

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

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| In the Matter of |) | |
| |) | Facility ID No. 43280 |
| MM&K of Alva, Inc. |) | NAL/Acct. No. MB-200741410428 |
| |) | FRN: 0003787793 |
| Licensee of KALV(AM) |) | File No. BRL-20060719AAL |
| Alva, Oklahoma |) | |

FORFEITURE ORDER

Adopted: February 4, 2011

Released: February 7, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to MM&K of Alva, Inc. (“Licensee”), licensee of KALV(AM), Alva, Oklahoma (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license renewal application for the Station, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”)² by continuing to operate the Station after its license expired.

II. BACKGROUND

2. On November 27, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.³ As noted in the NAL, Licensee’s license renewal application for the Station’s license term was due on February 1, 2005, four months prior to the June 1, 2005, expiration date.⁴ On July 7, 2006, the staff wrote to Licensee indicating that the Station’s license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station’s call letters were deleted from the Commission’s database.⁵ However, Licensee continued operating the Station and did not file the application until July 19, 2006, over one year after the Station’s license had expired.⁶ Licensee submitted a response (“Response”) to the NAL on December 28, 2007.

¹ See 47 C.F.R. § 73.3539.

² See 47 U.S.C. § 301.

³ *MM&K of Alva, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20555 (MB 2007). The Commission granted the license renewal application on November 27, 2007.

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

⁵ *Letter to MM&K of Alva, Inc.*, Ref. 1800B3-JDB (Chief, Audio Division, Media Bureau, July 7, 2006).

⁶ Licensee provided no explanation for the untimely filing, nor did it request special temporary authority to operate the Station pending consideration of the renewal application.

III. DISCUSSION

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ 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.¹⁰

4. Licensee argues that paying the proposed forfeiture would be a financial hardship. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner's current financial status.¹¹ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹² In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁴ 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.¹⁵

5. Here, the Licensee has provided us with federal tax returns for the years 2003, 2004 and 2005. These returns show the Licensee's gross revenues of approximately \$393,739, \$233,445 and \$174,724, respectively. The \$7,000 forfeiture in this case would represent less than three percent of Licensee's average gross revenue over the three years for which the information was provided. In considering claims of financial hardship, we have previously found forfeiture amounts as high as 5 percent of gross revenues to be reasonable,¹⁶ and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *NAL*, 22 FCC Rcd at 2058. See also *West Texas A&M University*, Forfeiture Order, 25 FCC Rcd 9086 (MB 2010); *Oberlin College Student Network, Inc.*, Forfeiture Order, 25 FCC Rcd 8240 (MB 2010) (rejecting licensee's financial hardship argument, finding that licensee failed to provide any documentation in support of an inability to pay claim).

¹² See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC RCD 7433, 7441 (2004), *modified*, 24 FCC Rcd 2205 (MB 2009), reducing forfeiture amount after review of licensee's federal tax returns demonstrated a financial hardship).

¹³ *PBJ Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411 (MB 2010) (reducing amount of forfeiture to five percent where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues). See also *Grace Baptist Church*, Forfeiture Order, 25 FCC Rcd 7481 (MB 2010) (forfeiture reduced from 11.4 percent of licensee's average total revenue to five percent based on licensee's inability to pay the higher amount).

hardship.¹⁷ We are unwilling to cancel or reduce the forfeiture in this case because the forfeiture represents such a small percentage of the Licensee's gross revenue.

6. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our Rules, and *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁸ violated Section 73.3539 of the Rules and willfully and repeatedly¹⁹ violated Section 301 of the Act,²⁰ and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

7. 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,²¹ that MM&K of Alva, Inc., SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

8. 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.²² 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).²³ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@fcc.gov. Requests for payment of the full amount of

¹⁷ See *Coleman Enterprises, Inc.* Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon denied*, 16 FCC Rcd 10023, 10025 (2001).

¹⁸ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

¹⁹ 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).

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

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

²² 47 U.S.C. § 504(a).

²³ See 47 C.F.R. § 1.1914.

the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²⁴

9. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested, to MM&K of Alva, Inc., c/o Randy Mitchel, Rt. 1 Box 53, Alva, Oklahoma, 73717 and to its counsel, Jesse D. Kline, Esq., 521 Barnes Avenue, P.O. Box 743, Alva, Oklahoma 73717.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ *Id.*