

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

| | | |
|-------------------------------------|---|-------------------------------|
| In the Matter of |) | |
| |) | Facility ID No. 54341 |
| R&M Broadcasting Company |) | NAL/Acct. No. MB2011941410014 |
| |) | FRN: 0007821846 |
| Licensee of Station KJCB(AM) |) | File No. BR-20100604ACU |
| Lafayette, Louisiana |) | |

FORFEITURE ORDER

Adopted: December 5, 2011

Released: December 6, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000), to R&M Broadcasting Company (“Licensee”), licensee of Station KJCB(AM), Lafayette, Louisiana (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”) for its failure to timely file a license renewal application and for unauthorized operation of the Station.¹

II. BACKGROUND

2. On July 22, 2011, the Media Bureau (“Bureau”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of thirteen thousand dollars (\$13,000) to Licensee for these violations.² Licensee submitted a letter in response to the NAL (“Response”) on August 11, 2011.

3. As noted in the NAL, Licensee’s renewal application should have been filed by February 1, 2004, four months prior to the June 1, 2004, expiration date, but was not.³ Licensee filed an application for renewal of license (“2004 Application”) more than two weeks past the deadline, on February 17, 2004.⁴ On February 3, 2005, by Public Notice, the staff dismissed the 2004 Application due to a delinquent debt under the Commission’s “red light” program.⁵ Licensee did not file another renewal application for the Station or seek reconsideration of the red light dismissal. On April 29, 2010, the staff

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

² *R&M Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10336 (MB 2011).

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

⁴ File No. BR-20040217ACP.

⁵ See *Broadcast Actions*, Public Notice, Report No. 45917 (rel. Feb. 8, 2005). Under Section 1.1910 of the Rules, “Action will be withheld on applications . . . by any entity found to be delinquent in its debt to the Commission . . .,” and the application or request for authorization will be dismissed “if a delinquency has not been paid or the debtor has not made other satisfactory arrangements within 30 days” of notice of such delinquency. See 47 C.F.R. § 1.1910(b)(2) and (3).

wrote Licensee, indicating that the Station's license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's database. Licensee was advised that any further operation of the Station was unauthorized and must cease immediately.⁶ Upon receipt of the *License Expiration Letter*, Licensee, on May 12, 2010, timely filed a petition for reconsideration of that letter and, on June 4, 2010, tendered the captioned renewal application.⁷ Notwithstanding the expiration of the license, Licensee apparently continued operating the Station until April 5, 2011.⁸

4. In its Response, Licensee asserts that it was misinformed by the Station's engineer about the appropriate process for seeking a renewal and that Station's financial difficulties warrant a cancellation or reduction of the assessed forfeiture.⁹

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² 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.¹³

6. Licensee does not dispute that it failed to file a timely renewal application for the Station or that it operated the Station after the expiration of its license. Rather, Licensee concedes that its actions "may have been inappropriate" and argues that it received incorrect guidance from its engineer.¹⁴ Licensee's claimed inadvertence does not mitigate its violations. Longstanding Commission precedent holds that the mistaken actions of employees are not grounds for the reduction or cancellation of a forfeiture.¹⁵ Accordingly, we reject this argument.

⁶ *Letter to R&M Broadcasting Company*, Ref. 1800B3 (MB rel. Apr. 29, 2010) ("*License Expiration Letter*"); see also *Broadcast Actions*, Public Notice, Report No. 47228 (rel. May 4, 2010) (public notice of *License Expiration Letter*).

⁷ File No. BR-20100604ACU.

⁸ Licensee also filed two requests for Special Temporary Authority ("STA"). See File No. BLSTA-20110426AAX ("Silent STA Request") and File No. BSTA-20110616AAQ ("Technical STA Request"). In the *NAL*, the Bureau dismissed the Silent STA Request as unnecessary and granted the Technical STA Request. See 26 FCC Rcd 10336.

⁹ Response at 1.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *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).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ Response at 1.

¹⁵ See, e.g., *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"); *St. Bonaventure Univ.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 11-1603 (MB rel. Sept. 26, 2011) ("[A]lthough the licensee claims that the failure to file a timely renewal application for the Station was

(continued....)

7. Regarding Licensee's claim of financial hardship, the Commission will not consider reducing or canceling 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.¹⁶ Here, Licensee did not submit federal tax returns, financial statements or any documentation setting forth its finances in support of its Response. It only provided us with "Salesmen Performance Reports" for the Station dated Sept. 15, 2008, Sept. 8, 2009, and Sept. 3, 2010.¹⁷ These pacing reports fail to meet the standard of "other reliable and objective documentation" sufficient to establish the Licensee's current financial status.¹⁸ Furthermore, the Commission has "consistently held that a *station's* financial information is an insufficient basis upon which to evaluate a *licensee's* ability to pay."¹⁹ Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

8. We have considered Licensee's response to the *NAL* 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.²² For the reasons set forth above, we find that the proposed forfeiture of thirteen thousand dollars (\$13,000) is warranted.

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,²³ that R&M Broadcasting, Inc., SHALL FORFEIT to the United States the sum of \$13,000 for willfully violating Section 73.3539 of the Commission's Rules and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

(...continued from previous page)

unintentional and resulted from staff turnover at the student-run station, the Commission has held that violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.").

¹⁶ *E.g.*, *San Jose State University*, Forfeiture Order, 24 FCC Rcd 14331, 14333 (MB 2009).

¹⁷ Response Exhibits A, B, and C.

¹⁸ *See, e.g.*, *Manchester College*, Forfeiture Order, 25 FCC Rcd 3638, 3640 (MB 2010) ("Manchester College") (one page "Budget Summary" is insufficient to establish licensee's financial status); *Friends of Christian Radio*, Forfeiture Order, 25 FCC Rcd 2580, 2581 (MB 2010) (photocopies of handwritten account book reflecting "Receipts and Disbursements" insufficient to establish licensee's financial status).

¹⁹ *Alamo Navajo School Board, Inc.*, Forfeiture Order, 25 FCC Rcd 17057, 17058 (MB 2010) (citing *Manchester College*, 25 FCC Rcd at 3640 (MB 2010) and *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009)).

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*, 6 FCC Rcd at 4387-88.

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. § 301.

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

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.²⁴ 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).²⁵ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Joe.Newberg@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²⁶

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to Ms. Janelle Chargois, R&M Broadcasting Company, 604 St. John St., Lafayette, LA 70501.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ 47 U.S.C. § 504(a).

²⁵ See 47 C.F.R. § 1.1914.

²⁶ *Id.*