

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

In re Application of
Creative Media Incorporated
For Renewal of License for
Station KASR(FM)
Vilonia, Arkansas
Facility I.D. No. 14465
NAL/Acct. No. MB-200741410334
FRN: 0004992962
File No. BRH-20040601BRL

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 9, 2007

Released: July 10, 2007

By the Associate Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Creative Media Incorporated, (the "Licensee"), for renewal of its license for Station KASR(FM), Vilonia, Arkansas (the "Station"). The Commission also has before it an informal objection ("Objection") filed by Merrill Media Group ("MMG") on July 20, 2005. 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"), by the Associate Chief, Media Bureau, by authority delegated under Section 0.283 of the Rules, we find that the Licensee apparently willfully violated Section 73.3539 of the Rules by failing to timely file the license renewal application for the Station. 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 one thousand five hundred dollars (\$1,500). We further deny MMG's Objection, and we grant the captioned KASR(FM) 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." An application for renewal of the Station's license

1 MMG's Objection also contained allegations against co-owned station KXXA(AM), Conway, Arkansas. That station's license has been cancelled and its call sign deleted. Letter to Dan J. Alpert, Esq., 21 FCC Red 689 (MB 2006). The Licensee did not oppose the Objection.

2 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

3 See 47 C.F.R. § 0.283.

4 See 47 C.F.R. § 73.3539.

5 47 C.F.R. § 73.3539(a).

should have been filed by February 1, 2004, four months prior to the Station's June 1, 2004, license expiration date,⁶ but was not. In fact, the Licensee did not file the renewal application until June 1, 2004. The Licensee provides no explanation for the untimely filing of the renewal application. In response to the Licensee's late-filed renewal application, MMG filed an informal objection to grant of the Licensee's renewal application, which opposed the renewal due to concerns about the grant to the Licensee of a construction permit to upgrade KASR(FM) from a Class A to a Class C3.

III. DISCUSSION

3. *Informal Objection.* MMG gives no basis for its Objection except that the grant of the upgrade will increase "the station's reach into "Little Rock." This claim, of itself, does not raise an issue as to whether grant of the station's license renewal is in the public interest. We conclude that MMG has failed to make a *prima facie* case as to why the renewal application should not be granted. We also note that the Station's covering Class C3 license application was granted on April 30, 2007.⁷

4. *Proposed Forfeiture.* In this case, the record indicates that the Licensee has failed to timely file the license renewal application for the Station, as required by Section 73.3539(a) of the Rules. Moreover, as noted above, the Licensee did not provide an explanation for the late filing.

5. 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ 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."¹²

6. 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.¹³ 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

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

⁷ File No. BLH-20050721ABN.

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

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 312(f)(2).

¹³ 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.

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."¹⁴

7. In this case, the Licensee failed to timely file the KASR(FM) renewal application. Taking into consideration this fact, the fact that the renewal application was filed prior to expiration of the Station's license, and all of the factors required by Section 503(b)(2)(D) of the Act¹⁵ and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 for the late filing.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁶ 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.¹⁷ 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.”¹⁸

9. We find that the Licensee's apparent violation of Section 73.3539 of the Rules does not constitute a “serious violation” warranting designation for evidentiary hearing. With respect to the Objection filed by MMG, we find that the Objection fails to raise any issues as to the Licensee's qualifications to remain a Commission licensee. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁹ Further, we find that Station KASR(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

10. 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 Creative Media Incorporated, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for the apparent willful violation of Section 73.3539 of the Commission's Rules.

¹⁴ 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).

¹⁵ 47 U.S.C. § 503(b)(2)(D).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 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).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 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).

11. 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*, Creative Media Incorporated SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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.

13. 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.

14. 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.

15. 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. 20554.²⁰

16. IT IS FURTHER ORDERED that the informal objection filed by Merrill Media Group on July 20, 2005, IS DENIED.

17. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Creative Media Incorporated for Station KASR(FM), Vilonia, Arkansas (File No. BRH-20040601BRL) IS GRANTED.

16. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Creative Media Incorporated, 1117 Oak Street, Suite 300, Conway, Arkansas, 72033, and to its counsel, Dan J. Alpert, Esquire, 2120 North 21st Road, Arlington, Virginia, 22201, and to Merrill Media Group, P.O. Box 232, Sallisaw, Oklahoma, 74955.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Robbins
Associate Chief, Media Bureau

²⁰ See 47 C.F.R. § 1.1914.