



Federal Communications Commission
Washington, D.C. 205543

December 22, 2010

DA 10-2394

In Reply Refer to:

1800B3-ATS

NAL/Acct No.: MB-200741410398

FRN: 0010518660

Released: December 22, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Robert Ross
Great Falls Community Broadcasting, Inc.
P.O. Box 110
Bellows Falls, VT 05101

In re: Falls Area Community Television, Inc.
Licensee of LPFM Station WOOL-LP
Bellows Falls, Vermont
Facility ID: 135150
File No. BRL-20060323AGS

Dear Mr. Ross:

We have before us a letter (“Letter”) filed by Great Falls Community Broadcasting Company on behalf of Falls Area Community Television, Inc. (“FACT”), licensee of Low Power FM Station WOOL-LP, Bellows Falls, Vermont (“Station”), requesting cancellation of a Notice of Apparent Liability for Forfeiture (“NAL”)¹ in the amount of two hundred and fifty dollars (\$250) for violation of Section 73.3539 of the Commission’s Rules (“Rules”).² FACT also seeks the refund of its \$250 payment for the NAL. The violation addressed in the NAL involves FACT’s failure to file a timely license renewal application for the Station. By this action, we deny FACT’s request for cancellation of the NAL and deny its request for a refund of the paid forfeiture.

Background. As noted in the NAL, FACT’s license renewal application for the Station was due on December 1, 2005, four months prior to the April 1, 2006, license expiration date. FACT did not file a license renewal application until March 23, 2006, and provided no explanation for the untimely filing. On October 17, 2007, the Bureau issued a NAL in the amount of two hundred and fifty dollars to FACT.³ FACT submitted a payment of \$250 and filed its Letter requesting cancellation of the forfeiture on November 7, 2007.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ Section 1.80 of the Rules,⁵ and the

¹Falls Area Community Television, Inc., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18557 (MB 2007).

² 47 C.F.R. § 73.3539.

³ Falls Area Community Television, Inc., 22 FCC Rcd at 18557. The Commission granted the above-referenced renewal application on October 17, 2007.

⁴ 47 U.S.C. § 503(b).

Commission's *Forfeiture Policy Statement*.⁶ 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.⁷

The Letter states that FACT intended to file a timely renewal application. FACT explains that it began filing its application using the Commission's electronic filing system, and although the application was validated, it was never submitted.⁸ FACT argues that this mistake does not amount to a willful violation of the Rules.⁹ 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 (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹¹ 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.¹² Accordingly, we will not consider this issue further.

The Letter also states that FACT operates a non-profit station and that it has a small budget.¹³ It is established Commission policy that there is no proposed forfeiture exemption or reduction based a licensee's noncommercial status.¹⁴ We therefore decline to reduce the forfeiture amount based on

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 Letter at 1.

⁹ *Id.*

¹⁰ 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").

¹¹ 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 ("willful [does] not require licensee intent to engage in a violation"). 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").

¹² See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

¹³ Letter at 2.

¹⁴ See, e.g., *Des Moines Independent Community School District*, Memorandum Opinion and Order, 24 FCC Rcd 3869, 3871 (MB 2009), citing *Bible Broadcasting Network, Inc.*, Forfeiture Order, 23 FCC Rcd 8743, 8745 (MB 2008) (rejecting licensee's argument that its forfeiture should be cancelled or reduced because of its noncommercial educational status). See also *Lebanon Educational Broadcasting Foundation*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446 (EB 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station.").

FACT's noncommercial status.¹⁵ Additionally, as noted in the *NAL*,¹⁶ the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflected the party's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁷ FACT has not provided any such documentation and we therefore will not reduce the forfeiture based on financial hardship.

We have examined FACT's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that FACT willfully violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount. FACT's payment of \$250 therefore will not be refunded.

Conclusion. In view of the foregoing, Falls Area Community Television, Inc's request for cancellation of the Notice of Apparent Liability (NAL/Acct. No. MB-200741410398) for violation of Section 73.3539 of the Commission's Rules and request for a refund is HEREBY DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Falls Area Community Television, Inc.

¹⁵ We note that a forfeiture amount of two hundred and fifty dollars (\$250) is proper for Station WOOL-LP, given the Commission's recent decisions assessing forfeitures in the amount of \$250 against licensees of LPFM stations for violations of Section 73.3539 of the Rules, based on the station's status as a provider of secondary service. *See, e.g., Meadowland Baptist Church*, Forfeiture Order, 24 FCC Rcd 12528 (MB 2009) (reducing forfeiture amount against LPFM station for late-filed renewal application from \$1,500 to \$250); *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241 (MB 2008) (same).

¹⁶ *Falls Area Community Television, Inc.*, 22 FCC Rcd at 18559-18560.

¹⁷ *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 after review of submitted federal tax returns demonstrated a financial hardship).