

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

In re Applications of	)	
	)	
Down Home Broadcasting	)	NAL/Acct. Nos. MB2007414102
	)	FRN: 0010019438
For Renewal of Licenses for	)	
	)	
Station WCOX(AM)	)	File No. BR-20060522ADJ
	)	Facility I.D. No. 17480
and	)	
	)	
Station WYVC(FM)	)	File No. BRH-20060522ADL
Camden, Alabama	)	Facility ID No. 17481
	)	

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

Adopted: January 31, 2007

Released: March 7, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned applications of Down Home Broadcasting (the "Licensee") for renewal of its licenses for Stations WCOX(AM) and WYVC(FM), Camden, Alabama (collectively, the "Stations"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules")¹ by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules by failing to timely file license renewal applications for the Stations,³ and Section 301 of the Act⁴ by engaging in unauthorized operation of the Stations after their licenses 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 fourteen thousand dollars (\$14,000), and we grant the captioned WCOX(AM) and WYVC(FM) license renewal applications and reinstate the call signs for the Stations.

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

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 U.S.C. § 301.

expiration date of the license sought to be renewed.”⁵ Applications for renewal of the Stations’ licenses should have been filed by December 1, 2003, four months prior to the Stations’ April 1, 2004, license expiration date,⁶ but were not. Although the Licensee filed the applications on June 8, 2004, more than two months after the Stations’ licenses had expired, on January 12, 2005, the applications were dismissed for the Licensee’s failure to pay regulatory fees, and the Stations’ licenses were cancelled.⁷ These fees were subsequently paid, and the Licensee refiled the applications for the Stations on May 22, 2006. It appears that the Licensee continued operating the Stations after January 12, 2005, but never sought STA to do so.

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee failed to timely file license renewal applications for the Stations, as required by Section 73.3539 of the Rules. It continued operating the Stations for more than two months after the licenses had expired on April 1, 2004, before unsuccessfully filing the applications, and for nearly 17 months after those applications were dismissed, never seeking STA to so operate, in violation of Section 301 of the Act. The Licensee was obligated to fully comply with the Rules, including timely and properly filing the Stations’ renewal applications and maintaining in effect the Stations’ authorizations.⁸ It 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 willfully or repeatedly failed 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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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.”¹³

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.¹⁴ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of

⁵ 47 C.F.R. § 73.3539(a).

⁶ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁷ See *Letter to Down Home Broadcasting from James Bradshaw, Deputy Chief, Audio Division, Media Bureau* (MB Jan. 12, 2005) (dismissing File Nos. BRH-20040608AAM and BRH-20040608AAN).

⁸ 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)).

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

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ 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.

authorization for the service.¹⁵ In determining the appropriate forfeiture amount, we may adjust the forfeiture 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 may require.”¹⁶

6. In this case, even if we were to assume that the Licensee properly filed the renewal applications for the Stations in June 2004, the Licensee operating the Stations for more than two months after the licenses had expired before so filing the applications, never seeking STA to so operate. It also continued operation of the Stations for nearly 17 months after these license renewal applications were dismissed without seeking STA to so operate. Nevertheless, because, it had previously been licensed to operate the Stations, the latter transgressions are 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 timely file the renewal applications for each of the Stations, but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000 for each Station.¹⁷ Thus, we propose a forfeiture in the total amount of \$14,000 (\$7,000 x 2).

7. *License Renewal Applications.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁸ 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.¹⁹ 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.”²⁰

8. We find that the Licensee’s apparent 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.²¹ Further, we find that Stations WCOX(AM) and WYVC(FM) each served the public interest,

¹⁵ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁶ 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).

¹⁷ See, e.g., *Discussion Radio Incorporated*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7438 (2004); *Gospel Media, Inc.*, Letter, 19 FCC Rcd 15600 (MB 2004). Although in *Gospel Media*, the Bureau imposed a proposed forfeiture of \$3,000 for unauthorized operation, the unauthorized operation lasted only two weeks and the applicant did not allow an STA for continued operations to expire. The \$4,000 forfeiture proposed here for unauthorized operation is analogous to use of an unauthorized frequency by a land mobile station holding a license for a different frequency. See, e.g., *In the Matter of Dave Mitchell*, Forfeiture Order, 20 FCC Rcd 1366 (EB 2005); *In the Matter of Joselyn Gordon*, Forfeiture Order, 19 FCC Rcd 23557 (EB 2004).

¹⁸ 47 U.S.C. § 309(k).

¹⁹ 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).

²⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²¹ For example, we do not find here that the Licensee's operation of the Stations "was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct

convenience, and necessity during the subject license term. We will therefore grant the license renewal applications below.

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 Down Home Broadcasting is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for the apparent willful and repeated violations of Section 73.3539 of the Commission's Rules and 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*, Down Home Broadcasting 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

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. 20554.²²

15. IT IS FURTHER ORDERED that the call signs WCOX(AM) and WYVC(FM) ARE REINSTATED.

16. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal applications of Down Home Broadcasting for Stations

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 stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d 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).

²² See 47 C.F.R. § 1.1914.

WCOX(AM), Camden, Alabama (File No. BR-20060522ADJ) and WYVC(FM), Camden, Alabama (File No. BRH-20060522ADL) ARE GRANTED.

17. IT IS FURTHER ORDERED, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Dr. Neolin Craig, Down Home Broadcasting, 235 Stallworth Street, P.O. Box 347, Beatrice, Alabama 36425.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau