



Federal Communications Commission
Washington, D.C. 20554

September 2, 2009

DA 09- 1996

In Reply Refer to:

1800B3-JWR

NAL/Acct No.: MB2006414140099

FRN: 0005028212

Released: September 2, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Timothy K. Brady, Esq.

P.O. Box 930

Johnson City, Tennessee 37605-0930

In re: WWGC(AM), Albertville, AL
MVB, Inc.
Facility ID: 6211
File No. BR-20040219ACN

Dear Mr. Brady:

The Chief, Audio Division has before him the January 5, 2007, letter filed on behalf of MVB, Inc. (“MVB”), former licensee¹ of Station WWGC(AM), Albertville, Alabama (the “Station”).² The Response requests the cancellation of a December 6, 2006, Notice of Apparent Liability for a Forfeiture (“NAL”).³ in the amount of one thousand five hundred dollars (\$1,500) for violation of Section 73.3539 of the Commission's Rules (the “Rules”).⁴ The violation involves MVB's failure to timely file a license renewal application for the Station. By this action, we cancel the *NAL* and admonish MVB for filing the renewal application in paper format without demonstrating good cause.

Background. As noted in the *NAL*, MVB's renewal application for the current WWGC(AM) license term was due on December 1, 2003, four months prior to the April 1, 2004, license expiration date. MVB did not file the application until February 19, 2004, and provided no explanation for the untimely filing of the renewal application. On December 6, 2006, the staff advised MVB of its apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the

¹ MVB assigned the Station to Quality Properties, LLC, in 2007. *See* File No. BAL-20060922AAV, granted on December 6, 2006 and consummated on January 16, 2007. Despite this assignment, MVB remains liable for forfeiture for those violations occurring when the Station was under its stewardship. *See, e.g., Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140, 140 n.2 (MMB 1999) (finding Licensee liable for forfeiture for violations of the Commission's rules that took place when station was under its stewardship).

² Response to Notice of Apparent Liability for Forfeiture, filed by MVB, Inc. on January 5, 2007 (“Response”).

³ *MVB, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 14104 (2006).

⁴ 47 C.F.R. § 73.3539.

fact that MVB failed to timely file a renewal application for the Station.⁵ In response, MVB filed the subject Response.

In support of its Response, MVB asserts that the violation was not willful and that it did not fail to file the "required form."⁶ MVB argues, respectively, that it filed the application with the intent of meeting the December 1, 2003 filing deadline, but did so on paper, not electronically. MVB states that because it was unaware of the electronic filing requirement, the violation was not willful. Similarly, MVB states that it did not fail to file the "required form," but merely filed it "untimely." MVB also asserts that the *NAL* was not issued within the time specified in Section 1.80(c) of the Rules.⁷ Specifically, MVB states that the violation occurred as of December 1, 2003, the date the application was required to be filed, and that the December 6, 2006, *NAL* was not issued within one year of the violation or "prior to the date of commencement of the current license term. . .", as provided by Section 1.80(c). For these reasons, MVB maintains that the assessed forfeiture should be cancelled.

Discussion. As noted in the *NAL*, the proposed forfeiture amount in this case was determined 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 considering MVB's response, Section 503(b)(2)(E) of the Act requires that the Bureau 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

Section 73.3539 of the Rules requires a broadcast licensee to file its license renewal application four months before the license expiration date. It is undisputed that MVB's proper, electronically filed license renewal application for WWGC(AM) was untimely. However, MVB states that it filed the application with the intent of meeting the filing deadline, but did so in paper form, being unaware of the electronic filing requirement. As the Commission has held, violations resulting from inadvertent error or failure to

⁵ The Commission granted the above-referenced license renewal application on December 6, 2006.

⁶ *NAL* specified that 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.

⁷ 47 C.F.R. §1.80(c) (Limits on the time when a [forfeiture] proceeding may be initiated), provides:

(1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, "date of commencement of the current license term" means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

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*, 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. § 503(b)(2)(E).

become familiar with the FCC's requirements are willful violations.¹² In the context of a forfeiture action, "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 (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹³

Regarding MVB's assertion that the proposed forfeiture was improperly assessed because it did not "fail to file the required form," but, in fact, filed the renewal application, albeit untimely, on February 19, 2004, before the Station's license expired, we find no merit. The pivotal date was December 1, 2003, the date the application was required to be filed. On that date, MVB had "fail[ed] to file the required form," therefore, the forfeiture was properly imposed pursuant to Section 1.80(b)(4).¹⁴ Furthermore, contrary to MVB's contention, the *NAL* was not issued in violation of 1.80(c) of the Rules. The *NAL* was not issued more than one year prior to the commencement of the "current license term," in that the "old" license term continued until the WWGC(AM) license renewal application was granted.¹⁵ Although the *NAL* and renewal grant were part of the same item, of necessity, the violation had to be addressed before the renewal application could be acted on. Therefore, the new, "current" license term commenced only *after* the *NAL* had been assessed.

We have considered Licensee's response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁶ violated Section 73.3539 of the Rules.¹⁷ However, given the close proximity of the date established for mandatory electronic filing of license renewal applications (March 21, 2003) and the due date for Alabama license renewal applications (December 1, 2003), we believe that favorable action on MVB's Response is warranted.

We cannot completely excuse MVB's failure to file its license renewal application properly, however. MVB filed its renewal application in paper format rather than electronically, as required.¹⁸

¹² See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (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, 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, 2651 (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).

¹⁴ See, e.g., *Manuel Huerta*, Forfeiture Order, 23 FCC Rcd 14647, 14648 (2008) (rejecting licensee's argument that it did not "fail to file" the required license renewal application but only filed it in an untimely fashion).

¹⁵ See 47 U.S.C. § 307(c).

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*, 6 FCC Rcd at 4387-88.

¹⁷ 47 U.S.C. § 301.

¹⁸ See *New FCC Form 303-S Available for Use*, Public Notice, 18 FCC Rcd 5088 (MB Mar. 21, 2003); see also Instructions for FCC 303-S ("Application for Renewal of Broadcast Station License").

Licensees are responsible for knowing and observing the rules affecting their activities, including the timely submission of required forms.¹⁹ Because it appears that its license renewal application for the Station was improperly filed in paper form, and MVB does not provide any showing of good cause for its failure to file electronically, we will admonish MVB for its failure to properly file its license renewal application for WWGC(AM).

Conclusion/Actions. In view of the foregoing, MVB, Inc.'s January 5, 2007, response to our December 6, 2006, *NAL* in the amount of one thousand five hundred dollars (\$1,500) IS GRANTED, and the Notice of Apparent Liability (MB-2006414140099) for violation of Section 73.3539 of the Rules is HEREBY CANCELLED. MVB, Inc. is instead hereby ADMONISHED for filing the renewal application in paper format without demonstrating good cause.²⁰

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: MVB, Inc.

¹⁹ See, e.g. *Rego, Inc.*, Forfeiture Order, 16 FCC Rcd 16795, 16797 (EB 2001).

²⁰ 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).