

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

In the Matter of	)	Facility ID No. 87888
	)	NAL/Acct. No. MB-200741410073
<b>Gallatin Valley Witness, Inc.</b>	)	FRN: 0003788890
	)	File No. BRH-20050623AAO
Licensee of KCMM(FM)	)	
Belgrade, Montana	)	
	)	

**FORFEITURE ORDER**

**Adopted: September 21, 2010**

**Released: September 22, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Gallatin Valley Witness, Inc. (“Licensee”), licensee of radio station KCMM(FM), Belgrade, Montana (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) by engaging in unauthorized operation of the Station after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On February 8, 2007, the Media Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for failure to timely file the Station’s renewal application and for unauthorized operation of the Station.<sup>2</sup> As noted in the NAL, an application for renewal of the Station’s license should have been filed by December 1, 2004, four months prior to the Station’s April 1, 2005, license expiration date. In fact, the Licensee did not file the license renewal application until June 23, 2005, nearly two months after the Station’s license had expired.<sup>3</sup> Licensee filed a response to the NAL (“Response”) on March 20, 2007.

3. In its Response, Licensee states that cancellation or reduction of the forfeiture amount is warranted because its failure to timely file the renewal application was inadvertent, and payment of the proposed forfeiture will cause it financial hardship.

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

<sup>2</sup> *Gallatin Valley Witness, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2254 (MB 2007). The Station’s license renewal application was granted on February 6, 2007.

<sup>3</sup> Licensee failed to seek special temporary authority (“STA”) to operate after the license had expired. At that time, Licensee did not provide an explanation for its untimely filing of the renewal application or for its failure to have sought STA.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,<sup>4</sup> Section 1.80(b)(4) of the Rules,<sup>5</sup> and the Commission's *Forfeiture Policy Statement*.<sup>6</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>7</sup>

5. Licensee does not dispute that it failed to file a timely renewal application for the Station, but argues that the forfeiture should be cancelled because the violation was unintentional.<sup>8</sup> Specifically, Licensee claims that it was unaware of the Commission's electronic filing requirement. As evidence, the Response includes a copy of the check and remittance advice associated with a paper renewal application filed on September 2, 2005.<sup>9</sup> However, our records show that Licensee filed electronically months earlier, on June 23, 2005.<sup>10</sup> Despite this factual inconsistency, in either scenario, Licensee filed its renewal late, and its inadvertent error or failure to become familiar with the FCC's requirements is a willful violation.<sup>11</sup> We have declined to reduce or cancel forfeitures in similar circumstances.<sup>12</sup> Accordingly, we find this argument to be without merit.

6. Next, Licensee argues that the forfeiture should be reduced or cancelled because it would cause significant financial hardship to the Station. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to GAAP; or (3) some other reliable and objective documentation that accurately reflects the petitioner'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>13</sup> In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>14</sup> We recognize that, in some cases, other financial indicators,

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<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> *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>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Response at 1.

<sup>9</sup> *Id.* See also Response at attachments 1 and 2, which are the remittance advice and a copy of the check, dated August 30, 2005 and September 2, 2005, respectively. It is unclear why Licensee has submitted these documents, as they postdate the renewal filing deadline and thus fail to demonstrate that it attempted to timely file a paper application.

<sup>10</sup> See File No. BRH-20050623AAO.

<sup>11</sup> See *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>12</sup> See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241 (MB 2008) (finding that lack of familiarity with electronic filing procedures is not a valid reason to cancel or reduce a proposed forfeiture).

<sup>13</sup> 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).

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

such as net losses, may also be relevant.<sup>15</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>16</sup>

7. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits adequate documentation to support its claim. Here, Licensee provided us with tax returns for 2002 and 2005, showing revenues of \$324,895 and \$264,632, respectively. Because two nonconsecutive years of tax returns do not allow us to accurately assess Licensee's financial status, we find that this documentation does not provide a sufficient basis on which to assess its inability to pay.<sup>17</sup> Nonetheless, even if we were to accept them here, we would reject Licensee's financial hardship argument because the forfeiture amount constitutes less than three percent of Licensee's average gross revenues for 2002 and 2005.<sup>18</sup> Accordingly, no reduction is warranted on the basis of an inability to pay.

8. We have considered the 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>19</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>20</sup> violated Section 301 of the Act and that no mitigating circumstances warrant cancellation or reduction of the proposed forfeiture amount.

#### IV. CONCLUSION

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,<sup>21</sup> that Gallatin Valley Witness, Inc. SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) 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.

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.<sup>22</sup> 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

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Cf. Translator Station K232CL, Challis, ID*, Letter, DA 10-1666 (rel. Sept. 01, 2010) (accepting tax returns for the two years immediately preceding the year the NAL was issued); *Lighthouse Broadcasting*, Memorandum Opinion and Order, 18 FCC Rcd 9573 (EB 2003) (same).

<sup>18</sup> We have recently found a forfeiture amount constituting three percent of gross revenues to be reasonable. *See, e.g., Barnesville Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 3561 (MB 2010) (declining to reduce or cancel the forfeiture based on inability to pay claim when forfeiture amount constituted approximately three percent of average gross revenues).

<sup>19</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) 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>20</sup> 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).

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

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>23</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@FCC.gov and Maureen.McCarthy@FCC.gov. Requests for payment of the full amount of this Forfeiture Order 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>24</sup>

11. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Gallatin Valley Witness, Inc., c/o Bryan Brucks, 2050 Amsterdam Road, Belgrade, Montana, 59714.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> See 47 C.F.R. § 1.1914.

<sup>24</sup> *Id.*