

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

In the Matter of)	
)	Facility ID No. 21743
FLORALA BROADCASTING COMPANY)	NAL/Acct. No. MB2006414140098
)	FRN: 0005039508
Licensee of Station WKWL(AM))	File No. BR-20040219ABI
Floral, Alabama)	

MEMORANDUM OPINION AND ORDER

Adopted: June 21, 2011

Released: June 22, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (“Petition”) filed on August 4, 2009, by Florala Broadcasting Company (“Florala”), licensee of Station WKWL(AM), Florala, Alabama (“Station”). Florala seeks reconsideration of the Media Bureau’s (“Bureau”) *Forfeiture Order*¹ in the amount of one thousand five hundred dollars (\$1,500) for Florala’s willful violation of Section 73.3539 of the Commission’s Rules (“Rules”)² by failing to file a timely license renewal application for the Station. For the reasons set forth below, we deny the Petition.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for license renewal for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”³ An application for renewal of the Station’s license should have been filed by December 1, 2003, four months prior to the Station’s April 1, 2004, license expiration date. Florala did not file the application until February 19, 2004, and provided no explanation for the untimely filing of the renewal application.⁴ On January 29, 2007, the Bureau issued the *NAL* to Florala, proposing a forfeiture in the amount of one thousand five hundred dollars (\$1,500) for its willful violation of Section 73.3539.⁵

3. In response to the *NAL*, Florala submitted a letter requesting the cancellation or reduction of the assessed forfeiture because: (1) its failure to timely file the renewal application was inadvertent; and (2) it was financially unable to pay the proposed forfeiture.⁶ In the *Forfeiture Order*, the Bureau rejected the first argument, stating that violations resulting from inadvertent error are still considered

¹ *Florala Broadcasting Company*, Forfeiture Order, 24 FCC Rcd 7719 (MB 2009) (“*Forfeiture Order*”).

² 47 C.F.R. §73.3539.

³ 47 C.F.R. §73.3539(a).

⁴ *Florala Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 1123 (MB 2007) (“*NAL*”).

⁵ *Id.*

⁶ *Forfeiture Order* at 7719.

willful violations.⁷ The Bureau also rejected the financial hardship claim because Florala did not submit adequate financial information to substantiate its claim.⁸

4. In response to the *Forfeiture Order*, Florala filed the Petition on August 4, 2009.⁹ In the Petition, Florala requests that the forfeiture amount be reduced or cancelled due to financial hardship. The Petition includes Florala's tax returns for 2005-2007, which it states are the "most recent years available."¹⁰

III. DISCUSSION

5. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹¹

6. The forfeiture amount for this violation was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("the Act"),¹² Section 1.80 of the Rules,¹³ and the Commission's *Forfeiture Policy Statement*.¹⁴ 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.¹⁵

7. The Commission will not consider reducing or cancelling a forfeiture in response to an 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 reflects the licensee's current financial status.¹⁶ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁷

⁷ *Id.* at 7720.

⁸ *Id.*

⁹ Although the Petition was filed 30 days after the end of the thirty day statutory period to file a petition for reconsideration, Florala's Petition will not be dismissed as untimely because the Commission in this case failed to provide timely notice by apparently failing to mail a copy of the *Forfeiture Order* to Florala. See *Gardner v. FCC*, 530 F.2d 1086, 1090-1091 (D.C. Cir. 1976) (stating that a limited exception to the thirty day filing period exists for "extraordinary circumstances," such as a situation where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought).

¹⁰ See Petition at 1 and Attachments.

¹¹ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 F.C.C. 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80.

¹⁴ *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) ("*Forfeiture Policy Statement*").

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ See *Forfeiture Order* at 7720.

¹⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after a review of submitted federal tax returns demonstrated a financial hardship).

8. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹⁸ For 2005, 2006, and 2007, Licensee showed that its gross revenues were \$52,901, \$68,764, and \$55,102, respectively. The \$1,500 forfeiture issued in the *Forfeiture Order* represents 2.5% of Florala's average gross revenue for 2005-07. In considering claims of financial hardship, we have found a forfeiture amount of 5 percent of gross revenue reasonable,¹⁹ 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.²⁰ Therefore, we decline to reduce or cancel the forfeiture because Florala's financial documents do not demonstrate an inability to pay.

9. We have considered Licensee's Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully violated Section 73.3539 of the Rules. We find the *Forfeiture Order* issued to Florala reasonable and consistent with precedent.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, that the aforementioned Petition for Reconsideration filed by Florala Broadcasting Company on August 4, 2009, IS DENIED.

11. IT IS FURTHER ORDERED, that a copy of this Memorandum Opinion and Order shall be sent by Certified Mail Return, Receipt Requested, and by First-Class Mail, to: Florala Broadcasting Company, c/o Robert Williamson, P.O. Box 159, Florala, Alabama 36442.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁸ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁹ See *CARE Broadcasting, Inc.*, 25 FCC Rcd 1411 (MB 2010) (reducing amount of forfeiture to 5 percent where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

²⁰ See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).