

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

In the Matter of)	
)	
Hawkins Broadcasting Company)	Facility I.D. No. 26465
)	NAL/Acct. No. MB-200741410094
Licensee of Station WWHN(AM))	FRN: 0007854961
Joliet, Illinois)	File No. BR-20060627ABG

FORFEITURE ORDER

Adopted: August 26, 2010

Released: August 27, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Hawkins Broadcasting Company (“Hawkins”), licensee of Station WWHN(AM), Joliet, Illinois (“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.¹

II. BACKGROUND

2. On March 7, 2007, the Media Bureau (“Bureau”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of seven thousand dollars (\$7,000) to Hawkins for these violations.² As noted in the *NAL*, Hawkins’ renewal application for the Station’s previous license term was due on August 1, 2004, four months prior to the December 1, 2004, expiration date.³ On June 21, 2006, the staff wrote to Hawkins 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 data base.⁴ Licensee did not file the application for the Station until June 27, 2006. Licensee provided no explanation for the untimely filing of the renewal application or its failure to request special temporary authority (“STA”) to operate after its license had expired.

3. Hawkins submitted a response (“Response”) to the *NAL* on March 19, 2007, requesting reduction or cancellation of the *NAL*. Enclosed with the Response is (1) a copy of a letter dated June 26, 2006, from Hawkins to the Commission requesting STA (“STA Request”) and explaining its efforts to file its renewal application on February 18, 2005;⁵ and (2) copies of federal tax returns for the years 2003,

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

² *Hawkins Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4497 (MB 2007). The Commission granted the license renewal application on March 7, 2007.

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

⁴ *Letter to Hawkins Broadcasting Company*, Ref. 1800B3-JDB (Chief, Audio Division, Media Bureau, June 21, 2006).

⁵ The Commission has no record of having received the STA Request.

2004, and 2005.⁶ Hawkins asserts that these documents demonstrate that it has “made every effort to maintain communication with the Commission” regarding the filing of its renewal application.⁷

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed 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 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.¹¹

5. Hawkins asserts that the application was prepared and payment tendered on February 18, 2005, adding that it received confirmation of these submissions through electronic correspondence from the Commission.¹² An internal review of CDBS indicates that Hawkins prepared a renewal application (Form 303), Ownership Report (Form 323), and EEO Report (Form 396) on February 18, 2005, but failed to click the “File Form” button and thus did not complete the renewal process.

6. The Commission has specifically ruled that confusion or difficulties with the Commission’s electronic filing system are not grounds for reduction or cancellation of a forfeiture.¹³ The Commission has also found applicants liable for forfeiture where they prepared an application but failed to complete it by pressing the “File Form” button.¹⁴ Moreover, even had Hawkins successfully submitted its renewal application on February 18th, 2005, it still would have been in violation of Section 73.3539 of the Rules by failing to timely file its application and Section 301 of the Act by operating the Station after its license had expired. Accordingly, we find this explanation to be without merit.

7. Hawkins has also provided tax returns, presumably to demonstrate financial hardship. The Commission will not consider reducing or cancelling a forfeiture in response to inability to pay unless the 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 the licensee’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial

⁶ Hawkins also included with its Response copies of (1) a letter requesting reinstatement of its license, dated June 26, 2006; and (2) an email requesting a status update of the application and STA Request, dated December 4, 2006.

⁷ Response at 1.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² STA Request at 1.

¹³ See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

¹⁴ See, e.g., *Bible Broadcast Church School*, Forfeiture Order, DA 10-344 (MB rel. Feb. 26, 2010) (issuing a forfeiture order for violating Section 73.3539 of the Rules where licensee created its application, but failed to complete the filing process by hitting the “File Form” button.).

documentation submitted.¹⁵ 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.¹⁶ 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.¹⁷

8. Here, Hawkins has provided us with federal tax returns for the years 2003, 2004, and 2005. These returns show gross revenues of \$129,889, \$80,109, and \$80,554, respectively, while the Station operated at a loss of \$52,960 in 2004. The forfeiture in this case (\$7,000), would constitute approximately 7 percent of Hawkins' average gross revenues. In considering claims of financial hardship, we have previously found forfeiture amounts as high as 4 percent of gross revenues to be reasonable,¹⁸ although a forfeiture equal to 5 percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.¹⁹ Although we are unwilling to cancel the forfeiture altogether, we believe that given Hawkins' average gross revenue and operating losses, a reduction in the total forfeiture amount to \$4,000, approximately 4 percent of Hawkins' average annual gross revenue, is appropriate for the violations involved in this case.²⁰

9. We have considered Hawkins' Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Hawkins willfully²¹ violated Section 73.3539 of the Rules and willfully and repeatedly²² violated Section 301 of the Act.²³ However, for the reasons set forth above, we find that reducing the forfeiture to four thousand dollars (\$4,000) 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,²⁴ that Hawkins

¹⁵ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁶ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁷ *Id.*

¹⁸ See *Bowie County Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 9539 (MB 2007).

¹⁹ See *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period).

²⁰ See *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

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)(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).

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

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

Broadcasting Company SHALL FORFEIT to the United States the sum of four thousand dollars (\$4,000) 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.²⁵ 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).²⁶ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@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. 20554.²⁷

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Ms. Toni Hawkins, Hawkins Broadcasting Company, 506 S. Dante Avenue, Glenwood, Illinois 60425-2137.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁵ 47 U.S.C. § 504(a).

²⁶ See 47 C.F.R. § 1.1914.

²⁷ *Id.*