

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

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| In the Matter of |) | |
| |) | |
| Bowie County Broadcasting Co., Inc. |) | Facility ID No. 6559 |
| Former Licensee of Station KLBW(AM) |) | NAL/Acct. No. MB200741410146 |
| New Boston, Texas |) | File No. BR-20050620ABC |
| |) | FRN: 0006742654 |

FORFEITURE ORDER

Adopted: July 29, 2009**Released: July 30, 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 five hundred dollars (\$1,500) to Bowie County Broadcasting Co., Inc. (“Bowie”), former licensee¹ of Station KLBW(AM) (formerly KNBO(AM)), New Boston, Texas (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application.²

II. BACKGROUND

2. On February 2, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Bowie in the amount of one thousand five hundred dollars (\$1,500) for violations at Station KLBW(AM).³ Bowie filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 1, 2007.

3. Bowie’s renewal application for the Station for the current license term should have been filed on April 1, 2005, four months prior to the August 1, 2005, expiration date,⁴ but was not. In fact, Bowie did not file the renewal application until June 20, 2005. Bowie provided no explanation for its failure to timely file the license renewal application. On February 2, 2007, the staff advised Bowie of its apparent liability for a forfeiture of \$1,500 for failure to timely file Station KLBW(AM)’s renewal application.⁵ In response, Bowie filed the subject Request.

¹ Bowie assigned the Station to Chapel of Light in 2008 (*see* File No. BAL-20080714ACZ (granted Sept. 5, 2008)). The assignment was consummated on November 5, 2008. Despite this assignment, Bowie remains liable for forfeiture for those violations occurring when the Station was under its stewardship. *See, e.g., Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140 n.2 (MMB 1999) (finding licensee liable for forfeiture for violations of the Commission’s rules that took place when station was under its stewardship).

² 47 C.F.R. § 73.3539.

³ *Bowie County Broadcasting Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2101 (MB 2007).

⁴ *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

⁵ The KUHB-FM renewal application was granted on February 5, 2007.

4. In support of its Request, Bowie states that: (1) its failure to timely file the renewal application was inadvertent; and (2) it is financially unable to pay the proposed forfeiture. Bowie asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

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 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.⁹

6. Bowie does not dispute that it failed to file a timely renewal application for the Station, but states that this violation was unintentional. Specifically, Bowie states that the Station manager who normally handled Commission filings became ill and passed away in early 2005, and the Station staff who assumed his responsibilities was unfamiliar with the Commission's Rules and missed the filing deadline.¹⁰ However, as the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹¹ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹² Moreover, while we are sympathetic to any health issues the Station manager faced at the time of the filing deadline, the Commission has held that "an employee's illness does not ... warrant[] special consideration" that would allow for deviation from the Rules.¹³

7. Regarding Bowie's claim of financial hardship, the Commission will not consider reducing or cancelling 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. Any claim of inability to pay must specifically

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 Request at 2.

¹¹ See *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 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹² See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹³ *Southern Communications Systems, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 25103, 25107 (2000), *recon. denied*, Second Memorandum Opinion and Order, 16 FCC Rcd 18357 (2001) (upholding denial of request for waiver that was based on claim that applicant was unable to wire transfer an auction installment due to the illness of its financial officer).

identify the basis for the claim by reference to the financial documentation submitted.¹⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁵ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁶ Here, Bowie has provided us with federal tax returns for the years 2004, 2005, and 2006.¹⁷ These returns show gross revenues of approximately \$40,000 for each year, and expenditures that show small losses in 2005 and 2006 (\$218 and \$4,000, respectively). Based on Bowie's financial documentation, we note that a \$1,500 forfeiture is approximately four percent of its annual total gross revenues.¹⁸ We therefore believe that the gross revenues are sufficiently great when compared to the forfeiture amount such that the mere fact that the Station may have experienced an operating loss does not demonstrate that Bowie cannot afford to pay the forfeiture amount.

8. We have considered Bowie's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Bowie willfully¹⁹ violated Section 73.3539 of the Rules, and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

9. 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,²⁰ that Bowie County Broadcasting Co., Inc., SHALL FORFEIT the sum of one thousand five hundred dollars (\$1,500) 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.

10. 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

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

¹⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

¹⁶ *Id.*

¹⁷ Bowie also provides a financial statement for 2006. However, in a letter accompanying the submitted financial statement, the accountant who prepared it stated that the documents were unaudited and that the licensee elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. Accordingly, because the financial statement does not comply with the requirements set forth in the NAL, we find that it provides an insufficient basis on which to assess Bowie's inability to pay. See *WLTV, Inc.*, Forfeiture Order, DA-09-1283 (MB rel. June 5, 2009) (rejecting financial hardship argument where argument based on financial statements that were unaudited and licensee omitted disclosures ordinarily included in financial statements prepared on a cash basis of accounting).

¹⁸ See *Community-First Broadcasters, Inc.*, Forfeiture Order, 23 FCC Rcd 10923, 10925 (MB 2008) (forfeiture not deemed excessive where it represented approximately 5 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

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

to Section 504(a) of the Act.²¹ 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).²²

11. 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: Bowie County Broadcasting, Co., Inc., c/o Charles Peters, 16905 Old Pond Drive, Dallas, Texas 75248 – 1525.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ 47 U.S.C. § 504(a).

²² See 47 C.F.R. § 1.1914.