

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

In the Matter of)	
)	Facility ID No. 73175
WKLC, INC.)	NAL/Acct. No. MB-2011941410016
)	FRN: 0002012003
Licensee of Station WKLC-FM)	File No. BMLH-20110523AEG
St. Albans, West Virginia)	

FORFEITURE ORDER

Adopted: August 31, 2012

Released: August 31, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to WKLC, Inc. (“Licensee”), licensee of Station WKLC-FM (“Station”), for willfully violating Section 73.3598 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license application, and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”),² by engaging in unauthorized operation of the Station after its construction permit expired.

II. BACKGROUND

2. Licensee filed an application on June 2, 2004 (“2004 Application”) seeking authorization to construct new facilities after its tower site was destroyed.³ On July 19, 2004, Commission staff granted the 2004 Application and issued a construction permit (“Permit”) with an expiration date of July 19, 2007. Licensee failed to file a covering license application by that date, and the Permit expired by operation of law pursuant to Section 73.3598(e) of the Rules.⁴

3. On May 23, 2011, Licensee filed an application for modification of license (“Application”) nearly four years after expiration of the Permit.⁵ It explained that it had in fact completed construction and begun operating the Station pursuant to program test authority before the Permit expired, and requested a waiver of Section 73.3598(e) of the Rules, citing *Clear Channel*

¹ 47 C.F.R. § 73.3598.

² 47 U.S.C. § 301.

³ File No. BPH-20040602AAD.

⁴ 47 C.F.R. § 73.3598(e) (“Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”).

⁵ Licensee states that it filed the instant Application as a “Modification of License” rather than as a covering license application because it “was unable to check the ‘purpose’ box on the Form 302-FM for ‘cover construction permit.’” CDBS apparently no longer recognizes the underlying construction permit (BPH-20040602AAD).” Application, Exhibit 1, n.1.

Broadcasting, Inc.,⁶ which it claimed “affirmed ‘the staff’s practice of waiving Section 73.3598(e) . . . where the applicant conclusively demonstrates that it completed construction prior to the expiration of the construction period, notwithstanding the tardy filing of the license to cover application.’”⁷

4. On August 1, 2011, the Media Bureau (“Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in which it rejected Licensee’s argument that *Clear Channel II* compelled a favorable action on the waiver request and dismissed the Application.⁸ The Bureau found Licensee apparently liable for a forfeiture of \$3,000, the full base amount permitted by the Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules, for Licensee’s failure to timely file a license application, and \$4,000 (reduced from the base amount of \$10,000) for Licensee’s unauthorized operation of the Station.⁹

5. Licensee submitted a Response to Notice of Apparent Liability for Forfeiture (“Response”) on August 29, 2011. In the Response, Licensee states that that forfeiture should be reduced or cancelled because: (1) the Commission violated *Melody Music, Inc. v. FCC*¹⁰ by not granting a waiver of Section 73.3598(e); (2) the forfeiture is excessive in light of the circumstances; and (3) Licensee has a history of compliance with the Rules.¹¹

III. DISCUSSION

6. 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, and the Commission’s *Forfeiture Policy Statement*.¹³ 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.¹⁴

7. Licensee initially reiterates arguments that the Bureau rejected in the *NAL*: that Licensee had constructed the Station in accordance with the construction permit and commenced operation pursuant to program test authority, but inadvertently failed to file a covering license application; that the Bureau has granted such waivers to other permittees, such as Clear Channel and those in the cases cited in *Clear Channel I*, which had failed to timely file license applications when their modified facilities were

⁶ *Clear Channel Broadcasting, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153 (2011) (“*Clear Channel IP*”), *aff’ing Clear Channel Broadcasting, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8677 (MB 2006) (“*Clear Channel P*”).

⁷ Response at 3, *citing Clear Channel II*, 26 FCC Rcd at 7157.

⁸ *WKLC, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 11001, 11003 (MB 2011) (“*NAL*”).

⁹ *Id.* at 11003.

¹⁰ *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

¹¹ Response at 2-3.

¹² 47 U.S.C. § 503(b).

¹³ See 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I; *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

constructed and operating at the time the construction period expired; and that *Melody Music* compels such a waiver of Section 73.3598(e) here.¹⁵

8. We reject the argument that Licensee is similarly situated to those other parties. Licensee did not file its Application until nearly four years after expiration of the Permit. As the Commission stated in *Clear Channel II*, “the staff practice has been to waive *relatively minor filing deadline violations*, so long as the applicant can demonstrate that construction was, in fact, completed in a timely manner.”¹⁶ A delinquency of four years is not a “relatively minor filing deadline violation,” as Licensee claims and, notably, the instances of waiver grants cited by Licensee occurred where the license application was filed within days or weeks after the expiration of the construction permit. Although Licensee argues that *Clear Channel II* “did not turn on the chronology of the [l]icense [a]pplication filing” and instead “focused on whether a licensee’s conduct satisfied the Commission’s policy of requiring construction and commencement of operation within three years,”¹⁷ we disagree. In *Clear Channel II*, the Commission specifically upheld the Bureau’s waiver of Section 73.3598 because the license application was filed *two days* after the deadline.¹⁸ We find the Licensee is not similarly situated to the permittees it references and therefore that *Melody Music* is inapplicable here.

9. Second, Licensee argues that even if the facts here are not similar to those of prior applicants for whom the Commission waived Section 73.3598, the amount of the proposed forfeiture is excessive, citing Section 503(b)(2)(D) of the Act.¹⁹ Licensee claims that reduction is warranted because its error was not “egregious” and because its “degree of culpability” was minimal as it “had no intention of violating Section 73.3598(e).”²⁰

10. The proposed forfeiture amount is supported by the *Forfeiture Policy Statement*,²¹ Section 1.80(b)(4) of the Rules,²² and Commission precedent for other willful violations of Section

¹⁵ Response at 4.

¹⁶ *Clear Channel II*, 26 FCC Rcd at 7156 (emphasis added); *Clear Channel I*, 21 FCC Rcd at 8679 n. 17 (citing “the following examples: Station WJUN(AM), Mexico, Pennsylvania (Construction Permit No. BP-19990727AC expired January 23, 2005; License Application File No. BL-20050125ALN filed on January 25, 2005, granted on May 18, 2005); KVLH(AM), Pauls Valley, Oklahoma (Construction Permit No. BP-20010202AD expired February 13, 2005; License Application File No. BL-20050228ADS filed on February 28, 2005, granted on June 1, 2005); WJEH(AM), Gallipolis, Ohio (Construction Permit File No. BP-20010525ABL expired September 10, 2004; License Application File No. BL-20041012AKQ filed on October 12, 2004, granted on March 7, 2005). *Accord Richard F. Swift, Esq.*, Letter, 24 FCC Rcd 13483 (MB 2009) (granting waiver where station construction was complete before expiration of the construction permit application for license to cover was filed 15 days after the permit expired).

¹⁷ Response at 4.

¹⁸ *Clear Channel II*, 26 FCC at 7157, ¶ 10 (“In these circumstance, where [the covering license application] was filed *only several days* after the pertinent filing deadline, we find that a waiver does not undermine Section 73.3598’s purpose.” (emphasis added)).

¹⁹ Response at 4 (citing 47 U.S.C. § 503(b)(2)(D) (factors that may form the basis for an adjustment of the base forfeiture amount)). *See also supra*, ¶ 5.

²⁰ Response at 4.

²¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17133 (specifying base forfeiture amounts of \$10,000 for operation without an instrument of license and \$3,000 for failure to file a required form).

²² 47 C.F.R. § 1.80(b)(4) (specifying base forfeiture amounts of \$10,000 for operation without an instrument of license and \$3,000 for failure to file a required form).

73.3598 and willful and repeated violations of Section 301.²³ Furthermore, in the *NAL*, the Bureau, after careful and reasoned consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, already reduced the forfeiture proposed for Licensee's nearly four-year period of unauthorized operations of the Station from the base amount of \$10,000 to \$4,000.²⁴ Further reductions are not warranted. We also reject Licensee's argument that its inadvertence is a mitigating factor. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.²⁵ Accordingly, we decline to reduce the proposed forfeiture amount on these grounds.

11. Finally, citing Commission precedent, Licensee argues that its record of compliance with the Commission's Rules warrants reduction.²⁶ Again, we disagree. Commission records indicate that the Enforcement Bureau previously admonished Licensee for its violation of Section 73.1690(b)(1) of Rules²⁷ at commonly owned Station WJYP(AM), St. Albans, West Virginia.²⁸ Prior violations of the Rules, even if they do not result in monetary forfeitures, are grounds for denying a forfeiture reduction based on history of compliance.²⁹ Therefore, we will not reduce the proposed forfeiture.

12. 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 willfully³⁰ violated Section 73.3598 of the Rules and willfully and repeatedly³¹ violated Section 301 of the Act³² and that no circumstances warrant reduction or cancellation of the proposed forfeiture.

²³ See, e.g., *St. Bonaventure University*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 13355 (MB 2011) (proposing a total forfeiture of \$7,000 for willful and repeated violation of Section 301 for operation without an instrument of license and willful violation of Section 73.3598 for failure to file a required form); *Alamo Navajo School Board*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd. 21481 (MB 2007) (same).

²⁴ *NAL*, 26 FCC Rcd at 11004-5.

²⁵ See *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").

²⁶ Response at 4, *citing Drexel University*, Forfeiture Order, 26 FCC Rcd 1386 (MB 2011); *Stocks Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 7307 (MB 2010).

²⁷ 47 C.F.R. § 73.1690(b)(1), which requires obtaining Commission approval prior to replacing an authorized tower with a tower of different height at the same location.

²⁸ See *WKLC, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 13554 (EB 2005) (admonishing WKLC, Inc., for its violation of Section 73.1690(b)(1) of the Rules by replacing an authorized tower with a tower of different height).

²⁹ See *Tidewater Communications LLC*, Order on Review, 25 FCC Rcd 1675 (2010) (affirming Enforcement Bureau's denial of reduction of proposed forfeiture based on history of compliance where licensee's prior Rule violation had resulted in an admonishment).

³⁰ 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 also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

³¹ 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).

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

IV. ORDERING CLAUSES

13. 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,³³ that WKLC, Inc. SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) for willfully violating Section 73.3598 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

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.³⁴ 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).³⁵ 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, DC 20554.³⁶

15. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent, by First Class Certified Mail, Return Receipt Requested, to WKLC, Inc., 100 Kanawha Terrace, St. Albans, WV 25177, and to its counsel, Sally A. Buckman, Esq., and F. Scott Pippin, Esq., Lerman Senter PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

³⁴ 47 U.S.C. § 504(a).

³⁵ See 47 C.F.R. § 1.1914.

³⁶ *Id.*