



Federal Communications Commission
Washington, D.C. 20554

February 26, 2010

DA 10-343

In Reply Refer to: 1800B3-VMM
NAL/Acct No.: MB2007141410019
FRN: 0010600609
Released: February 26, 2010

Mr. Samuel Warden
Fairview Broadcasting, Inc.
1072 Highway 96 North
Fairview, Tennessee 37062

Re: WPF(D)AM, Fairview, Tennessee
Fairview Broadcasting, Inc.
Facility ID No. 57044
File No. BR-20040913AAP

Dear Mr. Warden:

The Chief, Audio Division, has before him a March 7, 2007, Reply to Notice of Apparent Liability ("Reply") filed on behalf of Fairview Broadcasting, Inc. ("Fairview"), former licensee of Station WPF(D)AM, Fairview, Tennessee ("Station").¹ The Reply requests the cancellation or substantial reduction of the January 31, 2007, Notice of Apparent Liability for a Forfeiture ("NAL")² in the amount of seven thousand dollars (\$7,000) for Fairview's willful violation of Section 73.3539 of the Commission's Rules ("Rules") and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").³ The violations involve Fairview's failure to timely file a license renewal application for the Station and its unauthorized operation of the Station after its license had expired. By this action, we cancel the NAL and admonish Fairview for filing the renewal application in paper format without demonstrating good cause.

Background. As noted in the NAL, Fairview's renewal application for the current license term should have been filed by April 4, 2004, four months prior to the August 1, 2004, license expiration date but was not.⁴ In fact, Fairview did not file the renewal application until September 13, 2004, over a

¹ Fairview assigned the Station to SV Communications, Inc, in 2009. See File No. BAL-20090702AAM, granted on August 25, 2009, and consummated on October 1, 2009. See *Broadcast Actions*, Public Notice, Report No. 47092 (October 16, 2009). Despite this assignment, Fairview remains liable for forfeiture for those violations occurring when the Station was under its stewardship. See, e.g., *Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140, 140 n.2 (MMB 1999) (finding licensee liable for forfeiture for violations of the Commission's rules that took place when station was under its stewardship).

² *Fairview Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1563 (MB 2007).

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

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(c). The Commission granted the above-referenced license renewal application on January 31, 2007.

month after its license expired, and did not file a request for special temporary authorization (“STA”) to operate the Station. On January 31, 2007, the staff advised Fairview of its apparent liability for forfeiture of \$7,000 for its failure to timely file the Station’s renewal application and for unauthorized operation of the Station. In response, Fairview filed the subject Reply.

In its Reply, Fairview states that it (1) made a good-faith effort to file its renewal application on a timely basis and that its failure to do so was inadvertent, and (2) is financially unable to pay the assessed forfeiture.⁵ Fairview asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and the Commission’s Forfeiture Policy Statement.⁸ 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.⁹

Fairview asserts that it should be excused from liability because its failure to properly file the renewal application was inadvertent. Specifically, Fairview states that it was unaware of the electronic filing requirement and filed its application in paper form on March 24, 2004. After its application was returned in May 2004, it filed electronically as soon as possible. However, the Commission has held that violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.¹⁰ In the context of a forfeiture action, “willful” does not require a finding that the rule

⁵ In light of our determination below, we need not address this issue. We note, however, that the documentation Fairview provided (Reply, Exhibit “A”), a one-page typed statement for each year showing expenses, but not income, would have been insufficient to support a finding of inability to pay. See *Radio Free Georgia Broadcasting Foundation*, Forfeiture Order, 24 FCC Rcd 3336, 3337 (MB 2009) (showing of inability to pay requires (1) most recent three years’ federal tax returns; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the licensee’s current financial status).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *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).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 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 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”). See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

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.¹¹

Based on the above, we conclude that Fairview willfully¹² violated Section 73.3539 of the Rules and willfully and repeatedly¹³ violated Section 301 of the Act.¹⁴ However, because Fairview timely filed a renewal application in paper format, we will cancel the NAL and instead admonish Fairview for filing its renewal application in paper format without demonstrating any showing of good cause for its failure to file electronically.¹⁵

Conclusion/Actions. In view of the foregoing, Fairview Broadcasting, Inc.’s Reply to our NAL in the amount of \$7,000 IS GRANTED, and the Notice of Apparent Liability (MB-200714110019) for violation of Sections 73.3539 of the Rules and 301 of the Act is HEREBY CANCELLED. Fairview Broadcasting, Inc. is instead hereby ADMONISHED for filing the renewal application in paper format without demonstrating good cause.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: SV Communications, Inc.

¹¹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992). See also *Southern California*, 6 FCC Rcd at 4387; *Southern Communications Systems, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 25103, 25107 (2000), *recon. denied*, Second Memorandum Opinion and Order, 16 FCC Rcd 18357 (2001) (upholding denial of request for waiver that was based on claim that applicant was unable to wire transfer an auction installment due to the illness of its financial officer); *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”).

¹² 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.

¹³ 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).

¹⁴ 47 U.S.C. § 301.

¹⁵ See *K.S.L.O. Broadcasting Co. Inc.*, Letter, 24 FCC Rcd 4785 (MB 2009) (cancelling NAL and admonishing licensee for failure to file its renewal application in electronic form); *Peter Gutmann, Esq.*, Letter, 23 FCC Rcd 14666 (MB 2008) (same).