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

In the Matter of	)	NAL/Acct. No. MB-200741410133
	)	FRN: 0014423610
CARE Broadcasting, Inc.	)	
	)	
Licensee of Station KHGN(FM)	)	Facility ID No. 78923
Kirksville, Missouri	)	File No. BRED-20060209AEF
	)	
and	)	
	)	
FM Translator Station K220CN	)	Facility ID No. 8777
Kirksville, Missouri	)	File No. BRFT-20060207AAE

FORFEITURE ORDER

Adopted: February 16, 2010 **Released: February 17, 2010**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of three thousand four hundred dollars ($3,400) to CARE Broadcasting, Inc. ("CARE"), licensee of Station KHGN(FM) and FM translator station K220CN, Kirksville, Missouri ("Stations"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") by failing to timely file license renewal applications and engaging in unauthorized operation of the Stations.[1]

II. BACKGROUND

2. On February 8, 2007, the Media Bureau ("Bureau") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") in the amount of fourteen thousand dollars ($14,000) to CARE for these violations.[2] CARE submitted a response ("Response") to the *NAL* on March 9, 2007.

3. As noted in the *NAL*, CARE's renewal applications for the Stations' previous license term were due on October 1, 2004, four months prior to the February 1, 2005, expiration date.[3] CARE did not file the applications until February 2006, over one year after the Stations' licenses had expired. It also failed to seek special temporary authority to operate the Stations after the licenses expired. CARE explained that it attempted to file the license renewal applications for the Stations in September 2004 but believed that the forms were filed after they were "validated" by the Bureau's electronic filing system (known as "CDBS"); therefore, it failed to complete the filing process. It further states that payment of the proposed forfeiture would cause it financial hardship. Therefore, it argues, the forfeiture should be cancelled.

[1] 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

[2] *Care Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2369 (MB 2007). The Commission granted the license renewal application on February 8, 2007.

[3] *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,[4] Section 1.80 of the Rules,[5] and the 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]

5. As an initial matter, we note that the Commission has recently issued decisions assessing forfeitures in the amount of $500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act. In light of this precedent, we reduce the forfeiture amount for Station K220CN *sua sponte* to $500, in addition to $7,000 for KHGN(FM), for a total forfeiture amount of $7,500.[8]

6. CARE asserts that it "faithfully and timely filed" its renewal applications on September 26, 2004, and that it checked the "FCC website many times" and "all available information showed [the Stations] as being licensed."[9] It states that when it "did not receive mail confirmation that the license was renewed,"[10] it contacted a member of the Audio Division's staff, who informed it that its applications "had not advanced to final stage of filing."[11] CARE further states that the staff member "went into the application file and advanced it to completion."[12]

7. Despite its suggestion to the contrary, CARE fails to present any evidence demonstrating that CDBS was malfunctioning in September 2004. Indeed, our review of CDBS reveals that CARE commenced preparation of its online renewal applications on September 26, 2004, but did not submit them until February 9, 2006. Based on the explanation provided in its renewal applications, it appears that CARE simply misunderstood our electronic filing procedures and erroneously assumed that validation of the applications meant that they had been filed. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.[13] In the context of a forfeiture action, "willful" does not require a finding that the rule

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[4] 47 U.S.C. § 503(b).

[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] *See Pikes Peak Community College*, Forfeiture Order, 24 FCC Rcd 12238 (MB 2009) (issuing $500 forfeiture to licensee of translator station for failure to timely file license renewal applications and for unauthorized operation of its stations); *Big Sky Owners Association, Inc.*, Forfeiture Order, 24 FCC Rcd 12215 (MB 2009) (same).

[9] Response at 1.

[10] *Id*.

[11] *Id.*

[12] *Id*.

[13] *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").

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.[14] 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.[15] Accordingly we find this argument without merit.

8. Regarding CARE's claim of financial hardship, the Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflect the licensee'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.[16] In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.[17] If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.[18]

9. Here, CARE has provided us with federal tax returns for the years 2003, 2004, and 2005. These returns show gross revenues of approximately $70,000, $86,000, and $48,000, respectively. Taking into account our *sua sponte* reduction,[19] the forfeiture in this case ($7,500), would constitute approximately 11 percent of CARE's average gross revenues. In considering claims of financial hardship, we have previously found forfeiture amounts as high as 4 percent of gross revenues to be reasonable,[20] and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial hardship.[21] Although we are unwilling to cancel the forfeiture based on the information contained in the Response, we believe that a reduction in the total forfeiture amount to $3,400, approximately 5 percent of CARE's average annual gross revenue, is appropriate for the violations involved in this case.[22]

10. We have considered CARE's Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that CARE willfully[23]

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

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

[16] *See Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

[17] *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

[18] *Id.*

[19] *See* para 5, *supra*.

[20] *See Bowie County Broadcasting, Inc.,* Forfeiture Order, 2009 WL 2341711 (MB 2007).

[21] *See Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

[22] *See C.W.H. Broadcasting, Inc.*, Forfeiture Order, 17 FCC Rcd 4548 (EB 2002) (reducing a $20,000 forfeiture to $3,000 based on financial hardship).

[23] 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)

(continued....)

violated Section 73.3539 of the Rules and willfully and repeatedly[24] violated Section 301 of the Act.[25] However, for the reasons set forth above, we find that reducing the forfeiture to three thousand four hundred dollars ($3,400) is warranted.

IV. ORDERING CLAUSES

11. 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,[26] that CARE Broadcasting, Inc. SHALL FORFEIT to the United States the sum of three thousand four hundred dollars ($3,400) 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.

12. 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.[27] 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).[28]

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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.

[24] 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).

[25] 47 C.F.R § 73.3539; 47 U.S.C. § 301.

[26] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

[27] 47 U.S.C. § 504(a).

[28] *See* 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Mr. Thomas Lloyd, CARE Broadcasting, Inc., P.O. Box 500, Kirksville, Missouri 63501.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau