

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

In the Matter of)
)
Liability of Russellville Educational Broadcast)
Foundation)
)
Licensee of Noncommercial Educational)
Station KMTTC(FM),)
Russellville, AR)
)
For a Forfeiture)

**MEMORANDUM OPINION AND ORDER
AND FORFEITURE ORDER**

Adopted: August 18, 1999

Released: August 19, 1999

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283(c)(3) of the Commission's Rules, has before it for consideration: (1) a Notice of Apparent Liability ("NAL") for a forfeiture in the amount of \$2,500, issued on July 1, 1999 to Russellville Educational Broadcast Foundation ("REBF"), licensee of noncommercial educational radio station KMTTC(FM), Russellville, Arkansas; and (2) a July 28, 1999, response thereto submitted by REBF. REBF requests that the forfeiture be rescinded or alternatively reduced. For the reasons that follow, we deny REBF's request for rescission or reduction of the original forfeiture amount, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b) (the "Communications Act").

2. In the NAL, we determined that REBF had broadcast announcements promoting for-profit entities in apparent violation of Section 399B of the Communications Act, as amended, 47 U.S.C. § 399b, and Section 73.503(d) of the Commission's Rules. In support of the monetary forfeiture, the NAL specifically cited announcements, repeated a combined total of 828 times during the period January 1997 through October 1997, made on behalf of program sponsors Randy Casey Wrecker Service, Dial-a-Page, Ragsdale Insurance, Firearms Limited, and D&R Pittsburgh Paints. The NAL further acknowledged that the licensee reported having taken corrective measures by replacing staff involved in the review of the underwriting announcements, but also noted that these measures were not taken until the apparent violations were first pointed out by the Commission.

3. In its response to the NAL, REBF contends that the forfeiture should be reduced or rescinded because it has, since being notified by the Commission, achieved rule compliance, and that the violations in question were not "willful," or "repeated" as recited in the NAL. REBF also contends that the forfeiture amount of \$2,500 is excessive because its "income and/or trade-outs from businesses averages \$2,460 per month," and that the forfeiture amount thus poses a financial hardship.

4. We have reexamined the forfeiture imposed in view of the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act pertaining to the nature, circumstances, extent and gravity of the apparent violations. We affirm the prior finding that the announcements made on behalf of program sponsors in question constituted prohibited promotional advertisements in apparent violation of the Communications Act and the Commission's noncommercial rules and policies. For the reasons set forth below, we further conclude that, in this case, rescission or reduction of the \$2,500 monetary forfeiture proposed in the NAL is unwarranted.

5. Although REBF asserts that its ex post facto efforts at achieving rule compliance warrant forfeiture reduction or rescission, it cites no precedent in support of this proposition. Initially, we must note that licensees are obligated to comply with the applicable statutes and Commission rules governing the conduct of their broadcasts, and that their subsequent remedial efforts do not nullify or excuse prior violations. See Gaffney Broadcasting, Inc., 23 FCC 2d 912, 913 (1970), citing Eleven Ten Broadcasting Corp., 33 FCC 706 (1962). While a licensee's voluntary and advanced disclosure to the Commission of a rule violation may, in appropriate instances, justify mitigation of a forfeiture, that factor is not present in this case. As REBF acknowledges, its efforts toward rule compliance were not undertaken until after the violations occurred, and were pointed out to the licensee by the Commission itself. Consequently, REBF's argument is without merit.

6. REBF further contends that the monetary fine should be reduced or rescinded because its rule violations were neither "willful" nor "repeated." However, it is not pertinent whether a licensee's acts or omissions were specifically intended to violate the law because the term "willful," as used in Section 503(b) of the Act, has been interpreted to mean simply that the acts or omissions were committed knowingly. See Liability of Cate Communications Corp., 60 RR 2d 1386 (1986), citing Midwest Radio Television, Inc., 45 FCC 1137 (1963). In this case, REBF does not contend that the underwriting announcements in question were broadcast without its or its staff's knowledge. Further, in view of the hundreds of broadcast repetitions of these announcements over an approximate ten-month period, there is ample evidence in this case that the violations were, in fact, "repeated."¹ Moreover, REBF's repeated broadcast of the deficient underwriting announcements cannot be said to reflect an isolated lapse of judgment or single act of negligence. Cf. Rumbaut Management, Inc., DA 95-2303 (MMB 1995) (minimal forfeiture for violation of

¹ The Act specifies this criterion as an alternative justification for assessing forfeitures. See Liability of Cate Communications Corp., *supra*. See also Hale Broadcasting Corp., 79 FCC 2d 169, 171 (1980) (interpreting "repeatedly" to mean "simply more than once.")

anti-lottery advertising rule appropriate where there were only three such instances, two of which were based upon prohibited mention of "casino" during a live interview).

7. Finally, REBF argues that the forfeiture amount in this case is excessive because it exceeds its average monthly income, and poses a financial hardship. REBF, however, has failed to provide evidence to support that claim. In this regard, REBF did not submit a profit-and-loss statement as specifically required to demonstrate the inability to pay. See Paragraph I(B) of the Attachment to the NAL. See also Liability of Springtown Educational Broadcasting Foundation, 7 FCC Rcd 2588 (MMB 1992). Consequently, we have no basis to reduce or rescind the fine under this factor. We are, however, willing to entertain a request for an installment plan. If REBF wishes to arrange a payment plan, it should address its request to: Regina Dorsey, Chief, Credit & Debt Management Center, Financial Operations Division, Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

8. In view of the foregoing, REBF's July 28, 1999 response to our July 1, 1999, NAL, in the amount of \$2,500, requesting rescission or reduction of the forfeiture amount IS DENIED. Furthermore, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 503(b), Russellville Educational Broadcast Foundation FORFEIT to the United States the sum of Two Thousand Five Hundred Dollars (\$2,500) for the willful and repeated violation of Section 399B of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 399b, and Section 73.503(d) of the Commission's Rules, 47 C.F.R. Sec. 73.503(d), as described above. Russellville Educational Broadcast Foundation may take any of the steps outlined in the attachment to this letter regarding payment of the forfeiture pursuant to Section 1.80 of the Commission's Rules.

9. The Mass Media Bureau will send by Certified Mail -- Return Receipt Requested, copies of this Memorandum Opinion and Order and Forfeiture Order to Russellville Educational Broadcast Foundation.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau