

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

In the Matter of	)	
	)	
<b>GRACE BAPTIST CHURCH</b>	)	FRN: 0009461716
	)	
Licensee of Station WBLW(FM)	)	Facility ID No. 91339
Gaylord, Michigan	)	NAL/Acct. No. MB-200741410107
	)	File No. BRED-20050124AGB

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 13, 2011**

**Released: April 14, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us a Petition for Reconsideration (“Petition”) filed by Grace Baptist Church (“Licensee”), licensee of Station KBLW(FM), Gaylord, Michigan (“Station”). Licensee filed this Petition in response to a *Forfeiture Order*<sup>1</sup> issued for willful violation Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station and for its willful and repeated violation Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>2</sup> For the reasons set forth below, we deny reconsideration with respect to the arguments made in the Petition. However, we cancel the forfeiture with respect to Licensee’s violation of Section 73.3539 of the Rules because the violation occurred beyond the statute of limitations period set forth in Section 503(b)(6) of the Act. As such, we instead admonish Licensee for its violation of Section 73.3539 of the Rules and proportionally reduce the forfeiture amount from \$3,000 to \$1,700 for its violations of Section 301 of the Act.

**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.”<sup>3</sup> An application for renewal of the Station’s license should have been filed by June 1, 2004, four months prior to the Station’s October 1, 2004, license expiration date, but Licensee did not file the application until January 24, 2005.<sup>4</sup> Licensee did not seek Special Temporary Authority (“STA”) to continue Station operation.<sup>5</sup> On January 31, 2007, the Bureau granted the captioned renewal application, and on February 28, 2007, the Bureau issued an NAL to Licensee in the total amount of seven thousand dollars (\$7,000).<sup>6</sup> The NAL proposed a

<sup>1</sup> *Grace Baptist Church*, Forfeiture Order, 25 FCC Rcd 7473 (MB 2010) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>3</sup> 47 C.F.R. § 73.3539(a).

<sup>4</sup> *Grace Baptist Church*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 4005 (MB 2007) (“NAL”).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

forfeiture of \$3,000 for Licensee's willful violation of Section 73.3539 of the Rules and a forfeiture of \$4,000 for Licensee's willful and repeated violation of Section 301 of the Act.<sup>7</sup>

3. In response to the NAL, Licensee filed a Request for Cancellation or Reduction of Proposed Forfeiture on March 28, 2007 arguing among other things, that it was unable to pay the proposed forfeiture amount. In the *Forfeiture Order*, the Bureau found that the proposed \$7,000 forfeiture would create a financial burden and reduced the amount of the forfeiture to \$3,000, or approximately 5 percent of Licensee's average gross revenues for the three-year period prior to issuance of the NAL. In response to the *Forfeiture Order*, Licensee timely filed its Petition on August 2, 2010.

4. In its Petition, Licensee requests that the forfeiture amount be further reduced due to financial hardship in light of its more recent financial situation. The Petition also includes notarized profit and loss statements for 2007-09 and the first half of 2010.<sup>8</sup>

### 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.<sup>9</sup> Here, Licensee presents new financial documents that purport to show an inability to pay the forfeiture.<sup>10</sup>

6. The forfeiture amount for this violation was assessed in accordance with Section 503(b) of the Act,<sup>11</sup> Section 1.80 of the Rules,<sup>12</sup> and the Commission's *Forfeiture Policy Statement*.<sup>13</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>14</sup>

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.<sup>15</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.<sup>16</sup> Licensee has satisfied these requirements by submitting notarized profit and loss statements from 2006-10.

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<sup>7</sup> *Id.*

<sup>8</sup> See Petition at 1 and Attachments.

<sup>9</sup> See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 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) ("*Lorain Journal*"). See also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

<sup>10</sup> See Petition at 1 and Attachments.

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</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>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> See *Forfeiture Order* at 7475.

<sup>16</sup> See *Discussion Radio, Inc.*, 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).

8. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>17</sup> In some cases, other financial indicators such as net losses may also be relevant,<sup>18</sup> but if gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not by itself mean it cannot afford to pay.<sup>19</sup> For 2007, 2008, and 2009, Licensee showed that its gross revenues were \$82,190, \$71,810, and \$52,760, respectively. The \$3,000 forfeiture issued in the Forfeiture Order represents 4.4% of Licensee's average gross revenue for 2006-09. In considering claims of financial hardship, we have found a forfeiture amount of 5 percent of gross revenue reasonable,<sup>20</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>21</sup> Therefore, we decline to further reduce the forfeiture amount due to financial hardship.

9. Section 503(b)(6) of the Act limits the Commission's ability to issue forfeitures.<sup>22</sup> When the Commission renews a license after a violation occurs but before issuing an NAL to the licensee, as was the case here,<sup>23</sup> the Commission can only issue a forfeiture for violations occurring within the year prior to the issuance of the NAL.<sup>24</sup> Here, because the Commission issued the NAL on February 28, 2007 (nearly a month after renewal grant), it was barred from issuing a forfeiture to Licensee for violations occurring before February 28, 2006. The late-filed renewal application was filed on January 24, 2005. As such, Licensee's violation of Section 73.3539 of the Rules is beyond the reach of the statute of limitations. Therefore, we will cancel the forfeiture with respect to Licensee's violation of Section 73.3539 of the Rules. The cancellation will result in a reduction in the total forfeiture amount of approximately \$1,300 (the base amount for the 73.3539 violation set forth in the NAL less the 57.2 percent reduction given in the *Forfeiture Order*). However, the unauthorized operation of the Station continued through January 31, 2007, when the staff granted Licensee's renewal application. With respect to Licensee's violation of Section 301 of the Act, the NAL was issued within the period required by Section 503(b)(6) of the Act. We thus find the forfeiture issued for Licensee's violations of Section 301 of the Act in the amount of \$1,700 (the base amount set forth in the NAL amount less the 57.2 percent reduction, rounded down to an even figure) is appropriate.

10. 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 and willfully and repeatedly violated Section 301 of the Act. We find that the forfeiture imposed for violation of Section 73.3539 of the Rules is inappropriate because it violates the statute of

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<sup>17</sup> *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See *CARE Broadcasting, Inc.*, 25 FCC Rcd 1411 (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).

<sup>21</sup> See *Coleman Enterprises, Inc.*, Order of Forfeiture, 15 FCC 24385, 24389 (EB 2000), *recon. denied*, 16 FCC Rcd 10023, 10025 (2001).

<sup>22</sup> 47 U.S.C. § 503(b)(6)(A). The relevant language says no forfeiture shall issue to a person holding a broadcast station license "if the violation charged occurred -- more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or prior to the date of commencement of the current term of such license, whichever is earlier." See also *Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2006) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

<sup>23</sup> The Station's license renewal was granted on January 31, 2007. See File No. BRED-20050124AGB. The NAL was issued on February 28, 2007. See NAL, 22 FCC Rcd at 4005.

<sup>24</sup> See *John Crigler, Esq.*, Letter, 26 FCC Rcd 1186 (2011) (cancelling proposed forfeiture where licensee's renewal application was granted after violations occurred but prior to the issuance of an NAL and the violations occurred more than one year prior to issuance of the NAL).

limitations set forth in Section 503(b)(6) of the Act. Otherwise, we find the *Forfeiture Order* reasonable and consistent with previous decisions regarding similar violations.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, that the aforementioned Petition for Reconsideration filed by Grace Baptist Church on July 15, 2010, IS DENIED.

12. IT IS FURTHER ORDERED, that the forfeiture related to Licensee's violation of Section 73.3539 of the Rules for failure to timely file a license renewal application, IS CANCELLED, but Licensee IS ADMONISHED for its violation.

13. IT IS FURTHER ORDERED, that Grace Baptist Church SHALL FORFEIT to the United States the sum of one thousand seven hundred dollars (\$1,700) for its violation of Section 301 of the Act by operating station WBLW(FM), Gaylord, Michigan without authorization.

14. 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>25</sup> Payment of the proposed 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>26</sup> Licensee will also send electronic notification on the date said payment is made to kelly.donohue@fcc.gov and jennifer.oberhausen@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.<sup>27</sup>

15. 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: Grace Baptist Church, 232 South Townline Road, Gaylord, Michigan 49735 and to its counsel, Stephen Thomas Yelverton, Esq., 601 Pennsylvania Avenue, NW, Suite 900, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>25</sup> 47 U.S.C. § 504(a).

<sup>26</sup> See 47 C.F.R. § 1.1914.

<sup>27</sup> *Id.*