

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

In the Matter of	)	NAL/Acct. No. MB200741410045
	)	FRN: 0004073177
<b>Piedmont Radio Co.</b>	)	Facility ID No. 52550
	)	File No. BR-20050407IHO
Licensee of Station WPID(AM)	)	
Piedmont, Alabama	)	

**FORFEITURE ORDER**

**Adopted: June 10, 2010**

**Released: June 11, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of one thousand, one hundred dollars (\$1,100) to Piedmont Radio Co. (“Licensee”), licensee of Station WPID(AM), Piedmont, Alabama (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by failing to timely file its license renewal application and engaging in unauthorized operation of the Station.<sup>1</sup>

**II. BACKGROUND**

2. On February 27, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Licensee in the amount of seven thousand dollars (\$7,000) for these violations.<sup>2</sup> As noted in the NAL, Licensee’s renewal application for the current license term should have been filed on December 1, 2003, four months prior to the April 1, 2004, expiration date, but was not.<sup>3</sup> In fact, Licensee did not file the renewal application until April 7, 2005. On February 27, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$7,000 for failure to timely file the Station’s renewal application and for unauthorized operation. Licensee filed a Petition for Reconsideration (“Response”) on March 30, 2007.<sup>4</sup>

3. In its Response, Licensee claims that it attempted to file the application in early December 2003 and maintains that the application was never received by the Commission. Licensee indicates that it believed the filing had been successfully completed and is “unsure why” its uploaded materials were not submitted to the Commission.<sup>5</sup> It also argues that paying the forfeiture would cause it financial hardship and could cause it to reduce programming or to close the Station. Licensee submits

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Piedmont Radio Co.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd. 3879 (MB 2007). The Commission granted the license renewal application on February 27, 2007.

<sup>3</sup> The filing deadline was extended from December 1 to December 8, 2003, by Public Notice. See n.12, *infra*.

<sup>4</sup> Licensee also filed for Special Temporary Authority (“STA”) to continue operating the Station. The staff granted the STA on April 13, 2005.

<sup>5</sup> Response, Appendix A.

copies of its 2004, 2005, and 2006 federal income tax returns to establish its inability to pay the proposed forfeiture.<sup>6</sup> For these reasons, Licensee argues that the forfeiture should be cancelled.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission's *Forfeiture Policy Statement*.<sup>9</sup> 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.<sup>10</sup>

5. Licensee requests that the forfeiture be cancelled on the grounds that it thought it had correctly filed the renewal application in December of 2003. It claims that the failure could have been due to Licensee's own error or to a malfunction of the CDBS system.<sup>11</sup> In support for the latter contention, Licensee cites to a Public Notice issued by the Commission on November 21, 2003, explaining that "some users ha[d] experienced electronic filing difficulties following planned system upgrade and maintenance activities..." and extending the filing deadline from December 1 to December 8, 2003.<sup>12</sup> However, Licensee provides no evidence that CDBS was malfunctioning on December 4 or 5, 2003, when it unsuccessfully attempted to submit its renewal application. Indeed, our review of CDBS reveals that Licensee commenced preparation of its online renewal application on December 4, 2003, but did not submit it until April 7, 2005. Licensee also commenced a separate renewal application for the Station on December 5, 2003, which still remains "Pending" in CDBS. Based on the explanation provided in its Response and our review of CDBS, it appears that Licensee simply misunderstood our electronic filing procedures and erroneously assumed that validation of the application meant that it had been filed. Therefore, the failure to file the renewal application was due to Licensee's own error.

6. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>13</sup> We have declined to reduce or cancel forfeitures in similar circumstances.<sup>14</sup> Moreover, the Commission has specifically ruled that

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<sup>6</sup> Licensee has asked for confidential treatment of the tax returns pursuant to 47 C.F.R. § 0.459. We grant its request.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> *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).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> Response at 3.

<sup>12</sup> *Media Bureau Announces Extension of Certain Filing Deadlines*, Public Notice, 18 FCC Rcd 24370, 24370 (MB 2003), *quoted in* Response at 3.

<sup>13</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *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").

<sup>14</sup> 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 (continued...)

confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.<sup>15</sup> Accordingly, we find this argument without merit.

7. Licensee argues that the amount of the forfeiture would result in reduced programming or even the closure of the Station, either of which "would be detrimental to the community and decidedly contrary to the public interest."<sup>16</sup> This is essentially an argument to support a claim of financial hardship.<sup>17</sup> The Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless 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 Licensee'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.<sup>18</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>19</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>20</sup>

8. Here, Licensee has provided us with federal tax returns for the years 2004, 2005, and 2006. In considering claims of financial hardship, we have previously found forfeiture amounts as high as 4 percent of gross revenues to be reasonable,<sup>21</sup> and the Enforcement Bureau has found that a forfeiture as high as 7.9 percent of the violator's gross revenue was not excessive despite claims of financial hardship.<sup>22</sup> Although we are unwilling to cancel the forfeiture based on the information contained in the Response, we believe that a reduction in the total forfeiture amount to \$1,100 is appropriate for the violations involved in this case.<sup>23</sup>

9. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>24</sup>

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FCC Rcd 13811, 13815 (EB 2006) ("ignorance of or unfamiliarity with the Commission's requirements is not a mitigating factor and does not warrant a forfeiture reduction"); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006) ("negligence does not mitigate a Commission rule violation").

<sup>15</sup> See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

<sup>16</sup> Response at 2.

<sup>17</sup> See *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (rejecting licensee's argument that it should not be required to pay the proposed forfeiture because it would divert funds that would otherwise be used to create public interest programming), *rev. granted in part, decision modified by*, 23 FCC Rcd 15959 (Oct. 28, 2008).

<sup>18</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (2004).

<sup>19</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>20</sup> *Id.*

<sup>21</sup> See *Bowie County Broadcasting, Inc.*, Forfeiture Order, 2009 WL 2341711 (MB 2007).

<sup>22</sup> See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

<sup>23</sup> See *C.W.H. Broadcasting, Inc.*, Forfeiture Order, 17 FCC Rcd 4548 (EB 2002) (reducing a \$20,000 forfeiture to \$3,000 based on financial hardship).

<sup>24</sup> 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)

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violated Section 73.3539 of the Rules and willfully and repeatedly<sup>25</sup> violated Section 301 of the Act.<sup>26</sup> However, for the reasons set forth above, we find that reducing the forfeiture to one thousand, one hundred dollars (\$1,100) is warranted.

#### IV. ORDERING CLAUSES

10. 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,<sup>27</sup> that Piedmont Radio Co. SHALL FORFEIT to the United States the sum of one thousand one hundred dollars (\$1,100) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

11. 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.<sup>28</sup> Payment of the 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).<sup>29</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Keith.Watson@fcc.gov. Requests for payment of the full amount of the forfeiture 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.<sup>30</sup>

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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.

<sup>25</sup> Section 312(f)(2) 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)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>26</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>27</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>28</sup> 47 U.S.C. § 504(a).

<sup>29</sup> *See* 47 C.F.R. § 1.1914.

<sup>30</sup> *Id.*

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail Return Receipt Requested to Mr. Jimmy W. Kennedy, Piedmont Radio Co., P. O. Box 227, Piedmont, Alabama 36272, and to Licensee's counsel, M. Scott Johnson, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau