



Federal Communications Commission  
Washington, D.C. 20554

July 9, 2010

**DA 10-1282**

*In Reply Refer to:*

NAL/Acct No.: MB-200741410163

FRN: 0013510177

Released: July 9, 2010

Mr. Robert L. Lasso  
Friends of KHFM-Ruidoso  
HC 71 Box 1024  
Capitan, NM 88316

Re: FM Translator Station K240CN  
Ruidoso, New Mexico  
Friends of KHFM-Ruidoso  
Facility ID No. 22654  
File No. BRFT-20050811AAS

Dear Mr. Lasso:

The Chief, Audio Division, has before him a February 27, 2007, letter ("Response") filed on behalf of Friends of KHFM-Ruidoso ("Licensee"), licensee of Station KHFM(FM), Ruidoso, New Mexico ("Station"). The Response requests the cancellation or substantial reduction of the January 31, 2007, Notice of Apparent Liability for Forfeiture ("NAL")<sup>1</sup> in the amount of one thousand, five hundred dollars (\$1,500) for Licensee's willful violation of Section 73.3539 of the Commission's Rules ("Rules") for its failure to timely file a renewal application for the Station.<sup>2</sup> By this action, we cancel the NAL and admonish Licensee for filing the renewal application in paper format without demonstrating good cause.

*Background.* As noted in the NAL, Licensee's renewal application for the current license term should have been filed by June 1, 2005, four months prior to the October 1, 2005, license expiration date but was not.<sup>3</sup> In fact, Licensee did not file the renewal application until August 11, 2005, after receiving a telephone call from the Media Bureau advising that Licensee's attempted paper filing of the renewal application was not accepted and that an electronic filing was needed. On January 31, 2007, the staff advised Licensee of its apparent liability for forfeiture of \$1,500 for its failure to timely file the Station's renewal application. In reply, Licensee filed the subject Response.

In its Response, Licensee states that it (1) made a good-faith effort to file its renewal application on a timely basis and that its failure to do so was inadvertent, and (2) is financially unable to pay the

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<sup>1</sup> *Friends of KHFM-Ruidoso*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1734 (MB 2007).

<sup>2</sup> 47 C.F.R. § 73.3539.

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(c). The Commission granted the above-referenced license renewal application on January 31, 2007.

assessed forfeiture.<sup>4</sup> Licensee asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

*Discussion.* 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>

Licensee asserts that it should be excused from liability because its failure to properly file the renewal application was inadvertent. Specifically, Licensee claims that this violation was due to its "ignorance and unfamiliarity with the renewal process and forms."<sup>9</sup> Licensee explains that it attempted to file the renewal application online, became frustrated, and instead filed by mail on May 21, 2005, over a week prior to the due date.<sup>10</sup> After receiving a phone call from the staff notifying it that license renewals must be submitted online, Licensee filed electronically on August 11, 2005.

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> 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>12</sup> Accordingly, we find this argument without merit.

Based on the above, we conclude that Licensee willfully<sup>13</sup> violated Section 73.3539 of the Rules. However, because Licensee timely filed a renewal application in paper format, we will cancel the NAL

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<sup>4</sup> In light of our determination below, we need not address this issue.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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).

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

<sup>9</sup> Response at 2.

<sup>10</sup> In support of this assertion, Licensee provides a copy of its paper application, signed by the President of the Board of Licensee and dated May 21, 2005, as well as a copy of a cancelled check made payable to the Commission, dated May 24, 2005.

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

<sup>13</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.

and instead admonish Licensee for filing its renewal application in paper format without demonstrating any showing of good cause for its failure to file electronically.<sup>14</sup>

*Conclusion/Actions.* In view of the foregoing, Friends of KHFM-Ruidoso's response to our NAL in the amount of \$1,500 IS GRANTED, and the Notice of Apparent Liability (MB-200741410163) for violation of Sections 73.3539 of the Rules is HEREBY CANCELLED. Friends of KHFM-Ruidoso is instead hereby ADMONISHED for filing the renewal application in paper format without demonstrating good cause.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

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<sup>14</sup> See *K.S.L.O. Broadcasting Co., Inc.*, Letter, 24 FCC Rcd 4785 (MB 2009) (cancelling NAL and admonishing licensee for failure to file its renewal application in electronic form); *Peter Gutmann, Esq.*, Letter, 23 FCC Rcd 14666 (MB 2008) (same).