



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

December 5, 2016

In Reply Refer To:
1800B3-ATS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Donna J. Grant
Hawk Communications, LTD
110 North 2nd Street
Olean, NY 14760

In re: Hawk Communications, LTD
WSPQ(AM), Springville, NY
Facility ID No. 26452
File No. BR-20140331AKD
NAL/Acct. No. MB-201541410035
FRN No. 0014668040

Dear Ms. Grant:

We have before us the November 4, 2015, response (Response) filed by Hawk Communications, LTD (Hawk), licensee of Station WSPQ(AM), Springville, New York (Station), requesting cancellation of the Notice of Apparent Liability for Forfeiture (NAL)¹ issued by the Media Bureau (Bureau) for Hawk's apparent willful violation of Section 73.3539 of the FCC's Rules (Rules).² By this action, we cancel the NAL and admonish Licensee for violating Section 73.3539.

Background. As noted in the NAL, Hawk's application to renew the Station's license was due on February 1, 2014, four months prior to the license expiration date of June 1, 2014, but was not filed until March 31, 2014.³ On October 13, 2015, the Bureau issued the NAL in the amount of one thousand, five hundred dollars (\$1,500) to Hawk. In the Response, Hawk argues that the proposed forfeiture would be a financial hardship and provides copies of tax returns from 2012, 2013, and 2014 showing gross revenues of \$70,800, \$55,827, and \$54,827, with losses of \$17,043, \$43,153, and \$53,286 for those years, respectively.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with

¹Hawk Communications, LTD, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 10953 (MB 2015).

² 47 C.F.R. § 73.3539.

³ NAL, 30 FCC Rcd at 10953, para. 2.

⁴ 47 U.S.C. § 503(b).

⁵ 47 CFR § 1.80.

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).

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

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflected the party'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.⁸ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.⁹ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹⁰ However, in some cases, other financial indicators, such as net losses, may also be relevant.¹¹ In the past, we have cancelled forfeitures based on losses only in extreme cases.¹²

We have examined Hawk's Response pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Licensee willfully violated Section 73.3539 of the Rules. However, after reviewing Hawk's claim and the supporting documentation, we believe that payment of the \$1,500 forfeiture, or any reduction thereof consistent with Commission precedent,¹³ would pose a financial hardship in view of Hawk's documented gross income and losses. Accordingly, we cancel the proposed forfeiture.¹⁴ Nevertheless, we find that it is appropriate to admonish Hawk for its willful violation of Section 73.3539 of the Rules.

Conclusion. In view of the foregoing, the Notice of Apparent Liability (NAL/Acct. No. MB-201541410035) issued to Hawk Communications, LTD, for violation of Section 73.3539 of the FCC's Rules is HEREBY CANCELLED. Hawk Communications, LTD, is instead hereby ADMONISHED for its willful violation of Section 73.3539 of the Rules.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See *NAL*, 30 FCC Rcd at 10956, para. 13.

⁹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, para. 8 (1992) (*PJB Communications*).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Valley Air, LLC*, Letter Order, 24 FCC Rcd 5505, 5507 (MB 2009) (cancelling NAL where cumulative net losses exceeded Station's revenues by fifty percent over the relevant three-year period).

¹³ *PJB Communications*, 7 FCC Rcd at 2089, para. 8 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's average gross revenues); *CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411, 1413, para. 9 (MB 2010) (reducing proposed forfeiture to 5 percent of violator's average gross revenue).

¹⁴ *Metz, Inc.*, Letter Order, 25 FCC Rcd 12344 (MB 2010) (cancelling notice of apparent liability where licensee demonstrated history of significant losses).

IT IS FURTHER ORDERED that the license renewal application filed by Hawk Communications, LTD, for Station WSPQ(AM), Springville, New York (File No. BR-20140331AKD) IS GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized set of initials "HH".

Peter H. Doyle
Chief, Audio Division
Media Bureau