



**Federal Communications Commission
Washington, D.C. 205543**

September 26, 2008

DA 08-2158

In Reply Refer to:

1800B3-JWR

NAL/Acct No.: MB20081810045

FRN: 0007370744

Released: September 26, 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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200 South Church Street
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In re: WJYK(AM), Chase City, VA
West Mecklenburg Broadcasting
Facility ID: 71627
File No. BR-20031215ABI

Dear Mr. Steiner:

The Chief, Audio Division, has before him the May 23, 2005, letter¹ filed on behalf of West Mecklenburg Broadcasting (“WMB”), licensee of Station WJYK(AM), Chase City, Virginia (the “Station”). The Response requests cancellation of an April 28, 2005, Notice of Apparent Liability for a Forfeiture (“NAL”)² in the amount of six thousand dollars (\$6,000) for violation of Section 73.3539 of the Commission’s Rules (the “Rules”) and Section 301 of the Communications Act of 1934, as amended (the “Act”).³ The violations involve WMB’s failure to file a timely license renewal application for the Station and its unauthorized operation of WJYK(AM) after its license for the Station had expired.⁴ By this action, we cancel the *NAL* and admonish WMB for violating Sections 73.3539 of the Rules and 301 of the Act.

Background. As noted in the *NAL*, WJYK(AM)’s renewal application for the current WJYK(AM) license term was due on June 1, 2003, four months prior to the October 1, 2003, license expiration date. According to Commission records, no such application was filed, and the station’s license expired on October 1, 2003. Subsequently, on December 3, 2003, the staff wrote to WMB, indicating that the station’s license had expired and that (1) all authority to operate the station was terminated; and (2) the

¹ Response to Notice of Apparent Liability for Forfeiture, filed by West Mecklenburg Broadcasting on May 23, 2005 (“Response”).

² Letter to John C. Trent, Esq. from Peter Doyle, Chief, Audio Division, reference 1800B3 (April 28, 2005).

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

⁴ On November 8, 2005, WMB filed an application to assign WJYK(AM)’s license to Stephen C. Battaglia, Sr. & Janis G. Battaglia, File No. BAL-20051108AHZ. The application was granted on January 5, 2006.

station's call letters were deleted from the Commission's data base. Upon receipt of this letter, WMB contacted communications counsel and properly tendered a license renewal application for WJYK(AM) and a request for special temporary authorization ("STA") to continue operation pending consideration of the license renewal application. The staff granted the STA request on December 29, 2004. WMB explained that it attempted to timely file the renewal application, with appropriate filing fee, in paper form without the assistance of counsel, and that it was "unaware" that license renewal applications were required to be filed electronically. On April 28, 2005, the Bureau issued a *NAL* in the amount of six thousand dollars to WMB.⁵ WMB filed its Response requesting cancellation of the forfeiture on May 23, 2005.

In its Response, WMB states that "several errors" were made in filing the renewal application, and asserts that, based upon its financial condition, it is impossible for it to pay any forfeiture at all.

Discussion. Section 73.3539 of the Rules requires a broadcast licensee to file its license renewal application four months before the license expiration date. Moreover, Section 301 of the Act requires any person operating apparatus for the transmission of communications by radio to obtain a license under the provisions of the Act. It is undisputed that, not only was WMB's renewal application untimely, it was filed 10 weeks after WJYK(AM)'s license had expired. Despite WMB's assertion that the tardiness of the renewal application was inadvertent, we find that its violation of Section 73.3539 of the Rules was willful⁶ and repeated.⁷

WMB's being "unaware," or inadvertence, does not mitigate its violations. Licensees are responsible for knowing and observing the rules affecting their activities,⁸ including the timely submission of required forms. Untimely renewal applications disrupt the orderly processing of renewal applications in accordance with the staggered filing deadlines set forth in Section 73.1020 of the Rules. Moreover, Section 301 of the Act sets forth the general mandate that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and in accordance with the terms of a license. WMB's violation not only involved its untimely application for renewal of WJYK(AM)'s license, but also its unauthorized operation of a radio station for 10 weeks after the Station's license had expired before it obtained an STA for continued operation, pending consideration of its untimely renewal application.

As noted in the *NAL*, the proposed forfeiture amount in this case was determined in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ In considering WMB's request, the statute, the rule, and our policy require that the Bureau take into account the nature, circumstances, extent and gravity of the violation, and with respect to the

⁵ *Letter to John C. Trent, Esq. supra.*

⁶ For purposes of Section 503(b) of the Act, 47 U.S.C. § 503(b), the term "willful" means the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.

⁷ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3452 (1992) (applying this definition of repeated to Sections 312 and 503(b) of the Act).

⁸ *See, e.g., In the Matter of Rego, Inc.*, Forfeiture Order, 16 FCC Rcd 16795, 16797 (EB 2001).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 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.

violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹²

WMB also asserts that the payment of the proposed, or any forfeiture, would result in a financial hardship. 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.¹³

In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁴ 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.¹⁵ In support of its request for cancellation of the forfeiture, WMB submits copies of its 2001, 2002 and 2003 federal income tax returns, specifying gross revenues in the amounts of \$7,824, \$8,061, and \$5,670, respectively.

We have examined WMB's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that WMB willfully and repeatedly violated Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended. After reviewing WMB's claim and the supporting documentation, we believe that payment of the \$6,000 forfeiture, or any reduction thereof consistent with Commission precedent,¹⁶ would pose a financial hardship in view of the WMB's documented gross revenues.¹⁷

¹² 47 U.S.C. § 503(b)(2)(D); *see also* n.11, *supra*.

¹³ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004).

¹⁴ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁵ *Id.*

¹⁶ *Id.* (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).

¹⁷ In analyzing economic hardship claims, the Commission generally looks to companies' gross revenues as reasonable and appropriate yardsticks to determine their ability to pay assessed forfeitures. The Commission has stated that if companies' gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily signify inability to pay. *See Greenwood Acres Baptist Church*, Forfeiture Order, 19 FCC Rcd 9838 (EB 2004).

In view of the foregoing, the Notice of Apparent Liability (MB-200831810045) for violation of Sections 73.3539 of the Rules and 301 of the Act is HEREBY CANCELLED.¹⁸

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc : West Mecklenburg Broadcasting

¹⁸ Typically, if WMB were still a Commission licensee, we would admonish it for its violation of the Rules and the Act upon cancellation of the *NAL*. See, e.g., *American Family Association*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (EB 2003) (NAL cancelled and licensee admonished based on response to NAL). However, WMB has assigned its only radio station, *see* n.4, *supra*, and such an action would be pointless.