

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

In re Application of	)	
	)	
Volunteer Broadcasting, LLC	)	Facility I.D. No. 15530
	)	NAL/Acct. No. MB-201441410008
For Renewal of License for	)	FRN: 0013766621
Station WBRY(AM)	)	File No. BR-20120829AFF
Woodbury, Tennessee	)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 3, 2014

Released: April 3, 2014

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (“Bureau”) has before it the application (the “Application”) of Volunteer Broadcasting, LLC (“Licensee”) for renewal of license for Station DWBRY, Woodbury, Tennessee (“Station”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),¹ we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules² by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act, by continuing Station operations after its license had expired. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand dollars (\$7,000), and we reinstate the Station’s call sign.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”³ An application for renewal of the Station’s license should have been filed by April 1, 2012, four months prior to the Station’s August 1, 2012, license expiration date,⁴ but was not. Accordingly, on August 27, 2012, the staff wrote to the Licensee, indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Stations call letters had been deleted from the Commission’s data base. The Licensee was advised that any operation of the station was then unauthorized and must cease immediately.⁵ Upon receipt of the *License Expiration Letter*, on August 28, 2012, the Licensee tendered a request for special temporary

¹ This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s Rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

² See 47 C.F.R. § 73.3539(a).

³ 47 C.F.R. § 73.3539(a).

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

⁵ *Letter to Volunteer Broadcasting, LLC* (MB Aug. 27, 2012) (“*License Expiration Letter*”).

authority⁶ to continue Station operations and, the next day, the Application. In both the Application and the STA Request, the Licensee indicated that its renewal application for the Station was timely filed but, due to a delay in the payment of the application filing fee, the payment was not associated with the License in a timely matter and the application was dismissed, which allowed the license to expire.

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the record indicates that the Licensee has failed to file a timely license renewal application for Station WBRY(AM), as required by Section 73.3539(a) of the Rules. Moreover, the licensee continued Station operation for almost a month after its license had expired on August 1, 2012, before filing the appropriate renewal application and seeking STA to so operate, in violation of Section 301 of the Act. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization.⁷ Here, the Licensee did not do so.

4. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have failed willfully or repeatedly to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁸ 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.⁹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹²

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹³ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁴ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "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

⁶ BLSTA-20120828AGA ("STA Request"). The staff granted the STA Request on January 15, 2014. *Letter to Mr. Douglas Combs, Volunteer Broadcasting, LLC*, Reference 1800B3 (MB Jan. 15, 2014).

⁷ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

⁸ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 312(f)(2).

¹³ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁴ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

may require.”¹⁵

6. In this case, the Licensee failed to file a timely renewal application and continued Station operations for almost one month before filing the appropriate renewal application and STA request. Nevertheless, because it had previously been licensed to operate the Station, the latter transgression is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to file a timely renewal application but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000. Thus, we propose a forfeiture in the amount of seven thousand dollars (\$7,000).

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee's violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁹ Further, we find that Station WBRY(AM) served the public interest, convenience, and necessity during the subject license term. We will, therefore, reinstate the Station call sign and will grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the application.²⁰

¹⁵ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁰ The January 15, 2014, STA to continue Station operations (*see n.6, supra*) will expire on July 15, 2014. If the Application has not been granted prior to that date, the Licensee must seek extension of the STA.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Volunteer Broadcasting, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand dollars (\$7,000) for his apparent willful violation of Section 73.3539 of the Commission's Rules and apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Volunteer Broadcasting, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Karen.Workeman@fcc.gov.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²¹

15. IT IS FURTHERED ORDERED that the call sign WBRY(AM) IS REINSTATED.

²¹ See 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Mr. Douglas Combs, Volunteer Broadcasting, LLC, P.O. Box 7, Woodbury, Tennessee 37190.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau