

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

In the Matter of) Facility ID No. 31172
) NAL/Acct. No. MB200741410130
Victory & Power Ministries) FRN: 0008077877
) File No. BR-20041014AEM
Licensee of WPFC(AM))
Baton Rouge, Louisiana)
)

FORFEITURE ORDER

Adopted: December 7, 2010

Released: December 8, 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 Victory & Power Ministries ("Licensee"), licensee of radio station WPFC(AM), Baton Rouge, Louisiana ("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.

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. As noted in the NAL, the renewal application should have been filed by February 1, 2004, four months prior to the Station's June 1, 2004, license expiration date, but was not. Licensee did not file the application until October 14, 2004, over four months after the Station's license had expired. On March 23, 2007, Licensee filed a response to the NAL ("Response").

3. In its Response, Licensee states that reduction or cancellation of the proposed forfeiture is warranted because: (1) its failure to timely file the renewal application was inadvertent, and (2) it is unable to pay the proposed forfeiture amount.

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

2 Victory and Power Ministries, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2403 (MB 2007). The Station's renewal application was granted on February 8, 2007.

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

4 If the Commission rejects its request for a cancellation or reduction of the forfeiture, Licensee requests permission to pay via an installment plan. Paragraph ten of this order includes instructions for such payments.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,⁵ Section 1.80(b)(4) of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

5. Licensee first claims that the forfeiture should be reduced or cancelled because its violations were unintentional. Specifically, Licensee claims that it failed to timely file due to "different station managers and changes" during the last renewal cycle.⁹ As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁰ We have declined to reduce or cancel forfeitures in similar circumstances.¹¹ Accordingly, we find this argument 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.¹² In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁴ 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.¹⁵

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *Id.* at 1.

¹⁰ 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").

¹¹ See *Big Sky Owners Association, Inc.*, Forfeiture Order, 24 FCC Rcd 12215, 12216 (MB 2009) (rejecting staff turnover as an acceptable reason for untimely filing a license renewal application).

¹² 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).

¹³ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁴ *Id.*

¹⁵ *Id.*

7. Here, Licensee has provided us with balance sheets¹⁶ prepared by a certified public accountant for the years 2003, 2004, and 2005.¹⁷ These balance sheets show gross revenues of approximately \$414,466, \$585,985, and \$391,915, respectively. The \$7,000 forfeiture in this case represents 1.5 percent of Licensee's average gross revenue over the three years for which information was provided. In considering claims of financial hardship, we have previously found forfeiture amounts as high as five percent of gross revenues to be reasonable,¹⁸ 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.¹⁹ We are thus unwilling to cancel or reduce the forfeiture in this case because the forfeiture represents such a small percentage of Licensee's gross revenue.

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 willfully²⁰ violated Section 73.3539 of the Rules and willfully and repeatedly²¹ 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,²² that Victory and Power Ministries 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.²³ 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,

¹⁶ Balance sheets may be considered as other reliable and objective documentation that accurately reflects the petitioner's current financial status. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2009*, Report and Order, 24 FCC Rcd 10301, 10310 (2009).

¹⁷ The balance sheet for 2006 was not prepared at the time Licensee filed the Response. See Letter from Tameka M. Johnson, Executive Assistant to CEO, to Peter H. Doyle, Chief, Audio Division, Feb. 28, 2007, at 2.

¹⁸ See *Community-First Broadcasters, Inc.*, Forfeiture Order, 23 FCC Rcd 10923, 10925 (MB 2008).

¹⁹ See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

²⁰ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

²¹ 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).

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

²³ 47 U.S.C. § 504(a).

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).²⁴ 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. 20554.²⁵

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 Victory & Power Ministries, c/o Pastor Ralph N. Moore, 6940 Harry Drive, Baton Rouge, Louisiana 70806.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ See 47 C.F.R. § 1.1914.

²⁵ *Id.*