

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

In the Matter of)
Community-First Broadcasters, Inc.) Facility ID No. 12919
) NAL/Acct. No. MB20041810050
Licensee of Station WAMV(AM)) FRN: 00037969858
Amherst, VA) File No. BR-200309330AUE

FORFEITURE ORDER

Adopted: July 14, 2008

Released: July 15, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Community-First Broadcasters, Inc. (“Community”), licensee of Station WAMV(AM), Amherst, Virginia (“Station”), for willful and repeated violation of 47 C.F.R. Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license renewal application for the station.

II. BACKGROUND

2. On August 4, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) to Community for this violation.² Community filed a Request for Reduction of Proposed Forfeiture (“Request”) on September 3, 2004.

3. As noted in the NAL, Community’s renewal application for the current WAMV(AM) license term was due on June 1, 2003, four months prior to the October 1, 2003 expiration date.³ Community did not file the application until September 30, 2003. On August 4, 2004, the staff advised Community of its apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Community failed to timely file the WAMV(AM) renewal application.⁴

4. In its Request, filed on September 3, 2004, Community seeks reduction or cancellation of the forfeiture. To support its Request, Community argues that its principal owner, Robert Langstaff, made a good faith attempt to file its renewal application, but has been “flummoxed” by the Commission’s filing procedures;⁵ Community indicates that although it originally tendered the WAMV(AM) renewal application on paper on June 2, 2003, the application was returned because it did not include a Remittance

¹ 47 C.F.R. § 73.3539.

² Letter to Matthew H. McCormick, Esq. from Peter Doyle, reference 1800B3-RAB (MB Aug. 4, 2004).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ The Commission granted the above-referenced license renewal application August 4, 2004.

⁵ Request at 2.

Advice form (FCC Form 159).⁶ Community also claims that payment of the forfeiture will cause it financial hardship. The Request filed states that Community's annual revenues were approximately \$30,000 in 2001, 2002, and 2003. Community claims that while revenues increased in 2004, they were still well short of \$50,000.⁷ Community stated that it intended to submit documentation for these figures. It did not do so.

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ In examining Community's Request, Section 503(b)(2)(D) of the Act requires that we take into account 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 other such matters as justice may require.¹¹

5. Community does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. Specifically, Community states that its principal owner, Robert Langstaff, has tried to handle WAMV's FCC filings without the assistance of communications counsel. Although Community originally tendered WAMV(AM)'s renewal application in a timely manner, the application was returned because it did not include a fee form. The Commission has held that violations resulting from inadvertent error or failure to become familiar with Commission requirements are willful violations.¹² As it pertains to forfeiture actions, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Rules.¹³ We therefore cannot excuse the violation.

6. With respect to Community's arguments concerning its ability to pay the proposed forfeiture, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee 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 reflect the licensee's current financial status. Any

⁶ In its Request, Community submits as evidence its originally tendered renewal application, along with the FedEx receipt. Both are bear the FCC/Mellon stamp dated June 2, 2003.

⁷ Request at 3.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17100 (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.

¹¹ 47 U.S.C. C503(b)(2)(D)

¹² See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) ("PJB Communications"); *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹³ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. Even if we were to consider Community's unsupported gross revenue figures, a \$1,500 forfeiture is approximately 5 percent of Community's lowest reported annual revenue of \$30,000. Therefore, we do not find that Community is unable to pay such a forfeiture amount.¹⁵

7. We have considered Community's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Community willfully¹⁶ and repeatedly¹⁷ violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁸ that Community-First Broadcasters, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for willfully and repeatedly violating Section 73.3539 of the Rules.

9. 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 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV—27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁹

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441(Apr. 16, 2004).

¹⁵ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order , 7 FCC Rcd 2088, 2089 (1992)(forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹⁶ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), recon. denied, 7 FCC Rcd 3454 (1992) ("Southern California").

¹⁷ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁹ See 47 C.F.R. § 1.1914

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail-Return Receipt Requested and by First Class Mail to Community First Broadcasters, Inc., P.O. Box 769, Amherst, Virginia 24521, and to its counsel, Matthew H. McCormick, Esq., Fletcher, Heald & Hildreth, PLC, 1300 17th St N, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau