violation of Section 73.3527 of the Commission's Rules ("Rules").² For the reasons discussed below, we deny SAU's Petition.

Background. On May 3, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a forfeiture amount of ten thousand dollars (\$10,000) to SAU for its apparent willful and repeated violation of Section 73.3527 of the Rules for failure to retain all required documentation in the Station's public inspection file; the Bureau granted the Station's license renewal application on that same day.³ On June 4, 2007, SAU filed a response requesting that the forfeiture be cancelled or reduced ("Response"). In its Response, SAU did not dispute that it failed to place at least 22 missing issues/programs lists in the Station's public file, but sought reduction or cancellation of the proposed forfeiture because it was allegedly not imposed within the time limits set by Section 503(b)(6) of the Communications Act of 1934 ("Act").⁴ In the *Forfeiture Order*, the Bureau rejected SAU's Section 503(b)(6) argument but reduced the forfeiture amount to \$8,000 based on SAU's history of compliance with the rules.⁵ SAU subsequently filed the subject Petition, repeating its earlier argument that the forfeiture is statutorily barred by Section 503(b)(6) of the Act.⁶

¹ *Southern Adventist University*, Forfeiture Order, 26 FCC Rcd 11254 (MB 2011) ("*Forfeiture Order*").

² 47 C.F.R. § 73.3527.

³ *Southern Adventist University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8478 (MB 2007) (adopted on May 1, 2007) ("*NAL*").

⁴ 47 U.S.C. § 503(b)(6).

⁵ *Forfeiture Order*, 26 FCC Rcd at 11256.

⁶ Petition at 2.

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 changed circumstances or additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.⁷ It is settled Commission policy that petitions for reconsideration are not to be used for the mere re-argument of points previously advanced and rejected.⁸ Here, while SAU largely restates its earlier argument, we will address its contention because SAU presents evidence unavailable at the time it filed its Response: a Bureau disposition issued on August 3, 2011.⁹

Under Section 503(b)(6)(A) of the Act, 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.¹⁰ In support of its argument that the forfeiture amount is statutorily barred by Section 503(b)(6)(A) because the grant action occurred on the day the order was adopted, SAU cites the *Swift Letter*. The Bureau in that case adopted an *NAL* and granted the Station's license renewal application on March 16, 2007; however, it did not release the *NAL* until March 19, 2007. In the *Swift Letter*, the Bureau found that the *NAL* was imposed for violations occurring prior to the commencement date of the current license term – which commenced on March 16, 2007 when the license renewal application was granted – and more than one year prior to the issuance of the *NAL*. The Bureau concluded that therefore a forfeiture was statutorily barred by Section 503(b)(6)(A). Accordingly, the Bureau cancelled the forfeiture order. SAU contends that the Bureau's action in this case is inconsistent with the *Swift Letter*.

SAU's contention is misguided. Pursuant to our Rules, non-hearing or interlocutory actions generally are effective upon the document's release, not its adoption.¹¹ Thus, the adoption date of an order such as the *NAL* here does not automatically trigger the grant of a renewal application; rather, an independent, albeit ministerial, Commission action is required to grant the application, which normally occurs upon release of an order granting an application. Here, the Bureau adopted the *NAL* on May 1, 2007, but it did not grant the license renewal application until May 3, 2007, the day the *NAL* was released. Therefore, the Station's new license term did not begin until May 3, 2007. The Commission has held that the simultaneous issuance of an *NAL* and the grant of a renewal application in a single document does not trigger the one-year statute of limitation provisions of Section 503(b)(6).¹² Thus, this case clearly is distinguishable from the *Swift Letter*. Therefore, we find that the additional facts SAU presents in the Petition do not evidence a material error in the *Forfeiture Order* or changed circumstances that would otherwise warrant reconsideration.

⁷ 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).

⁸ *Knoxville Broadcasting Corp.*, 87 FCC 2d 1103, 1107 (1981).

⁹ *Richard F. Swift, Esq.*, Letter, 26 FCC Rcd 11085 (MB 2011) (“*Swift Letter*”).

¹⁰ See 47 U.S.C. 503(b)(6)(A).

¹¹ See 47 C.F.R. § 1.102(b)(1).

¹² See *Emmis Broadcasting Corporation of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541, 8543 (1996).

Conclusion. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed on September 12, 2011, by Southern Adventist University, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Southern Adventist University