

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

In the Matter of	)	NAL/Acct. No. MB-200741410182
	)	FRN: 0013088547
<b>Texas Southern University</b>	)	
	)	Facility ID No. 65336
Licensee of Station KTSU(FM)	)	File No. BRED-20050928AMN
Houston, Texas	)	

**FORFEITURE ORDER**

**Adopted: July 8, 2010**

**Released: July 9, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Texas Southern University (“Licensee”), licensee of Station KTSU(FM), Houston, Texas (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”), by failing to timely file its license renewal application, and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On February 12, 2007, 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> As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on April 1, 2005, four months prior to the August 1, 2005, expiration date.<sup>3</sup> The application, as well as a request for special temporary authority (“STA”) to operate, was not filed until September 28, 2005, nearly two months after the Station’s license had expired. Licensee provided no explanation for the untimely filing of the renewal application or its failure to promptly request STA to continue operations after its license expired. In response to the NAL, Licensee submitted a letter (“Request”) on February 28, 2007. In its Request, Licensee asserts that the proposed forfeiture should be cancelled because its failure to timely file its renewal application was inadvertent.

**III. DISCUSSION**

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>6</sup> In

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

<sup>2</sup> *Texas Southern University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2723 (MB 2007). The Commission granted the license renewal application on February 12, 2007.

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

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *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).

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>7</sup>

4. Licensee does not dispute that it failed to file a timely renewal application for the Station, but requests that the forfeiture be cancelled on the grounds that it “did not intend to willfully violate statutes of FCC law.”<sup>8</sup> Licensee claims that it believed it had correctly filed the renewal application on March 16, 2005. Specifically, it asserts that the application for the Station was created on that date, and it mistakenly assumed that the application had been successfully filed. Licensee maintains that because it “received nothing to the contrary from the FCC Media Bureau, [it] believed everything was in order.”<sup>9</sup> Licensee further states that it properly re-filed the application as soon as it discovered its error.<sup>10</sup> Our review of CDBS electronic filing records reveals that Licensee commenced preparation of its online renewal application on March 22, 2005, but did not actually file the application until September 28, 2005.

5. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>11</sup> We have declined to reduce or cancel forfeitures in similar circumstances.<sup>12</sup> Moreover, the Commission has specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.<sup>13</sup> Accordingly, we find Licensee's argument without merit.

6. We have considered Licensee'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 Licensee willfully<sup>14</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>15</sup> violated Section 301 of the Act<sup>16</sup> and

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<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Request at 1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 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, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>12</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (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) (“ignorance of or unfamiliarity with the Commission's requirements is not a mitigating factor and does not warrant a forfeiture reduction”); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006) (“negligence does not mitigate a Commission rule violation”).

<sup>13</sup> See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

<sup>14</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>15</sup> Section 312(f)(2) 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)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

7. 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>17</sup> that Texas Southern University SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

8. 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>18</sup> 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).<sup>19</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Keith.Watson@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, D.C. 20554.<sup>20</sup>

9. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Mr. George Thomas, KTSU-FM Radio Station, 3100 Cleburne St., Houston, Texas 77004.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>16</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

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

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> See 47 C.F.R. § 1.1914.

<sup>20</sup> *Id.*