

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

In the Matter of	)	
	)	Facility ID No. 2472
<b>Appalshop, Inc.</b>	)	NAL/Acct. No. MB20041810038
	)	File No. BR-20030724ACY
Licensee of Translator Stations	)	
W201AI, Coeburn, Virginia	)	Facility ID No. 2482
W255BT (formerly W202AL), Norton, Virginia	)	NAL/Acct. No. MB20041810039
W201AJ, Big Stone Gap, Virginia	)	File No. BR-20030724ACZ
and	)	
W216BO, Hansonville, Virginia	)	Facility ID No. 2480
	)	NAL/Acct. No. MB20041810040
	)	File No. BR-20030724ADC
	)	
	)	Facility ID No. 92652
	)	NAL/Acct. No. MB20041810041
	)	File No. BR-20030724ADJ
	)	
	)	FRN: 0008539959

**FORFEITURE ORDER**

**Adopted: June 5, 2008**

**Released: June 6 2008**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000), to Appalshop, Inc. (“Licensee”), licensee of Translator Stations W201AI, Coeburn, Virginia, W255BT (formerly W202AL), Norton, Virginia, W201AJ, Big Stone Gap, Virginia, and W216BO, Hansonville, Virginia (collectively, “Stations”), for its willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to timely file license renewal applications for the Stations.

**II. BACKGROUND**

2. On August 3, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of six thousand dollars (\$6,000) to Licensee for these violations.<sup>2</sup> Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) on August 31, 2004.

3. As noted in the NAL, Licensee’s renewal applications for the current Stations’ license term were due on June 1, 2003, four months prior to the October 1, 2003, expiration date.<sup>3</sup> Licensee did not

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *Letter to Appalshop, Inc. from Peter Doyle*, reference 1800B3-EEB (MB Aug. 3, 2004).

<sup>3</sup> *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

file the applications until July 24, 2003, and provided no explanation for the untimely filing of the renewal applications. On August 3, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$6,000 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Licensee failed to timely file renewal applications for the Stations.<sup>4</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that its failure to timely file the renewal application was unintentional. It explains that, when it filed its application to renew the license for Station WMMT(FM), Whitesburg, Kentucky, it mistakenly believed the translator stations rebroadcasting WMMT(FM) would be treated as “auxiliary” stations whose licenses would be automatically renewed with the WMMT(FM) license. It also states that it mistakenly believed that it had until April 1, 2004, the due date for filing renewal applications for stations licensed to Kentucky, to file the applications to renew the Stations’ licenses, since they rebroadcast a primary station licensed to Kentucky. Licensee claims that its late-filed applications were the result of a “reasonable, good faith misunderstanding” of the Commission’s Rules and did not constitute a willful violation of the Rules. Licensee asserts these reasons warrant a reduction or cancellation 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,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>7</sup> 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.<sup>8</sup>

6. Licensee does not dispute that it failed to file timely renewal applications for the Stations, but states that these violations were unintentional. Specifically, Licensee asserts that because of its lack of familiarity with the Commission’s Rules, it mistakenly believed that either it was not required to file renewal applications for the Stations or that the renewal applications were not due until April 1, 2004. It is, however, a well established and long-standing principle that mistaken belief or ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.<sup>9</sup> Violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.<sup>10</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule

<sup>4</sup> The Commission granted the above-referenced license renewal applications on August 3, 2004.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See *Richard Mann d/b/a The Antique Radio Collector Toledo, Ohio*, Memorandum Opinion and Order, 2008 WL 1914220 (EB 2008) (denying request to reduce forfeiture based on petitioner’s claim that it was unaware that its actions constituted a violation of the Commission’s Rules); *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor”); see also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

violation was intentional. Rather, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.<sup>11</sup>

7. We have considered Licensee’s response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>12</sup> and repeatedly<sup>13</sup> violated Section 73.3539 of the Rules. However, given the Commission’s recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250 for each Station, for a total of \$1,000.<sup>14</sup>

#### IV. ORDERING CLAUSES

8. 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,<sup>15</sup> that Valley Baptist Church and Christian School, SHALL FORFEIT to the United States the sum of \$1,000 for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules with respect to Translator Stations Translator Stations W201AI, Coeburn, Virginia, W255BT (formerly W202AL), Norton, Virginia, W201AJ, Big Stone Gap, Virginia, and W216BO, Hansonville, Virginia.

9. 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).<sup>16</sup>

10. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, to Cheryl Marshall, Appalshop, Inc., 91 Madison Ave., Whitesburg,

<sup>11</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

<sup>12</sup> 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) 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*, 6 FCC Rcd at 4387-88.

<sup>13</sup> 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).

<sup>14</sup> See, e.g., *Good News Translator Assoc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

<sup>15</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>16</sup> See 47 C.F.R. § 1.1914.

Kentucky 41858, and by First Class Mail to its counsel, John Crigler, Esq., Garvey Schubert Barer, Flour Mill Building, 5<sup>th</sup> Floor, 1000 Potomac St. NW, Washington, D.C. 20007-3501.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau