

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

In the Matter of)	
)	Facility ID No. 2311
Dewey D. Lankford)	NAL/Acct. No. MB20051810138
)	FRN: 0007693641
Former Licensee of Station WANA(AM))	File No. BR-20050408ACG
Anniston, Alabama)	

FORFEITURE ORDER

Adopted: April 14, 2009

Released: April 15, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000), to Dewey D. Lankford (“Lankford”), former licensee¹ of Station WANA(AM), Anniston, Alabama (“Station”),² for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”) for his failure to timely file a license renewal application and for unauthorized operation of the Station.³

II. BACKGROUND

2. On January 17, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Lankford for these violations.⁴ Lankford filed a Request for Cancellation of Proposed Forfeiture (“Request”) on March 10, 2006.

3. As noted in the NAL, Lankford’s renewal application for the pertinent WANA(AM) license term should have been filed on December 1, 2003.⁵ No such application was filed, and the Station’s license expired on April 1, 2004.⁶ Accordingly, on March 17, 2005, the staff wrote to Lankford, indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station’s call letters were deleted from the Commission’s database. Lankford was advised that any operation of the Station would be unauthorized and must cease immediately.⁷ Upon receipt of the letter, Lankford tendered the captioned license renewal application for the Station and a request for Special Temporary Authorization (“STA”) to operate the Station, pending consideration of the renewal application. Lankford also subsequently filed a Petition for Reconsideration of the March 17, 2005, staff action. In the STA request and Petition for Reconsideration, Lankford explained that he

¹ Lankford assigned the Station to Jacobs Broadcast Group, Inc., in 2006. See File No. BAL-20060111ACB (granted March 3, 2006). The assignment was consummated on May 23, 2006.

² The Station’s call sign was changed to WSYA(AM) on May 23, 2008. For administrative convenience, we will continue to use the previous call sign.

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

⁴ Letter to Audrey P. Rasmussen, Esq. from Peter H. Doyle, Ref. 1800B3 (MB Jan. 17, 2006).

⁵ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁶ *Id.*

⁷ Letter to Anniston Radio Company from Peter H. Doyle, Ref. 1800B3-DW (MB Mar. 17, 2005).

thought he had successfully filed the renewal application through the Bureau's Consolidated Data Base System ("CDBS") on November 21, 2003, even though it was never received by the Commission for processing. Specifically, Lankford claimed that CDBS showed that the application's status was "valid" and stated that, to a novice user such as him, that denotation signaled that the application was on course. It was not until he received the March 17, 2005, letter that he realized that the application had never been properly tendered. Media Bureau staff granted the STA request on April 18, 2005.⁸ On January 17, 2006, the staff advised Lankford of his apparent liability for a forfeiture of \$7,000 for his failure to timely file the Station's renewal application and for unauthorized operation of the Station.⁹ In response, Lankford filed the subject Request.

4. In support of his Request, Lankford states that his failure to properly file the Application: (1) was inadvertent because Lankford thought it had been properly filed, and (2) may have been the result of technical difficulties in CDBS. Lankford asserts these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² In assessing forfeitures, Section 503(b)(2)(E) 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 such other matters as justice may require.¹³

6. Lankford first asserts that he should be excused from liability because his failure to properly file the renewal application was inadvertent. Specifically, Lankford indicates that because of his lack of familiarity with the Commission's electronic filing procedures, he mistakenly believed that he had electronically filed the renewal application in a timely fashion. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁴ 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.¹⁵

⁸ *Letter to Audrey P. Rasmussen, Esq.*, Reference 1800B3 (MB Apr. 18, 2005). Lankford timely sought an extension of the STA on October 11, 2005, which was dismissed on January 17, 2006, upon grant of the Station's renewal application.

⁹ The Commission granted the above-referenced license renewal application on January 17, 2006.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

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

¹⁵ *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,

(continued...)

7. In the alternative, Lankford asserts that technical difficulties within CDBS may have interfered with the Commission's timely receipt of the renewal application. In support of this claim, Lankford submits: (1) a copy of a *Public Notice*¹⁶ released by the Bureau on November 21, 2003, extending the renewal application deadline for Alabama and Georgia radio broadcast licensees by one week due to difficulties with CDBS; and (2) a copy of an email submitted to the Commission by Lankford's counsel on November 24, 2003, documenting technical difficulties it experienced with CDBS when attempting to file license renewal applications on behalf of other licensees it represented.¹⁷ This documentation not only fails to substantiate Lankford's claim that the Commission was responsible for his failure to timely file his renewal application, but in fact, works against it. First, if there were technical difficulties with CDBS, the Bureau compensated for them by extending the renewal application filing deadline via the *Public Notice*. Lankford did not meet this extended deadline. Second, in the email exchange between Bureau staff and Lankford's counsel, counsel indicated that the electronic difficulties it experienced was evidenced by an "error" prompt generated by CDBS when it attempted to file the renewal applications.¹⁸ Lankford does not claim that he ever received such an "error" report when attempting to file his renewal application. In fact, the screen shots provided by Lankford in an exhibit to his Request indicate that CDBS was working properly but that Lankford failed to complete the filing process by hitting the "File Form" button.¹⁹ Given these considerations, we can only conclude that it was Lankford that was responsible for the failure to file his renewal application before the filing deadline, rather than some unspecified "glitch" in CDBS.²⁰

8. We have considered Lankford's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Lankford willfully²¹ and repeatedly²² violated Section 73.3539 of the Rules and Section 301 of the Act²³ and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

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13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹⁶ See *Media Bureau Announces Extension of Certain Filing Deadlines*, Public Notice, 18 FCC Rcd 24370, 24370 (MB 2003) (noting that CDBS users had been experiencing electronic filing difficulties following "planned system upgrade and maintenance activities" and extending the filing deadline to "provide a reasonable opportunity for impacted licensees and CDBS users to timely file [their renewal applications]").

¹⁷ See Request, Exhibit 4.

¹⁸ *Id.*

¹⁹ See *id.*, Exhibit 2.

²⁰ See, e.g., *Union-Carolina Broadcasting Co., Inc.*, Letter, 22 FCC Rcd 14017, 14018 (MB 2007) (rejecting licensee's argument that its failure to timely file its application was due to technical difficulties in CDBS).

²¹ 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.

²² 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).

²³ 47 U.S.C. § 301.

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,²⁴ that Dewey D. Lankford, SHALL FORFEIT to the United States the sum of \$7,000 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and 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.²⁵ 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).²⁶

11. 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 Dewey D. Lankford, 115 W. 33rd St., Anniston, AL 36201, and to his counsel, Audrey P. Rasmussen, Esq., Hall, Estill, Hardwick, Gable, Golden & Nelson, PC, 1120 20th St., N.W., Suite 700, North Building, Washington, DC 20036-3406.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

²⁵ 47 U.S.C. § 504(a).

²⁶ See 47 C.F.R. § 1.1914.