

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

In re Application of	)	
	)	
<b>Bethany College</b>	)	Facility I.D. No. 4954
	)	NAL/Acct. No. MB201241410031
For Renewal of License for	)	FRN: 0008982951
FM Station WVBC(FM)	)	File No. BRED-20110930AOQ
Bethany, West Virginia	)	

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

**Adopted: April 26, 2012**

**Released: April 27, 2012**

By the Chief, Audio Division:

**I. INTRODUCTION**

1. The Commission has before it the captioned application of Bethany College (“Licensee”) for renewal of its license for noncommercial educational Station WVBC(FM), Bethany, West Virginia (“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 (“Act”), and Section 1.80 of the Commission’s Rules (“Rules”),<sup>1</sup> by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Licensee apparently willfully violated Sections 73.3539<sup>3</sup> and 73.1740 of the Rules by failing to timely file a license renewal application for the Station,<sup>4</sup> and by discontinuing operation of the Station without authority. Based upon our review of the facts and circumstances before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of six thousand five hundred dollars (\$6,500).

**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.”<sup>5</sup> An application for renewal of the Station’s license should have been filed by June 1, 2011, four months prior to the Station’s October 1, 2011, license expiration date,<sup>6</sup> but was not. Licensee did not file the renewal application until September 30, 2011. Licensee provides no explanation for the untimely filing of the renewal application.

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

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.1740.

<sup>4</sup> See 47 C.F.R. § 73.3539.

<sup>5</sup> 47 C.F.R. § 73.3539(a).

<sup>6</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

3. Section 73.1740 of the Rules requires that stations adhere to minimum operating requirements, and pursuant to Section 73.1740(a)(4) of the Rules, if they are unable to do so for more than 30 days, they must request authorization to remain silent. Section III, Item 4 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Licensee indicated “No” in response to this question, and explained: “On October 12, 2010, the station went silent. On September 28, 2011, the Station resumed full broadcasting with authorized facilities by disseminating radio communications intended to be received by the public.”<sup>7</sup> According to Commission records, Licensee never sought or received Commission authority for the Station to remain silent during this period. Licensee gives no reason for the Station’s silence, or its failure to timely request permission for the Station to remain silent.

### III. DISCUSSION

4. *Proposed Forfeiture.* In this case, the record indicates that Licensee has failed to timely file a license renewal application for the Station, as required by Section 73.3539(a) of the Rules. In addition, Licensee failed to adhere to minimum operating requirements pursuant to Section 73.1740 of the Rules, and failed to request permission to do so pursuant to Section 73.1740(a)(4) of the Rules.

5. 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 willfully or repeatedly failed 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.<sup>8</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.<sup>9</sup> 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,<sup>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> 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.”<sup>12</sup>

6. Late-filed Application. In this case, the record indicates that Licensee failed to timely file a license renewal application for the Station, as required by Section 73.3539(a) of the Rules. Moreover, as noted above, Licensee did not provide an explanation for the late filing.

7. 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.<sup>13</sup> 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,

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<sup>7</sup> Application, Exhibit 13.

<sup>8</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>11</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>12</sup> 47 U.S.C. § 312(f)(2).

<sup>13</sup> *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.

ability to pay, and such other matters as justice may require.”<sup>14</sup>

8. In this case, Licensee failed to timely file the Station’s license renewal application. Taking into consideration 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<sup>15</sup> and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 for the late filing.<sup>16</sup>

9. Minimum Operating Schedule. Licensee indicated on Exhibit 13 of its renewal application that the Station was off the air from October 12, 2010, to September 28, 2011. Section 73.1740(a)(4) of the Rules requires licensees to request permission to remain off the air for more than 30 days. In this case, the Station was off the air without authority from November 12, 2010, to September 28, 2011, when it returned to the air.

10. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$5,000 for the unauthorized discontinuance of service.<sup>17</sup> Licensee gives no reason for its failure to request authority to remain off the air, and gives no reason for going off the air. Accordingly, no reduction is warranted and we will impose a \$5,000 forfeiture for this violation.

11. *License Renewal Application*. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>18</sup> 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.<sup>19</sup> 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.”<sup>20</sup>

12. We find that Licensee’s apparent violations of Sections 73.3539 and 73.1740 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>21</sup> Further, we find that

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<sup>14</sup> 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).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>16</sup> *See Little Miami Local Schools*, Forfeiture Order, 25 FCC Rcd 3553 (MB 2010) (affirming \$1,500 forfeiture issued in Notice of Apparent Liability for failure to file a timely renewal application); *Barnesville Broadcasting, Inc.* Forfeiture Order, 25 FCC Rcd 3561 (MB 2010) (same); *Faith Trinity Assemblies* Forfeiture Order, 25 FCC Rcd 2593 (MB 2010)(same).

<sup>17</sup> *See Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113-15 (1997); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I

<sup>18</sup> 47 U.S.C. § 309(k).

<sup>19</sup> 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).

<sup>20</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>21</sup> For example, we do not find here that 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

the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant of the application.

#### IV. ORDERING CLAUSES

13. 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 Bethany College, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand five hundred dollars (\$6,500) for the apparent willful violations of Sections 73.3539 and 73.1740 of the Commission's Rules.

14. 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*, Bethany College SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.<sup>22</sup>

15. 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 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Victoria.McCauley@fcc.gov.

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

17. 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.<sup>23</sup>

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Commission's Rules." *Id.*, 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).

<sup>22</sup> Any reduction request must indicate why Licensee, Bethany College, not Station WBVC(AM), is unable to pay.

<sup>23</sup> We note in this regard that a licensee's noncommercial status is not a basis for reduction of the forfeiture. 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.").

18. 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, DC 20554.<sup>24</sup>

19. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Bethany College, WVBC-FM, Bethany, WV 26032, and to its counsel, Frederick A. Polner, Esq., Polner Law Office, 16 Forest Hills Dr., Madison, CT 06443.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>24</sup> See 47 C.F.R. § 1.1914.