



Federal Communications Commission
Washington, D.C. 20554

June 3, 2015

In Reply Refer to:
1800B3-ATS
NAL/Acct. No. MB-201441410008
FRN: 001376621

Frank R. Jazzo, Esq.
Davina S. Sashkin, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

In re: Volunteer Broadcasting, LLC
WBRY(AM), Woodbury, Tennessee
Facility ID No. 15530
File No. BR-20120829AFF

Notice of Apparent Liability

Dear Counsel:

We have before us: 1) the "Request for Cancellation or Reduction of Forfeiture" ("NAL Response")¹ filed on behalf of Volunteer Broadcasting, LLC, licensee of Station WBRY(AM), Woodbury, Tennessee ("Station"), seeking cancellation or substantial reduction of the Notice of Apparent Liability for Forfeiture ("NAL")² issued to Volunteer on April 3, 2014; and 2) the above-referenced application to renew the Station's license ("Renewal Application"). For the reasons set forth below, we cancel the NAL, grant the Application.

Background. Section 73.3539(a) of the Commission's Rules ("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. No such application was filed, and the Station's license expired on August 1, 2012. Accordingly, in an August 27, 2012, letter ("*Expiration Letter*"), the staff informed Volunteer 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.⁴ Volunteer was advised that any further operation of the Station was unauthorized and must cease immediately.

On August 28, 2012, Volunteer filed a request for special temporary authority⁵ to continue Station operations and on August 29, 2012, filed the Renewal Application. On April 3, 2014, the staff issued the NAL in the amount of \$7,000 for willfully violating Section 73.3539 of the Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") for its failure to timely file the Application and for unauthorized operation of the Station after its license had expired.⁶ Volunteer filed the NAL Response on May 19, 2014.

¹ The NAL Response was filed on May 19, 2014.

² *Volunteer Broadcasting, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 3659 (MB 2014).

³ 47 C.F.R. § 73.3539(a).

⁴ *Volunteer Broadcasting, LLC*, Letter (MB Aug 27, 2012).

⁵ File No. BLSTA-20120828AGA.

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

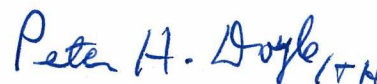
In the NAL Response, Volunteer states that it timely filed a renewal application on March 29, 2012 ("March Application"), three days before the filing deadline, and submitted a payment for the filing fee by check. Volunteer further states that the payment was not applied to the March Application because of an improper regulatory fee hold.⁷

Discussion. We have reviewed the record in this case and the Commission's CDBS database, and we find that Volunteer did in fact tender a license renewal application for the Station on March 29, 2012, but failed to pay the requisite filing fee. Under Section 1.1118(a) of the Rules,⁸ if the defective fee is discovered within 30 days of filing, the application is dismissed and can be refiled with a new filing date. If the defective fee is discovered after 30 days have passed and the application has not been "forwarded to Commission staff for substantive review," pursuant to Section 1.1118(b) of the Rules,⁹ a filer is billed the fee amount due plus a 25 percent penalty. Under current electronic application filing procedures, the March Application was never "forwarded to Commission staff for substantive review" because it did not contain the requisite filing fee.¹⁰ Accordingly, we will cancel the *NAL* and grant the Renewal Application.¹¹

Conclusion/ Action. Accordingly, for the reasons set forth above, IT IS ORDERED that the "Request for Cancellation or Reduction of Forfeiture" filed by Volunteer Broadcasting, LLC, IS GRANTED, and the Notice of Apparent Liability (NAL/Acct. No. MB-201441410008) for violation of Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended, is HEREBY CANCELLED.

IT IS FURTHER ORDERED that pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Volunteer Broadcasting, LL, for Station WBRY(AM), Woodbury, Tennessee (File No. BR-20120829AFF), IS GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "PH".

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Volunteer Broadcasting, LLC

⁷ NAL Response at 2.

⁸ 47 C.F.R § 1.1118(a).

⁹ 47 C.F.R § 1.1118(b).

¹⁰ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 957, Supplemental Order, 2 FCC Rcd 1882 (1987), *recon. granted in part*, 3 FCC Rcd 5987 (1988), *aff'd sub nom. Brown v. FCC*, 888 F.2d 898 (D.C. Cir. 1989). See also *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25 percent penalty). The Rules provide that the Commission's recourse, once 30 days have elapsed from the date an application is submitted with no fee, is to bill the applicant retroactively and impose the 25 percent penalty. Because Volunteer apparently paid the filing fee twice (once for the March Application and once for the Renewal Application), we will not require it to pay the additional 25 percent penalty provided for in Section 1.1118 of the Rules. We direct Volunteer to consult with the Commission's Office of the Managing Director to obtain a refund.

¹¹ See, e.g., *Wennes Communications Stations, Inc.*, Letter, 25 FCC Rcd 869 (MB 2010) (cancelling notice of apparent liability where applicant timely filed renewal application but did not pay filing fee).