

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

In the Matter of)	
)	Facility ID No. 67269
TOL-TOL COMMUNICATIONS, INC.)	NAL/Acct. No. MB20041810051
)	FRN: 0005011382
Licensee of Station WILA(AM))	File No. BR-20031030ACG
Danville, VA)	

FORFEITURE ORDER

Adopted: July 24, 2008

Released: July 25, 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 four thousand eight hundred dollars (\$4,800) to Tol-Tol Communications, Inc. (“Tol-Tol”), licensee of Station WILA(AM), Danville, Virginia (the “Station”), for its willful violation of Section 73.3539 of the Commission’s Rules (the “Rules”) and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (the “Act”).¹ The violations involve Tol-Tol’s failure to file a timely license renewal application for the Station and its unauthorized operation of WILA(AM) after its license for the Station had expired.

II. BACKGROUND

2. On October 21, 2004, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of six thousand dollars (\$6,000) to Tol-Tol.² Tol-Tol filed a response requesting cancellation or reduction of the forfeiture (the “Response”) on November 16, 2004.

3. As noted in the NAL, WILA(AM)’s license renewal application was due on June 1, 2003, four months prior to the October 1, 2003, license expiration date.³ Tol-Tol did not file the application until October 30, 2003, four weeks after the Station’s license had expired. On October 14, 2003, Tol -Tol requested a special temporary authorization (“STA”) to continue operation, pending consideration of the license renewal application.⁴ The NAL concluded that Tol-Tol had violated Section 73.3539 of the Rules and Section 301 of the Act and proposed the \$6,000 forfeiture.

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² Letter to Peter Gutmann, Esq. from Peter Doyle, Chief, Audio Division, reference 1800B3-RAB (Oct. 21, 2004).

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

⁴ This request was granted on August 10, 2004. Letter to Peter Gutmann, Esq., reference 1800B3-MFW (MB Aug. 10, 2004).

4. We note that, in the STA request, Tol-Tol indicates that it had not timely filed the license renewal application "through inadvertence." In its Response, Tol-Tol requests that the NAL be reduced because of the station's "previously clean record of serving the public interest." It also maintains that the

proposed forfeiture should be cancelled or reduced on the ground of its inability to pay, and submits copies of its 2001, 2002, and 2003 federal income tax returns to establish its inability to pay the proposed forfeiture.⁵

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission's *Forfeiture Policy Statement*.⁸ In examining Tol-Tol'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.⁹

6. Tol-Tol does not dispute that it failed to file a timely renewal application for the Station, but states that these violations were unintentional. The Commission has held that violations resulting from inadvertent error or failure to become familiar with Commission requirements are willful violations.¹⁰ 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.¹¹ We therefore cannot excuse the violation.

7. With respect to Tol-Tol's arguments concerning its ability to pay the proposed forfeiture, 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)

⁵ Tol-Tol has asked for confidential treatment of the tax returns pursuant to 47 C.F.R. § 0.459. We grant its request.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 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.

⁹ 47 U.S.C. C503(b)(2)(D)

¹⁰ 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").

¹¹ 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).

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.¹² In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ 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.¹⁴ In support of its request for cancellation or reduction of the forfeiture, Tol-Tol submits copies of its 2001, 2002 and 2003 federal income tax returns.

8. We have examined Tol-Tol's response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. As a result of our review, we conclude that Tol-Tol willfully¹⁵ violated Section 73.3539 of the Commission's Rules and willfully and repeatedly¹⁶ violated Section 301 of the Communications Act of 1934, as amended, and we find that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.¹⁷ However, given Tol-Tol's history of compliance with the Rules, we reduce the forfeiture amount to \$4800.¹⁸

IV. ORDERING CLAUSES

9. 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,¹⁹ that Tol-Tol Communications, Inc. SHALL FORFEIT to the United States the sum of four thousand eight hundred dollars (\$4,800) for willfully violating Section 73.3539 of the

¹² See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

¹³ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁴ *Id.*

¹⁵ 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*, 6 FCC Rcd at 4387-88.

¹⁶ 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).

¹⁷ 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).

¹⁸ See, e.g., *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

¹⁹ 47 C.F.R. §§ 0.283, 1.80.

Commission's Rules and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁰ 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).

Requests for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.

11. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Tol-Tol Communications, Inc., P.O. Box 3444, Danville, Virginia 24543, and to its counsel, Peter Gutmann, Esq., Womble, Carlyle, Sandridge & Rice, PLLC, 7th Floor, 1401 Eye Street, N.W., Washington, DC 20005.

FEDERAL COMMUNICATIONS

COMMISSION

Peter H. Doyle, Chief
Audio Division
Media Bureau

²⁰ 47 U.S.C. § 504(a).