

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

In the Matter of	)	
	)	Facility ID No. 4298
<b>Board of Trustees, Davis &amp; Elkins College</b>	)	NAL/Acct. No. MB200641410067
	)	FRN: 0010044980
Licensee of Station WCDE(FM)	)	File No. BRED-20040107AAJ
Elkins, West Virginia	)	

**FORFEITURE ORDER**

**Adopted: April 28, 2009**

**Released: April 29, 2009**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Board of Trustees, Davis & Elkins College (“Licensee”), licensee of Station WCDE(FM), Elkins, West Virginia (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) for its failure to timely file a license renewal application and for unauthorized operation of the Station.<sup>1</sup>

**II. BACKGROUND**

2. On September 27, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.<sup>2</sup> Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on October 27, 2006.

3. As noted in the NAL, Licensee’s renewal application for the current WCDE(FM) license term should have been filed on June 1, 2003, four months prior to the October 1, 2003, expiration date, but was not.<sup>3</sup> Accordingly, on December 3, 2003, the staff wrote to Licensee, indicating that the Station’s license had expired and that: (1) all authority to operate the station was terminated; and (2) the Station’s call letters were deleted from the Commission’s data base. Licensee was advised that any operation of the Station would be unauthorized and must cease immediately.<sup>4</sup> Upon receipt of the letter, on January 7, 2004, the Licensee tendered the captioned license renewal application for the Station and a request for Special Temporary Authorization (“STA”) to operate the Station, pending consideration of the renewal application. Staff granted the STA request on January 9, 2004.<sup>5</sup> On September 27, 2006, the staff

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Board of Trustees, Davis & Elkins College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10654 (MB 2006).

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

<sup>4</sup> *Letter to Davis & Elkins College*, Ref. 1800B3-DW (MB Dec. 3, 2003).

<sup>5</sup> *Letter to Scott D. Goddard, Assistant Dean of Students, Davis & Elkins College*, Ref. 1800B3-MFW (MB Jan. 9, 2004). By the terms of that letter, the authority expired on July 9, 2004. Licensee failed to timely seek an extension  
(continued....)

advised Licensee of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station's renewal application and for unauthorized operation of the Station.<sup>6</sup> In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that: (1) its failure to file properly the renewal application was not willful; and (2) it immediately took corrective action upon learning that the Station license had expired. Licensee asserts 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,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission's *Forfeiture Policy Statement*.<sup>9</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>10</sup>

6. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, it states that its failure to timely file the renewal application was the result of "poor administration" of the Station license.<sup>11</sup> As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>12</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>13</sup>

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of the STA, and it did not file for further authority to continue the Station's operations until April 17, 2006, which the staff granted on April 27, 2006. *See Letter to Stephen Bright, Vice President for Finance and Administration, Davis & Elkins College*, Ref. 1800B3-MFW (MB Apr. 26, 2006).

<sup>6</sup> The Commission granted the above-referenced license renewal application on September 27, 2006.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</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>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> Request at 1.

<sup>12</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("*PJB Communications*"); *see Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 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").

<sup>13</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).

7. Licensee next asserts that a reduction of its forfeiture is warranted because it took corrective action following the discovery of the Station's deficiencies. Specifically, Licensee states that it assigned the task of learning "all applicable FCC regulations regarding licensing and operations" of the Station to Licensee's Dean of Students, and will implement a policy for training future station managers. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>14</sup>

8. 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>15</sup> and repeatedly<sup>16</sup> violated Section 73.3539 of the Rules and Section 301 of the Act.<sup>17</sup> Furthermore, we find that Licensee's arguments do not support cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

9. 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>18</sup> that Board of Trustees, Davis & Elkins College, SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

10. 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.<sup>19</sup> 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

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<sup>14</sup> *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

<sup>15</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>16</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>17</sup> 47 U.S.C. § 301.

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>19</sup> 47 U.S.C. § 504(a).

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>20</sup>

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to: Board of Trustees, Davis & Elkins College, c/o Robin Price, Office of the President, Davis & Elkins College, 100 campus Drive, Elkins, West Virginia 26241.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>20</sup> See 47 C.F.R. § 1.1914.