

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

In the Matter of	)	
	)	Facility ID No. 3973
<b>Barnesville Broadcasting, Inc.</b>	)	NAL/Acct. No. MB-200741410040
	)	FRN: 0003778024
Former Licensee of Station WBAF(AM)	)	File No. BR-20040323AUV
Barnesville, Georgia	)	

**FORFEITURE ORDER**

**Adopted: April 5, 2010**

**Released: April 6, 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 five hundred dollars (\$1,500) to Barnesville Broadcasting, Inc. (“Barnesville Broadcasting”), former licensee<sup>1</sup> of Station WBAF(AM), Barnesville, Georgia (“Station”), for its willful violation of Section 73.3539 of the Commission’s Rules (“Rules”),<sup>2</sup> by failing to timely file a license renewal application for the Station.

**II. BACKGROUND**

2. On February 27, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”), in the amount of one thousand, five hundred dollars (\$1,500) to Barnesville Broadcasting for willfully violating Section 73.3539 of the Rules, based on the fact that it failed to timely file a renewal application for the Station. As noted in the *NAL*, Barnesville Broadcasting’s renewal application for the Station’s license term was due on December 1, 2003, four months prior to the April 1, 2004, expiration date.<sup>3</sup> Barnesville Broadcasting did not file the application until March 23, 2004, and provided no explanation for the untimely filing of the renewal application.<sup>4</sup> In response to the *NAL*, Barnesville Broadcasting submitted a letter (“Letter”), on March 20, 2007.

3. In its Letter, Barnesville Broadcasting asserts that the proposed forfeiture should be cancelled because: (1) its failure to timely file its renewal application was an oversight, and (2) paying the forfeiture would present a financial hardship.

<sup>1</sup> Barnesville Broadcasting, Inc. assigned the Station to Ploener Radio Group of Barnesville, LLC in 2008 (*see* File No. BAL-20080616ADS (granted July 28, 2008)). The assignment was consummated on September 16, 2008. Despite this assignment, Barnesville Broadcasting 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).

<sup>2</sup> 47 C.F.R. § 73.3539.

<sup>3</sup> *See* 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> *Barnesville Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3884 (MB 2007). The Commission granted the Station’s license renewal application on February 27, 2007.

### III. DISCUSSION

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

5. In its Letter, Barnesville Broadcasting states that its failure to timely file the renewal application "was an oversight . . ." <sup>9</sup> As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>10</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule 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.<sup>11</sup>

6. Regarding Barnesville Broadcasting's claim of 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 documentation submitted.<sup>12</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>13</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>14</sup>

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<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> Letter at 1.

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 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 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>11</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (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 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

<sup>12</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>13</sup> *PJB Communications of Virginia, Inc.*, 7 FCC Rcd at 2089.

<sup>14</sup> *Id.*

7. Here, Barnesville Broadcasting has provided us with federal tax returns for the years 2004, 2005, and 2006. These returns show gross revenues of approximately \$46,711, \$45,177, and \$48,433, respectively. The forfeiture in this case (\$1,500), would constitute approximately 3 percent of Barnesville Broadcasting's 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,<sup>15</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>16</sup> We therefore find that a \$1500 forfeiture does not pose a financial hardship on the Barnesville Broadcasting and decline to reduce the forfeiture amount on that basis.<sup>17</sup>

8. We have considered Barnesville Broadcasting's Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Barnesville Broadcasting willfully<sup>18</sup> violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

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>19</sup> that Barnesville Broadcasting, Inc. SHALL FORFEIT to the United States the sum of one thousand five hundred dollars (\$1,500) to for willfully violating Section 73.3539 of the Commission's Rules.

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>20</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>21</sup> Requests for payment of the full amount of the forfeiture under an installment plan should be

<sup>15</sup> See *Bowie County Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 9539, 9541 (MB 2007).

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

<sup>17</sup> As noted below, Barnesville Broadcasting may request to pay the forfeiture amount under an installment plan. See *infra* ¶ 10.

<sup>18</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>19</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> See 47 C.F.R. § 1.1914.

sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>22</sup>

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Charles Waters, Barnesville Broadcasting, Inc., 645 Forsyth Street, Barnesville, Georgia 30204.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>22</sup> *Id.*