

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

In the Matter of)	
)	
James Rouse)	Facility I.D. No. 31856
)	NAL/Acct. No. MB-200841410019
Licensee of Station WTOW(AM))	FRN: 00103114078
Washington, North Carolina)	File No. BR-20070925AIA

FORFEITURE ORDER

Adopted: February 9, 2011

Released: February 10, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000) to James Rouse (“Licensee”), licensee of Station WTOW(AM), Washington, North Carolina (“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”), by failing to timely file his license renewal application and engaging in unauthorized operation of the Station.¹

II. BACKGROUND

2. On April 2, 2008, the Media Bureau (“Bureau”) adopted a *Notice of Apparent Liability for Forfeiture* (“NAL”) proposing a forfeiture in the amount of thirteen thousand dollars (\$13,000) against Licensee for these violations.² As noted in the *NAL*, Licensee’s renewal application for the Station’s license term was due on August 1, 2003, four months prior to the December 1, 2003, expiration date.³ No such application was filed, and the Station’s license expired on December 1, 2003. Accordingly, on March 2, 2004, the staff wrote to 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.⁴ Upon receipt of the letter, on April 1, 2004, Licensee filed a petition for reconsideration of the canceled license and a license renewal application.⁵ On that same date, Licensee also filed a request for special temporary authority (“STA”) to continue Station operations

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

² *James Rouse*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5602 (MB 2008). In the *NAL*, the Bureau proposed a forfeiture of the full base amount of \$3,000 specified in 47 C.F.R. § 1.80 for the failure to file a timely renewal application and the full base amount of \$10,000 for unauthorized operation. The Commission granted the license renewal application on April 3, 2008.

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

⁴ *Letter to James Rouse*, Ref. 1800B3-DW (Chief, Audio Division, Media Bureau, Mar. 2, 2004).

⁵ File No. BR-20040401ANS. On January 28, 2005, the Media Bureau dismissed this application due to the application’s “Red Light” status as determined by the Commission’s Office of the Managing Director. See 47 C.F.R. § 1.1910.

pending consideration of the untimely WTOW(AM) renewal application.⁶ The staff granted the STA request on April 2, 2004, and it expired on October 2, 2004.⁷ Licensee continued to operate the Station after the expiration of the initial STA until he ceased operations on September 13, 2007, subsequent to a visit from the Enforcement Bureau's Norfolk Office.⁸ He sought no further authority to operate until he filed the captioned renewal application and second request for STA on September 25, 2007. The staff granted the second STA request on September 27, 2007,⁹ and it expired on March 27, 2008. Licensee filed for an extension of his STA on March 25, 2008.¹⁰ In the second STA request, Licensee explained that his April 1, 2004, renewal application was dismissed by the staff on January 28, 2005, due to the application's "Red Light" status as determined by the Commission's Office of the Managing Director. Licensee did not indicate why he continued the unauthorized operation of the Station from October 2004 to September 2007, although he did say that he recently engaged counsel to help resolve these matters and has taken steps to ensure that his "oversights" do not recur.¹¹ Licensee submitted a response ("Response") to the *NAL* on May 6, 2008.

3. In his Response, Licensee asserts that the proposed forfeiture should be cancelled because: (1) the proposed forfeiture is inconsistent with other proposed forfeitures imposed on similarly situated licensees, and (2) he has a history of compliance with the Rules.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of 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

5. Licensee argues that the proposed forfeiture is inconsistent with and disproportionate to forfeitures proposed against similarly situated licensees, citing several recent *NALs* issued by the Media Bureau.¹⁶ These cases are distinguished from the present one because those licensees engaged in

⁶ See File No. BLSTA-20040329ANP.

⁷ *Letter to James Rouse*, Ref. 1800B3-PAD (Chief, Audio Division, Media Bureau, Apr. 2, 2004).

⁸ See captioned application, Exhibit 6.

⁹ See File No. BLSTA-20070925ALG; see also *Letter to Coe W. Ramsey, Esq.*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Sep. 27, 2007).

¹⁰ See File No. BELSTA-20080325ADI. This STA request was dismissed as moot when the license renewal was granted.

¹¹ See captioned renewal application, Exhibit 6.

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).

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ Response at 3-4, citing *Widener University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 375 (MB 2008) (licensee engaged in unauthorized operation of the station for 5 weeks); *Schweitzer Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4095 (MB 2007) (licensee engaged in unauthorized operation of the station for 14 months); *Gallatin Valley Witness, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4090

(continued....)

relatively short periods of unauthorized operation, for which the Bureau proposed a reduction from the base forfeiture amount of \$10,000. In contrast, Licensee operated the Station for four months after the expiration of his license and for almost three years after the expiration of his first STA. Licensee's unauthorized operation of the Station was far more egregious than that of the licensees in the cited cases, and we find that those cases do not support reduction of the proposed forfeiture.

6. In addition, we reject Licensee's argument regarding his history of compliance with the rules.¹⁷ Licensee is the owner of The Minority Voice, Inc.¹⁸ During the license period,¹⁹ the Bureau issued a Notice of Apparent Liability in the amount of \$13,000 to The Minority Voice, Inc., for its nearly identical violations of the Act and the Rules with regard to the operation of Station WOOW(AM), Greenville, North Carolina.²⁰ We therefore cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.²¹

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(MB 2007) (licensee engaged in unauthorized operation of the station for 14 months); *Faith Enterprises, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3734 (MB 2007) (licensee engaged in unauthorized operation of the station for 3 months); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433 (2004) (licensee engaged in unauthorized operation of the station for 14 months). To the extent that Licensee cites to Enforcement Bureau cases in which licensees were fined different amounts for similar violations, we note that those cases predate more recent Media Bureau precedent. Furthermore, the Media Bureau retains discretion to determine forfeiture amounts on a case-by-case basis. See 47 C.F.R. § 1.80(b)(4), Note ("The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute."); see also *Gaston College*, Forfeiture Order, 25 FCC Rcd 982, 986 (EB 2010) (declining to follow Media Bureau precedent involving denial of access to station's public file); *John Jason Bennett*, Letter, 20 FCC Rcd 17193, 17195, n.14 (MB 2005) (noting that Wireless Bureau precedent is not binding on Media Bureau).

¹⁷ Response at 6.

¹⁸ Findings of violations, or apparent violations, by parent, sister or commonly controlled companies are imputed to, and also negate the past history claim, of the company under investigation. See, e.g., *Urban Radio, III, L.L.C.*, Forfeiture Order, 25 FCC Rcd 8215, 8217 (MB 2009) (finding that licensee was not entitled to a reduction of proposed forfeiture based on history of compliance where another subsidiary of its parent company had been issued a forfeiture order for violation of the Rules).

¹⁹ *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (in determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination).

²⁰ *The Minority Voice, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 5607 (MB 2008) (\$13,000 forfeiture proposed for filing renewal application after the station's license had expired and for several "extended periods of unauthorized operation" after the original untimely renewal application was dismissed under the "red light" program). In a separate action released today, we are issuing a \$13,000 forfeiture order to The Minority Voice, Inc., for these violations.

²¹ Moreover, even had Licensee not received another NAL during the license term, we do not believe that a reduction in the forfeiture amount would be warranted due to the repeated and lengthy (nearly three years) nature of Licensee's unauthorized operation of the Station. See *Escalante City*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2561 (MB 2010) (no downward adjustment in proposed forfeiture amount where license twice failed to timely file renewal applications and twice engaged in extended periods of unauthorized operation of its station).

7. We have considered Licensee's 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 willfully²² violated Section 73.3539 of the Rules and willfully and repeatedly²³ violated Section 301 of the Act.²⁴ We find that there is no basis for reduction and no basis for downward adjustment of the proposed monetary forfeiture.

IV. ORDERING CLAUSES

8. 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,²⁵ that James Rouse SHALL FORFEIT to the United States the sum of thirteen thousand dollars (\$13,000) 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.

9. 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.²⁶ 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/Act. 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).²⁷ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@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, D.C. 20554.²⁸

²² 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*").

²³ Section 312(f)(2) 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)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

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

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

²⁶ 47 U.S.C. § 504(a).

²⁷ See 47 C.F.R. § 1.1914.

²⁸ *Id.*

10. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to James Rouse, 405 S. Evans St., Greenville, North Carolina 27834, and to his counsel, Elizabeth E. Spainhour, Esq., Brooks, Pierce, McLendon, Humphrey, & Leonard, LLP, P.O. Box 1800, Raleigh, North Carolina 27602.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau