

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

In the Matter of)	
)	
NEWMAN MEDIA, INC.)	NAL/Acct. No. MB-200741410262
)	FRN: 003786464
For Renewal of License for)	Facility ID No. 2874
Station WDSR(AM))	File No. BR-20040217ADK
Lake City, Florida)	

FORFEITURE ORDER

Adopted: August 13, 2012

Released: August 13, 2012

By Chief, Audio Division Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to Newman Media, Inc. (“Licensee”), licensee of Station WDSR(AM), Lake City, Florida (“Station”), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station.¹ We also admonish Licensee for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station.²

II. BACKGROUND

2. On March 19, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Licensee in the amount of seven thousand dollars (\$7,000) for these violations.³ Licensee filed a response to the NAL (“Letter”) on April 3, 2007.

3. As noted in the NAL, Licensee’s renewal application for the current license term should have been filed by October 1, 2003, four months prior to the February 1, 2004, expiration date, but was not. In fact, Licensee did not file the renewal application until February 14, 2004. On October 6, 2004, the Licensee filed a request for Special Temporary Authorization (“STA”) for WDSR(AM) to continue operations pending consideration of the late-filed renewal application.⁴ The staff granted the request on October 15, 2004, and the STA expired on April 15, 2005.⁵ The Licensee did not seek an extension of the STA, nor did it request an additional STA to maintain station operations. Accordingly, on March 19, 2007, the Bureau issued an NAL in the amount of \$7,000 for apparent violations of Section 73.3539 of the Rules and Section 301 of the Act.

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

² 47 C.F.R. § 73.3539

³ *Newman Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5331 (MB 2007). (“NAL”). The staff granted the renewal application on March 16, 2007.

⁴ BLSTA-20041006AFB (“STA Request”).

⁵ *Letter to Donald E. Martin, Esq.*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Oct. 15, 2004).

4. In its Letter, Licensee asserts that the proposed forfeiture should be cancelled or reduced because: (1) its failure to timely file was inadvertent; (2) the proposed forfeiture is partially barred by the statute of limitations; (3) it voluntarily disclosed its violations; and (4) it has a history of overall compliance with the Rules.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ 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 violations 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.⁹

6. As an initial matter, Licensee is correct that the violation of Section 73.3539 of the Rules is time-barred. Section 503(b)(6) of the Act limits the Commission's ability to issue forfeitures.¹⁰ When the Commission renews a license after a violation occurs but before issuing a Notice of Apparent Liability to the licensee, the Commission can only issue a forfeiture for violations occurring within one year prior to the issuance of the Notice.¹¹ Here, the Bureau granted the renewal application on March 16, 2007, and issued the *NAL* on March 19, 2007. We are thus barred from issuing a forfeiture to Licensee for violations occurring before March 16, 2006. The late-filed renewal application was filed on February 17, 2004. Therefore, we may not impose a forfeiture for this violation, and we will cancel that portion of the forfeiture concerning Licensee's violation of Section 73.3539 of the Rules. However, the unauthorized operation of the Station continued through March 16, 2007, when the Bureau granted Licensee's license renewal application. Thus, with respect to Licensee's violation of Section 301 of the Act, the *NAL* was issued within the period required by Section 503(b)(6) of the Act.

7. Licensee next asserts that the forfeiture should be cancelled because its failure to timely file was inadvertent. Specifically, Licensee states that it thought it had correctly filed the renewal for WDSR on the same application as its co-owned station, WNFB(FM), Lake City, Florida. Based on the explanation provided in its Letter, it appears that Licensee simply misunderstood our electronic filing procedures and erroneously assumed that it could apply for two license renewals on one form. Therefore, the failure to file the renewal application was due to Licensee's own error.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 U.S.C. § 503(b)(6) ("No forfeiture penalty shall be determined or imposed against any person...if the violation charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or (ii) prior to the date of commencement of the current term of license, whichever is earlier"). *See Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2008) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

¹¹ *See Cumberland Communities Communications Corporation*, Letter, 26 FCC Rcd 1186 (MB 2011) (cancelling proposed forfeiture where licensee's renewal application was granted prior to the issuance of an *NAL* and the violations occurred more than one year prior to issuance of the *NAL*).

8. The Commission has long held that violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹² Moreover, we have specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.¹³ Accordingly, we find this argument to be without merit.

9. Licensee also argues that the proposed forfeiture should be reduced, pro rata, from \$4,000 to \$1,520, because, although the Station was engaged in unauthorized operations for 31 months, only 12 of those months are within the period which the Commission can statutorily issue a forfeiture. Licensee provides no authority for this novel approach. Moreover, we have previously proposed forfeitures in the amount of \$4,000 for any period of unauthorized operation.¹⁴ Therefore, a \$4,000 forfeiture for the 12 month period of unauthorized operation from March 16, 2006, to March 16, 2007, is supported by precedent.

10. Licensee also argues that a reduction in the proposed forfeiture is warranted based on its voluntary disclosure of the violation. We find this argument without merit as Licensee cannot have in any sense "voluntary" disclosed its failure to timely file its renewal application where it was statutorily required to file the application, however late, in order to maintain its license.

11. We have considered Licensee's Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully violated Section 73.3539 of the Rules and willfully and repeatedly¹⁵ violated Section 301 of the Act.¹⁶ However, as described above, we will reduce the forfeiture amount to \$4,000. Furthermore, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$3,200.¹⁷

IV. ORDERING CLAUSES

12. 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,¹⁸ that Newman Media, Inc. SHALL FORFEIT to the United States the sum of three thousand two hundred dollars (\$3,200) for

¹² 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").

¹³ See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

¹⁴ See, e.g., *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13199 (MB 2010) (\$4,000 proposed forfeiture for 12 months of unauthorized operation of station), *modified*, Forfeiture Order, 26 FCC Rcd 442 (MB 2011) (reducing forfeiture based on financial hardship); *Trinity Church of the Nazarene*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20940 (MB 2007) (\$4,000 proposed forfeiture for 4 months of unauthorized operation of station), *aff'd* Forfeiture Order, 25 FCC Rcd 17384 (MB 2010).

¹⁵ 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).

¹⁶ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

¹⁷ See *Truman State University*, Forfeiture Order, 25 FCC Rcd 956 (MB 2010) (reducing proposed forfeiture by 20 percent based on licensee's history of compliance with the Rules).

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

willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended. Newman Media, Inc. is hereby ADMONISHED for its violation of Section 73.3539 of the Commission's Rules.

13. 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.¹⁹ 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).²⁰ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Shannon.Hyatt@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²¹

14. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested to John Newman, Newman Media, Inc., 2854 South Marion Ave., Lake City, FL 32025, and the Licensee's counsel, Donald E. Martin, Esq., P.O. Box 8433, Falls Church, VA, 22041.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁹ 47 U.S.C. § 504(a).

²⁰ See 47 C.F.R. § 1.1914.

²¹ *Id.*