

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

In re Application of)	
)	
Westchester Community College)	Facility I.D. No. 71709
)	NAL/Acct. No. MB-200941410007
For Renewal of License for)	FRN: 0015079460
Station WARY(FM))	File No. BRED-20060522ABO
Valhalla, New York)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 9, 2010

Released: April 12, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Westchester Community College (the "Licensee"), for renewal of its license for Class D station WARY(FM), Valhalla, New York (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully violated Section 73.3539 of the Rules³ by failing to file a timely license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of two hundred fifty dollars (\$250), and we grant the captioned WARY(FM) renewal application.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."⁴ An application for renewal of WARY(FM)'s license should have been filed by February 1, 2006, four months prior to the Station's June 1, 2006, license expiration date,⁵ but was not. In fact, the Licensee did not file the renewal application until May 22, 2006. The licensee provides no explanation for the untimely filing of the renewal application.

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ 47 C.F.R. § 73.3539(a).

⁵ See 47 C.F.R. §§ 73.1020, 73.3539(a).

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee has failed to file a timely license renewal application for Station WARY(FM), as required by Section 73.3539(a) of the Rules. Moreover, as noted above, the Licensee did not provide an explanation for the late filing. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application.⁶ Here, the Licensee did not do so.

4. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have failed willfully or repeatedly to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ 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.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹¹

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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.”¹³

6. In this case, the Licensee failed to file a timely renewal application for the Station. Taking into consideration this fact, the fact that the renewal application was filed prior to expiration of the Station's license, and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$250 for the late filing, based on the WARY(FM)'s status as a Class D secondary service facility.¹⁴

⁶ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license “rests solely and exclusively with the licensee”) (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

⁷ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹¹ 47 U.S.C. § 312(f)(2).

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹³ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁴ See, e.g., *School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 2896, 2898 (MB 2008) (\$250 forfeiture proposed each for late-filing and unauthorized

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁵ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁶ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁷

9. We find that the Licensee's violation of Section 73.3539 of the Rules does not constitute a “serious violation” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.¹⁸ Further, we find that Station WARY(FM) served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant the license renewal application below.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Westchester Community College is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two hundred fifty dollars (\$250) for its apparent willful violation of Section 73.3539 of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Westchester Community College SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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

operation when renewal application filed after the station's license had expired); *Danbury Community Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 1946, 1948 (MB 2008) (same).

¹⁵ 47 U.S.C. § 309(k).

¹⁶ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that the Licensee "cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

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).

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 reflects the respondent'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.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹

16. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Westchester Community College for Class D noncommercial educational Station WARY(FM), Valhalla, New York (File No. BRED-20060522ABO) IS GRANTED.

17. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Radames Ocasio, Westchester Community College, 75 Grass Lands Road, Valhalla, New York 10595.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ See 47 C.F.R. § 1.1914.