

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

In re Application of)	
)	
B & E Broadcasting, Inc.)	Facility I.D. No. 3425
)	NAL/Acct. No. MB-200741410392
For Renewal of License for)	FRN: 0010019818
Station WSLV(AM))	File No. BR-20060410ACP
Ardmore, Tennessee)	

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

Adopted: October 15, 2007

Released: October 16, 2007

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of B & E Broadcasting, Inc. (the "Licensee"), for renewal of its license for commercial Station WSLV(AM), Ardmore, Tennessee (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, Audio Division, 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,³ by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in unauthorized operation of the Station after its authorization 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 WSLV(AM) renewal application and reinstate the call letters for the Station.

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 WSLV(AM)'s license should have been filed by April 1, 2004, four months prior to the Station's August 1, 2004, license expiration date,⁶ but was not. Accordingly, on June 8, 2006, the staff wrote to the Licensee indicating

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 47 C.F.R. § 73.3539(a).

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

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 then unauthorized and must cease immediately.⁷ Upon receipt of the letter, the Licensee tendered the captioned license renewal application and a request for Special Temporary Authorization ("STA") for WSLV(AM) to continue operating pending consideration of the late-filed renewal application.⁸ The staff granted that STA request on July 7, 2006.⁹ By the terms of that letter, the authority expired on January 7, 2007. The Licensee timely sought an extension of the STA on October 11, 2006, which remains pending.¹⁰ In the STA request, the licensee explains that it had prepared a license renewal application for WSLV(AM) but, due to a miscommunication regarding the filing fee that was to accompany the license renewal application, the application was never accepted for filing and processing.¹¹

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee has failed to timely file a license renewal application for WSLV(AM), as required by Section 73.3539(a) of the Rules. Moreover, it continued Station operation for nearly two years after its license had expired on August 1, 2004, before filing a license renewal application and a request for STA to so operate, in violation of Section 301 of the Act. Although the Licensee explains that the untimely filing was due to a miscommunication regarding the filing fee that was to accompany the license renewal application, the application was never accepted for filing and processed. Although the Licensee indicates that its failure to file a timely renewal application was inadvertent, broadcast licensees are obligated to comply fully with the Rules, including timely filing the station's renewal application and maintaining in effect the station's authorization.¹² 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 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.¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with

⁷ Letter to B & E Broadcasting, Inc. from Chief, Audio Division, Media Bureau, Ref. 1800B3-MW (MB June 8, 2006).

⁸ See File No. BLSTA_20060614ABW (the "STA Request").

⁹ Letter to Mr. Ernie Ashworth, Reference 1800B3 (MB Jul 7, 2005).

¹⁰ See File No. 20061011AFC.

¹¹ We have examined the Commission's records and electronic data bases, and we can find no record of an earlier attempt to file electronically a license renewal application for WSLV(AM).

¹² 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)).

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

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ 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.”¹⁷

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.¹⁸ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁹ 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.”²⁰

6. In this case, the Licensee failed to timely file the WSLV(AM) renewal application and continued Station operations for nearly two years after the Station’s license expired on August 1, 2004 before filing the appropriate renewal application and a request for STA to so operate. Nevertheless, because it had previously been licensed to operate Station WSLV(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 and STA request, but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000.²¹ 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.²² 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.²³ 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

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ 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.

¹⁹ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²⁰ 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).

²¹ 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. 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*, 20 FCC Rcd (EB 2005); *In the Matter of Joselyn Gordon*, Forfeiture Order, 19 FCC Rcd 23557 (EB 2004).

²² 47 U.S.C. § 309(k).

²³ 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."²⁴

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.²⁵ Further, we find that Station WSLV(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 B & E Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand dollars (\$7,000) for its 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*, B & E Broadcasting, 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 in the caption 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

²⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁵ 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." *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).

plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶

15. IT IS FURTHER ORDERED, that the call sign WSLV(AM) IS REINSTATED.

16. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of B & E Broadcasting, Inc. for Station WSLV(AM), Ardmore, Tennessee (File No. BR-20060410ACP) IS 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 B & E Broadcasting, Inc., P.O. Box 147, Hartsville, Tennessee 37074.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division,
Media Bureau

²⁶ See 47 C.F.R. § 1.1914.