

November 16, 2018

2018 NOV 20 PM 2: 26

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Accepted / Filed

NOV 19 2018

Federal Communications Commission
Office of the Secretary

Re: Alaska Educational Radio Systems, Inc.
File No. MB-201841410016
Petition for Reconsideration

Attn: Albert Schuldiner, Chief, Audio Division, Media Bureau

Dear Ms. Dortch:

Alaska Educational Radio Systems, Inc. ("AERS") respectfully submits a petition for reconsideration of the October 17, 2018 Forfeiture Order ("Order") regarding a Notice of Apparent Liability for Forfeiture and Order DA 18-738, released on October 18, 2018 ("NAL").

In the Order, the Media Bureau denies any relief for the licensee based upon the licensee's stated inability to pay, citing the lack of any available or applicable provision for reduction of the ordered forfeiture amount.

However, the Commission does provide such relief and there are precedents specifically applicable to the licensees of translators. We have attached a 2010 Forfeiture Order issued to Friends of Christian Radio that has direct bearing on this File.

Together with further citations contained within this attachment concerning Best Media, Inc. and Valley Baptist Church and Christian School, there is apparent latitude for the reduction of Forfeitures notwithstanding the stipulations cited in the captioned AERS Order.


AERS respectfully reiterates its inability to pay and requests a reasoned reduction in the amount of the Forfeiture Order. Because of the lengthy time spans involved in the NAL and the fact that AERS

has been between offices it has been difficult to respond with further exhibits on the subject of our finances.

However, we expect to have utilities installed at our new offices so that we can take up occupancy by the end of the month and provide further documentation.

If there is any question concerning this response, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wolfgang Kurtz', with a long horizontal stroke extending to the right.

Wolfgang Kurtz, President

Alaska Educational Radio Systems, Inc.

By Email:

Albert.Schuldiner@fcc.gov

25 FCC Rcd. 2580 (F.C.C.), 25 F.C.C.R. 2580, 2010 WL 930416

Federal Communications Commission (F.C.C.)
Forfeiture Order

IN THE MATTER OF FRIENDS OF CHRISTIAN RADIO
Licensee of FM Translator Station K228DI Sidney, Nebraska

Facility ID No. 22653
NAL/Acct. No. MB-2007414140112
FRN: 0013131453
File No. BRFT-20050414AAJ
DA 10-440
Adopted: March 15, 2010
Released: March 16, 2010

****1 *2580** By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of two hundred and fifty dollars (\$250) to Friends of Christian Radio ("FCR"), licensee of FM translator station K228DI, Sidney, Nebraska ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application for the Station.¹

II. BACKGROUND

2. On February 16, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of one thousand, five hundred dollars (\$1,500) to Licensee for willfully violating Section 73.3539 of the Rules, based on the fact that it failed to timely file a renewal application for the Station.² As noted in the NAL, Licensee's renewal application for the Station's license term was due on February 1, 2005, four months prior to the June 1, 2005, expiration date.³ Licensee did not file the application until April 14, 2005, and provided no explanation for the untimely filing of the renewal application. In response to the NAL, FCR submitted a "Request for Cancellation of Imposed Fine" ("Request") on March 16, 2007.

3. In its Request, Licensee asserts that the proposed forfeiture should be cancelled because: (1) its failure to timely file its renewal application was inadvertent, and (2) it would be a financial hardship for it to pay the forfeiture amount.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In ***2581** 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.⁷

5. FCR does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. FCR states in its Request that it "did not receive notification from the Commission stating an upcoming license renewal was required and cannot afford legal counsel to notify them of such requirements" but admits that it "was incorrectly under the impression that the Commission

would send out a license renewal due date reminder.”⁸ As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.⁹ Therefore, FCR’s unfamiliarity with the Commission’s license renewal application filing deadline does not excuse its failure to timely file the license renewal application.

****2** 6. FCR also argues that it would be a **financial hardship** for it to pay the forfeiture amount. It states that, given the Station’s account balance of approximately \$1,870 in available funds and its payment of an annual insurance premium of \$350, a \$1,500 fine “would total exhaust the funds available” to FCR.”¹⁰ The Commission will not consider reducing or canceling a forfeiture in response to **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 reflect the licensee’s current financial status.¹¹ FCR states that it does not file tax returns because it has annual gross receipts less than \$25,000.¹² Instead, it has provided photocopies of its handwritten account book reflecting its “Receipts and Disbursements” from August 2004 to February 2007, along with a notarized certificate attesting to the authenticity of the photocopies.¹³ We find this information alone is an insufficient basis on which to ***2582** assess FCR’s **inability to pay**.¹⁴ Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of **inability to pay**.

7. We have considered FCR’s Request and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that FCR willfully¹⁵ 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 will reduce the forfeiture amount against Friends of Christian Radio to two hundred fifty dollars (\$250) based on the Station’s status as a provider of secondary FM translator service.¹⁶ Therefore, we find that a forfeiture in the total amount of two hundred fifty dollars (\$250) is warranted.

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,¹⁷ that Friends of Christian Radio SHALL FORFEIT to the United States the sum of two hundred and fifty dollars (\$250) for willfully violating Section 73.3539 of the Commission’s Rules.

9. 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.¹⁸ 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 ***2583** code).¹⁹ 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, D.C. 20554.²⁰

****3** 10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Friends of Christian Radio, c/o Jack Knicely, 2336 Linden Street, Sidney, Nebraska 69162, and its technical consultant, Sterling Communications, Inc., c/o James E. Price III, 219 Dodd, Ringgold, Georgia 30736.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief
Audio Division
Media Bureau

Footnotes

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

² *Friends of Christian Radio*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3292 (MB 2007). The Commission granted the license renewal application on February 16, 2007.

³ *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Request at 1.

⁹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("Southern California") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁰ Request at 1.

¹¹ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount based on financial hardship).

¹² Request at 2.

¹³ Request, Exhibits 2-3.

¹⁴ *See Christian Radio Translator Association*, Forfeiture Order, 24 FCC Rcd 11288, 11289-90 (MB 2009) (rejecting licensee's **financial hardship** argument, finding that three years' worth of monthly bank statements reflecting licensee's checking account activity was an insufficient basis on which to assess the licensee's **inability to pay**); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (rejecting licensee's **financial hardship** argument, finding that a one-page document summarizing its station budget and no information about licensee's finances was an insufficient basis on which to assess the licensee's **inability to pay**).

¹⁵ 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.

¹⁶ See, e.g., *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4143 (MB 2009) (reducing *sua sponte* forfeiture amount from \$7,000 to \$500 for translator station's late renewal filing and unauthorized operation); *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing).

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

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ *Id.*

25 FCC Rcd. 2580 (F.C.C.), 25 F.C.C.R. 2580, 2010 WL 930416

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