

ATS



Federal Communications Commission
Washington, D.C. 205543

August 4, 2011

In Reply Refer to:
1800B3-ATS
NAL/Acct No.: MB-200641410087
FRN: 0010680551

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In re: Mountain Mist Media, LLC
Former License of Station WTKI(AM)
Huntsville, Alabama
Facility ID: 30965
File No. BR-20040401AUF

Dear Counsel:

We have before us a "Request for Cancellation and Refund of Proposed Forfeiture" ("Response") filed by Mountain Mist Media, LLC ("MMM"), former licensee¹ of Station WTKI(AM), Huntsville, Alabama ("Station"), requesting cancellation of a November 27, 2006, Notice of Apparent Liability for Forfeiture² in the amount of one thousand, five hundred dollars (\$1,500) for violation of Section 73.3539 of the Commission's Rules ("Rules").³ MMM also seeks the refund of its \$1,500 payment for the *NAL*. The violation addressed in the *NAL* involves MMM's failure to file a timely license renewal application for the Station. By this action, we dismiss MMM's request for cancellation of the *NAL* and dismiss its request for a refund of the paid forfeiture.

Background. As noted in the *NAL*, MMM's renewal application for the Station's current license term was due on December 1, 2003, four months prior to the April 1, 2004, license expiration date. Licensee did not file the application until April 1, 2004, the date the Station's license expired, and provided no explanation for the untimely filing of the renewal application. On November 27, 2006, the Media Bureau issued the *NAL*. MMM submitted a payment of \$1,500 on December 7, 2006, and filed its Response requesting cancellation of the forfeiture on April 11, 2007.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended,⁴ Section 1.80 of the Rules,⁵ and the

¹ Mountain Mist Media, LLC, assigned the license for the Station to Christian Voice of Central Ohio, Inc., in 2007 (see File No. BAL- 20061208AAD (granted February 8, 2007)). The assignment was consummated on March 9, 2007. Despite this assignment, Mountain Mist Media, LLC, is still 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, 140 n.2 (MMB 1999) (finding licensee liable for forfeiture for rule violations that took place when station was under its stewardship); *WROV Broadcasters, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 1421, 1422-23 (1991) (statute of limitations does not preclude a forfeiture against a former licensee when the *NAL* was issued while it was the licensee)

² *Mountain Mist Media, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13696 (MB 2006) ("*NAL*"). The Commission granted the above-referenced license renewal application on November 27, 2006.

³ 47 C.F.R. § 73.3539.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

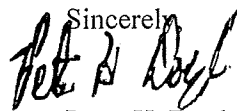
Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Communications Act of 1934, as amended ("Act"), requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

We initially note that the *NAL* required requests for reduction or cancelation of the proposed forfeiture to be filed within 30 days of the issuance of the *NAL*.⁸ The Response was filed over three months after the *NAL* was issued and will be dismissed as untimely.

However, even if we were to consider the Response on its merits, we would deny it. MMM argues that the imposition of a forfeiture is barred by the statute of limitations because the *NAL* was issued on November 27, 2006, more than one year after the violation ended on April 1, 2004.⁹ We disagree. Section 503(b)(6) of the Act states that "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 such license, whichever is earlier."¹⁰ Here, the grant of the renewal application and the issuance of the *NAL* occurred concurrently. Because the Bureau took these two actions simultaneously, there was no intervening renewal which would have triggered the restricting provisions of the statute of limitations and prevented us from considering MMM's conduct during the license term under review.¹¹ Moreover, because MMM has already paid the proposed forfeiture amount, there is no need to issue a forfeiture order in this case.

We have examined MMM's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement* as well. As a result of our review, we conclude that MMM willfully violated Section 73.3539 of the Commission's Rules, and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount. MMM's payment of \$1,500 will therefore not be refunded.

Conclusion. In view of the foregoing, Mountain Mist Media's request for a cancellation the Notice of Apparent Liability (NAL/Acct. No. MB-200641410087) for violation of Section 73.3539 of the Rules and request for a refund is HEREBY DISMISSED.

Sincerely,


Peter H. Doyle, Chief
Audio Division
Media Bureau

⁶ *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) ("*Forfeiture Policy Statement*").

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *NAL*, 21 FCC Rcd at 13698.

⁹ Response at 2-3, citing 47 USC 503(b)(6).

¹⁰ 47 U.S.C. § 503(b)(6) (emphasis added).

¹¹ *Emmis Broadcasting Corporation of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541, 8543 (1996).