

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

In the Matter of)	
)	Facility ID No. 4954
Bethany College)	NAL/Acct. No. MB201241410031
)	FRN: 0008982951
Licensee of Station WVBC(FM))	File No. BRED-20110930AOQ
Bethany, West Virginia)	

FORFEITURE ORDER

Adopted: June 22, 2012**Released: June 22, 2012**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of six thousand five hundred dollars (\$6,500), to Bethany College (“Licensee”), licensee of noncommercial educational (“NCE”) Station WVBC(FM), Bethany, West Virginia (“Station”), for its willful and repeated violation of Sections 73.561¹ and 73.3539² of the Commission’s Rules (“Rules”) by remaining off the air without Commission authorization for a period of more than 30 days and failing to timely file a license renewal application for the Station.

II. BACKGROUND

2. On April 27, 2012, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of six thousand, five hundred dollars (\$6,500) to Licensee for its violations.³ Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on May 21, 2012.

3. Licensee’s renewal application for the current WVBC(FM) license term was due on June 1, 2011, four months prior to the October 1, 2011, expiration date.⁴ Licensee did not file the referenced application until September 30, 2011, one day before expiration, and provided no explanation for the untimely filing of the renewal application. Also, Section III, Item 4, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that during the preceding licensing term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Licensee indicated “No” in response to this question and explained: “On October 12, 2010, the station went silent. On September 28, 2011, the Station resumed full broadcasting with authorized facilities by disseminating radio communications intended to be received by the public.”⁵

¹ 47 C.F.R. § 73.561. The NAL mistakenly referred to a violation of Section 73.1740, which specifies the minimum operating requirements for *commercial* FM stations. However, Section 73.1740(b) references Section 73.561 as the appropriate rule in the NCE context, and there is not substantive difference in result in the present case.

² 47 C.F.R. § 73.3539.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. MB201241410031 (MB April 27, 2012) (“NAL”).

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

⁵ Application, Exhibit 13.

According to Commission records, Licensee never sought or received Commission authority for the Station to remain silent during this period. Licensee gives no reason for the Station's silence, or its failure to timely request permission for the Station to remain silent. On April 27, 2012, the staff notified Licensee of its apparent liability for a forfeiture of \$6,500 for willfully and repeatedly violating Section 73.3539 and 73.561 of the Rules. In response, Licensee filed the subject Request.

4. In support of its Request, Licensee concedes that it violated both Sections 73.3539 and 73.561, but argues that the violations were "minor," and, as such, the forfeiture amount should be reduced or cancelled. Licensee argues that although its application was filed late, the renewal was still submitted before the October 1, 2011 expiration. Licensee also argues that its period of unauthorized silence is, in actuality, significantly shorter, taking into account weekends and vacation or recess periods when the school is not required to operate its station under Section 73.561(a). Additionally, Licensee states that it has a history of compliance with the Commission's Rules. Licensee asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ 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.⁹

6. *Late-Filed Application.* Licensee does not dispute that it failed to file a timely renewal application for the Station but states that the violation was "minor." Specifically, Licensee asserts that because its license had not yet expired, the forfeiture amount is excessive. Licensee's argument is not persuasive. Licensees are responsible for the timely submission of required forms—late renewal applications disrupt the staggering of license renewal terms in Section 73.1020 of the Rules¹⁰ and the orderly processing of renewal applications. We find that a forfeiture in the amount of \$1,500 is consistent with precedent and appropriate for Licensee's late filing.¹¹

7. *Minimum Operating Schedule.* Licensee also does not dispute that it remained off the air without Commission permission for a period of more than 30 days. However, Licensee notes that educational institutions are not subject to the minimum operating requirements during weekends or periods of official recess or vacation.¹² Licensee was off the air from October 12, 2010 to September 27, 2011, a period of 351 days. In its Request, Licensee states that the school was officially on recess for 172

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. 73.1020.

¹¹ See, e.g., *Little Miami Local Schools*, Forfeiture Order, 25 FCC Rcd 3553 (MB 2010) (affirming \$1,500 forfeiture for failure to file a timely renewal application); *Barnesville Broadcasting, Inc.* Forfeiture Order, 25 FCC Rcd 3561 (MB 2010) (same); *Faith Trinity Assemblies* Forfeiture Order, 25 FCC Rcd 2593 (MB 2010)(same).

¹² 47 C.F.R. 73.561(a).

of those days.¹³ Additionally, there were 46 Saturdays and Sundays during the period of silence. Taking these days into account Licensee, had 133 days of unauthorized silence.

8. Section 73.561(d)¹⁴ provides that a Licensee may discontinue operation for a period not to exceed 30 days without further authorization from the Commission provided that it notifies the Commission within ten days of the beginning of limited or discontinued operation. Here, Licensee failed to give the Commission any notice of reduced service, and its period of silence, even after taking account of the exempt days, far exceeded 30 days. We reject Licensee's argument that the individual intervals of silence in between weekends and recess periods do not warrant forfeiture. When a licensee discontinues operations for an extended period of time, the public is harmed through diminished service.¹⁵ Section 73.561(d) enables the Commission to remain informed about the operational status of a station and to ensure that licensees broadcast in the public interest, a responsibility imposed by the Communications Act of 1934, as amended.¹⁶ Although Licensee is correct that it is technically not responsible for the 218 days of weekends and vacation, we treat the remaining 133 days of unauthorized silence as a single interval.¹⁷ This approximately four-month period merits the \$5,000 forfeiture imposed in the NAL.¹⁸

9. Licensee also contends that its history of compliance should act to reduce its forfeiture amount. However, it is now responsible for two simultaneous violations, and its period of unauthorized silence spanned almost an entire year. In this light, reducing Licensee's forfeiture amount would be inappropriate.¹⁹

10. We have considered Licensee's Request in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully and repeatedly violated Sections 73.561 and 73.3539 of the rules. Furthermore, we find that Licensee's arguments do not support cancellation or reduction of the proposed forfeitures.

IV. ORDERING CLAUSES

11. Accordingly, IT IS 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,²⁰ that Bethany College,

¹³ Request, Declaration of William R. Kiefer. Licensee's official recess periods included 9 days for Thanksgiving break, 46 days for Christmas break, 9 days for spring break, and 108 days for summer break.

¹⁴ 47 C.F.R. § 73.561(d).

¹⁵ *Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations*, Notice of Proposed Rulemaking, 8 FCC Rcd 49, 49 ¶ 5(1993) ("*Renewal Reporting Requirements NPRM*"). See also *See Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S; Radio License Renewal Cycle to Commence on May 2, 2011*, Public Notice, 26 FCC Rcd 3809, 3810 (MB 2011) (revising FCC Form 303-S to, among other things, require a licensee to certify that its station had not been silent for any period of more than 30 days and to require a licensee who cannot certify to this to submit an explanatory exhibit stating the dates during which the station was silent (or operating less than its prescribed minimum operating hours)).

¹⁶ *Renewal Reporting Requirements NPRM*, 8 FCC Rcd at 49.

¹⁷ Licensee contends that its period of unauthorized silence should be broken up into several small intervals in between weekends and vacations. Under this interpretation, educational institutions would never be subject to the minimum operating requirements of Section 73.561. This is an untenable result.

¹⁸ See *South Seas Broadcasting, Inc.*, Forfeiture Order, 55 Communications Reg. (P&F) 997 (MB 2012) (affirming two \$5,000 forfeitures for two separate instances of unauthorized silence, one lasting for more than one month and the other more than two months).

¹⁹ See, e.g., *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd. 9532 (EB 2006) ("offenses need not be 'prior' to be considered in determining whether there is a history of overall compliance").

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

SHALL FORFEIT to the United States the sum of \$6,500 for willfully and repeatedly violating Sections 73.561 and 73.3539 of the Commission's Rules.

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 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.²¹ 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).²² Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Eric.Cohen@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 20554.²³

13. IT IS FURTHER ORDERED, that copies of this NAL shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Bethany College, WVBC(FM), Bethany, WV 26032, and to its counsel, Frederick A. Polner, Esq., Polner Law Office, 16 Forest Hills Dr., Madison, CT 06443.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.

²³ *Id.*