

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

In the Matter of)	
)	
WLVV, Inc.)	Facility ID No. 854
Licensee of Station WLVV(AM))	NAL/Acct. No. MB2006414140097
Mobile, Alabama)	File No. BR-20040203AAS
)	FRN 0008703514

FORFEITURE ORDER

Adopted: June 4, 2009**Released: June 5, 2009**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one thousand two hundred dollars (\$1,200) to WLVV, Inc. (“Licensee”), licensee of Station WLVV(AM), Mobile, Alabama (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file a license renewal application.¹

II. BACKGROUND

2. On January 29, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Licensee in the amount of one thousand five hundred dollars (\$1,500) for violations at Station WLVV(AM).² Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on February 12, 2007.

3. Licensee’s renewal application for the Station for the current license term should have been filed on December 1, 2003, four months prior to the April 1, 2004, expiration date,³ but was not. In fact, Licensee did not file the renewal application until February 3, 2004. Licensee provided no explanation for its failure to timely file the WLVV(AM) license renewal application. On January 29, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$1,500 for failure to timely file Station WLVV(AM)’s renewal application.⁴ In response, Licensee filed the subject Request.

4. In support of its Request, Licensee states that: (1) it is financially unable to pay the proposed forfeiture, and (2) it has a history of overall compliance with the Rules. Licensee asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

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

² *WLVV, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Red 1139 (MB 2007).

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

⁴ The WLVV(AM) renewal application was granted on January 29, 2007.

III. DISCUSSION

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

6. Licensee does not dispute that it failed properly to file a timely renewal application for the Station, but states that it is unable to pay the proposed forfeiture due to its financial condition. Specifically, it states that it was a victim of Hurricane Katrina and has "continuing capital need for repairs" but only "limited revenue."⁹ It cites two cases in support of its claim that cancellation or reduction of the forfeiture is warranted on this basis.¹⁰ It also submits a statement of assets, liabilities and stockholders' equity, and the related statement of revenues, expenses and retained earnings of Licensee as of December 31, 2006, for the preceding 12-month period.¹¹ These financial statements were prepared by a certified public accountant ("CPA") on a cash basis of accounting.

7. When analyzing claims of financial hardship, the Commission will not consider reducing or canceling 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.

8. We are sympathetic to the fact that Licensee has experienced difficulties in the aftermath of Hurricane Katrina. However, Licensee's financial status is ultimately the relevant factor in determining its ability to pay the proposed forfeiture.¹² In a letter accompanying the submitted financial statements, the CPA who prepared them stated that the documents were unaudited and that:

[m]anagement ... elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the cash basis of accounting ... If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's assets, liabilities, stockholder's equity, revenues, expenses and cash flows.¹³

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Response at 2.

¹⁰ *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995); *First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1990).

¹¹ Licensee has requested that its financial submissions be kept confidential. We grant this request.

¹² See *Dominga Berreto Santiago*, Forfeiture Order, 14 FCC Rcd 5065, 5067 (CIB 1999) (rejecting licensee's unsubstantiated claim that the expenses to repair damage caused by Hurricane Georges would make it difficult for the station to pay the forfeiture).

¹³ Letter of J. Otis Mitchell Co., P.C., dated Feb. 8, 2007 (filed Feb. 12, 2007).

9. Because the financial documents submitted by Licensee do not comply with the requirements set forth in the NAL, we find that they provide an insufficient basis on which to assess Licensee's inability to pay.¹⁴

10. Moreover, the holding in *Benito Rish* does not support Licensee's request for a reduction in forfeiture for inability to pay. The Commission noted in that case that the station was a daytime-only, directional station that served a community of 425, and that it was the only service to the area. These conditions resulted in "inherently low station value" which, in addition to the Station's "apparent unprofitability," constituted the reasons for the Commission's reduction of the forfeiture it assessed against the station.¹⁵ None of these factors is present here.

11. Likewise, the holding in *First Greenville Corporation* does not support Licensee's request for reduction of forfeiture. In that case, the Commission found that the sole shareholder of the licensee had loaned the violating station and its affiliates the funds to continue operating and that, without regard for depreciation, the stations' losses had generally exceeded their revenues.¹⁶ The petitioner in *Greenville* also was able to successfully argue that significant loss of service to the public would occur if it were found liable for the full amount of the proposed forfeiture because it was the sole service provider to its area.¹⁷ Neither of these factors is present here.¹⁸ Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

12. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁹ and repeatedly²⁰ violated Section 73.3539 of the Rules and Section 301 of the Act.²¹ However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$1,200.²²

¹⁴ See *CanXus Broadcasting Corp.*, Memorandum Opinion and Order, 8 FCC Rcd 4323, 4323-4324 (MMB 1993) (rejecting financial documents provided by licensee as evidence of its inability to pay proposed forfeiture, where CPA who prepared them noted that the documents were unaudited and omitted disclosures that would be influential in determining the licensee's financial position). See also *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

¹⁵ *Benito Rish*, 10 FCC Rcd at 2862.

¹⁶ *First Greenville Corp.*, 11 FCC Rcd at 7403.

¹⁷ *Id.* Even with a significant forfeiture reduction based on inability to pay, the *Greenville* petitioner was found liable for a forfeiture higher than the one assessed in the instant proceeding.

¹⁸ According to the BIA Media Access Pro data base, there are 13 radio stations (4 AM and 9 FM), including WLTV(AM), licensed to Mobile, Alabama.

¹⁹ 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) 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.

²⁰ Section 312(f)(1) 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)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²¹ 47 U.S.C. § 301.

²² See, e.g., *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484 (MB 2009) (issuing forfeiture for licensee's public file violations, but reducing forfeiture amount based on licensee's history of compliance); *Christian Center*,

(continued....)

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, that WLTV, Inc.'s request for confidentiality IS GRANTED, and that the financial documents submitted with its response to the NAL SHALL BE KEPT CONFIDENTIAL pursuant to Sections 0.457 and 0.459 of the Commission's Rules.

14. IT IS FURTHER 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,²³ that WLTV, Inc., SHALL FORFEIT the sum of one thousand two hundred dollars (\$1,200) to the United States for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

15. 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.²⁴ 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).²⁵

16. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to: WLTV, Inc., 4638 Decker Drive, Baytown, Texas 77520, and to its counsel, Barry A. Friedman, Thompson Hine LLP, 1920 N Street, N.W., Washington, D.C. 20036-1600.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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Inc., Forfeiture Order, 24 FCC Rcd 1128 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

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

²⁴ 47 U.S.C. § 504(a).

²⁵ See 47 C.F.R. § 1.1914.