

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

In re Application of)	
)	
WBLB, Inc.)	Facility I.D. 48921
)	NAL/Acct. No. MB200741410314
For Renewal of License for)	FRN: 0009992025
Station WBLB(AM))	File No. BR-20031210ABF
Pulaski, Virginia)	

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

Adopted: April 14, 2007

Released: April 23, 2007

By the Associate Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of WBLB, Inc. (the "Licensee") for renewal of its expired license for Station WBLB(AM), Pulaski, Virginia (the "Station"). 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 violated Section 73.3539 of the Rules by failing to timely file a license renewal application for the Station,³ and willfully and repeatedly violated Section 301 of the Act⁴ by engaging in unauthorized operation of the Station 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 grant the captioned WBLB(AM) license renewal application.

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."⁵ An application for renewal of WBLB(AM)'s license should

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.

⁵ Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 has been placed in the station's public inspection file at the appropriate times. WRI indicated "No" to that certification, attaching an Exhibit explaining that all of the documents required by section 73.3526 "may or may not have" been placed in public file at the appropriate times, and that WRI is taking measures to ensure compliance in the future. On June 6, 2006, the staff sent the Licensee a letter of inquiry requesting more detailed information, advising the Licensee that its explanation did not enable us to determine the nature and extent of its noncompliance. *Letter to Ms. Sandra Dale Young*, Reference 1800B3-JWR

have been filed by June 1, 2003, four months prior to the station's October 1, 2003, license expiration date,⁶ but was not. Accordingly, on December 3, 2003, 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 Station's call letters were deleted from the Commission's data base. The Licensee was advised that any operation of the Station was unauthorized and must cease immediately.⁷ Upon receipt of the staff letter, the Licensee tendered the captioned renewal application and requested special temporary authorization ("STA")⁸ to continue Station operations pending consideration of the renewal application. The staff granted the STA request on December 16, 2003, and it expired on June 16, 2004.⁹ The Licensee did not seek extension of the STA or additional authority to continue Station operations. The Licensee does not provide an explanation for the untimely application filing.

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee failed to timely file a license renewal application for WBLB(AM), as required by Section 73.3539 of the Rules. Moreover, the Licensee continued station operations for over two months after the license had expired on October 1, 2003, before filing the renewal application or requesting an STA, in violation of Section 301 of the Act. It also has continued Station operations for nearly three years after the June 16, 2004, expiration of the STA without seeking extension of the STA or additional operating authority, a further violation of Section 301 of the Act. The Licensee was obligated to fully comply with the Rules, including timely filing the Station's renewal application and maintaining in effect the Station authorization.¹⁰ 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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with

(Chief, Audio Division, Media Bureau, Jun. 6, 2006). In its response, Licensee filed an amendment to the application dated January 11, 2007, stating that the issues/programs lists and all the documentation required to be in the file "have been . . . and are now in the appropriate file." Thus, it appears that the Licensee complied with Section 73.3526 during the license term.

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

⁷ Letter to *WBLB, Inc.*, Reference 1800B3-DW (Chief, Audio Division, Media Bureau, Dec. 3, 2003).

⁸ File No. BLSTA-20031211ACQ.

⁹ Letter to *Sandra Dale Young*, Reference 1800B3 (Chief, Audio Division, Media Bureau, Dec. 16, 2003).

¹⁰ 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)).

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

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

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.”¹⁵

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.¹⁶ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁷ 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 may require.”¹⁸

6. In this case, the Licensee failed to timely file the WBLB(AM) renewal application and continued station operations for over two months after the license expired before filing the renewal application and requesting STA to so operate. Moreover, it has continued to operate the Station for nearly three years after the expiration of the STA, never seeking extension of the STA or additional authority to so operate. Nevertheless, because it had previously been licensed to operate Station WBLB(AM), 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 timely file the renewal application, but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000.¹⁹ Thus, we propose a forfeiture in the total amount of \$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.²⁰ 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.²¹ 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

¹⁵ 47 U.S.C. § 312(f)(2).

¹⁶ 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.

¹⁷ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁸ 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).

¹⁹ 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).

²⁰ 47 U.S.C. § 309(k).

²¹ 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).

application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."²²

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.²³ Further, we find that Station WBLB(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application 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 WBLB, Inc. is hereby NOTIFIED of his APPARENT LIABILITY FOR FORFEITURE in the amount of \$7,000 for the apparent willful violation of Section 73.3539 of the Commission's Rules and willful and repeated violation 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*, WBLB, Inc. 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

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ 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 FCC2d 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." *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).

1-A625, Washington, D.C. 20554.²⁴

15. IT IS FURTHER ORDERED, that the license renewal application of WBLB, Inc. for Station WBLB(AM), Pulaski, Virginia (File No. BR-20031210ABF) IS GRANTED.

16. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WBLB, Inc., P.O. Box 150, Pulaski, Virginia 24301, and to its counsel, Lee J. Peltzman, Esquire, Shainis & Peltzman, Chartered, 1850 M Street, NW, Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman
Associate Chief, Media Bureau

²⁴ See 47 C.F.R. § 1.1914.