

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

In the Matter of)	
)	NAL/Acct No.: MB-
AD20041810082)	
)	FRN: 0007988827
MUSKEGON TRAINING AND EDUCATIONAL CENTER)	
)	
)	Facility ID No. 126334
Licensee of Low Power FM Station WMMT-LP)	File No. BRL-20040721AED
Muskegon, Michigan		

FORFEITURE ORDER

Adopted: July 24, 2008

Released: July 25, 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 two hundred fifty dollars (\$250) to Muskegon Training & Educational Center ("Licensee"), licensee of Low Power FM Station WMMT-LP, Muskegon, Michigan ("Station"), for willful violation of Section 73.3539 of the Commission's Rules ("Rules")¹ by failing to file a timely license renewal application for the Station.

II. BACKGROUND

2. On October 26, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL")² in the amount of one thousand five hundred dollars (\$1,500) to Licensee. Licensee filed a response to the NAL on November 8, 2004, requesting cancellation of the proposed forfeiture.³

3. As noted in the NAL, Licensee's renewal application for the current WMMT-LP license term was due on June 1, 2004, four months prior to the October 1, 2004, expiration date.⁴ Licensee did not file the application until July 21, 2004, and provided no explanation for the untimely filing of the renewal application. On October 26, 2004, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for willfully violating Section 73.3539 of the Rules,

¹ 47 C.F.R. § 73.3539.

² Letter to Mr. William Spaniola, Muskegon Training & Educational Center, Reference 1800B3-SS, NAL/Acct. No. MB-AD20041810082 (MB Oct. 26, 2004).

³ Response to Notice of Apparent Liability for Forfeiture filed by Muskegon Training & Educational Center on November 8, 2004 ("Response").

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a); see also 47 C.F.R. § 73.873.

based on the fact that Licensee failed to timely file the WMMT-LP renewal application.⁵ In response, Licensee filed the subject request.

4. In its response Licensee states that it thought it had completed the application in a timely manner. Specifically, Licensee states that it began the filing process on May 7, 2004, when it visited the Commission's website to see what it was required to do, and that on May 27, 2004, it filed all of the required forms, "or so we thought." Licensee submits that it checked the status of the application "a couple of times a month or so later," but the site continued to show the status as "pending." Licensee states that it called the Commission on July 21st and was informed by a staff member that it had completed all of the necessary documents, but that it had neglected to return to the main menu and click on "File Form." Licensee states that it then followed the staff member's instructions, completed the forms in the correct order, and made certain that it clicked on "File Form."

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁸ In examining Licensee's response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.⁹

6. Licensee does not dispute that it failed to file a timely renewal application for the Station. Specifically, Licensee indicates that because of its lack of familiarity with the Commission's electronic filing procedures, it mistakenly believed that it had electronically filed the renewal application in a timely fashion. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁰ 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 the action in question, irrespective of any intent to violate the Rules.¹¹ Moreover, the

⁵ The Commission granted the above-referenced license renewal application on October 26, 2004.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 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) ("Forfeiture Policy Statement").

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 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, 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").

¹¹ 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,

Commission has long held that “licensees are responsible for the acts and omission of their employees and independent contractors,”¹² and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”¹³

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 willfully¹⁴ violated Section 73.3539 of the Rules but, consistent with our precedent regarding Low Power FM Stations, we will reduce the forfeiture to \$250 for the late filing.¹⁵

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,¹⁶ that Muskegon Training & Educational Center, SHALL FORFEIT to the United States the sum of two hundred 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.¹⁷ 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). Requests for payment of the full amount of this Forfeiture Order under an

13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹² *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (“*Eure*”); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

¹³ See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹⁴ 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.

¹⁵ Cf. *Mountain Christian Fellowship*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21025 (MB 2007).

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

¹⁷ 47 U.S.C. § 504(a).

installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED that, a copy of this Order shall be sent by First Class Mail and Certified Mail - Return Receipt Requested to: Mr. William Spaniola, Muskegon Training & Educational Center, 571 Apple Avenue, Muskegon, Michigan 49442.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau