

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

In the Matter of)	
)	Facility ID No. 72057
Hope Broadcasting, Inc.)	NAL/Acct. No. MB-2011414100028
)	FRN: 0009994732
Licensee of Station WFGN(AM))	File Nos. BR-20110525ADI
Gaffney, South Carolina)	BR-20110902AAE

FORFEITURE ORDER

Adopted: February 13, 2012

Released: February 14, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of four thousand six hundred dollars (\$4,600) to Hope Broadcasting, Inc. (“Licensee”), licensee of Station WFGN(AM), Gaffney, South Carolina (“Station”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”) by twice failing to timely file a license renewal application, and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.¹

II. BACKGROUND

2. On December 1, 2011, the Media Bureau (“Bureau”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Licensee for these violations.² Licensee submitted a letter in response to the NAL (“Response”) on December 21, 2011.

3. As noted in the NAL, Licensee’s renewal application for the Station was due on August 1, 2003, four months prior to the December 1, 2003, license expiration date. No such application was filed, and the Station’s license expired on December 1, 2003. Consequently, on May 10, 2011, the Bureau 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 had been deleted from the Commission’s data base. Licensee was advised that any operation of the Station was then unauthorized and must cease immediately.³ Upon receipt of the *License Expiration Letter*, on May 25, 2011, Licensee filed a license renewal application for the Station. Subsequently, on June 1, 2011, Licensee filed a request for Special Temporary Authority

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

² *Hope Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Red 16370 (MB 2011).

³ *Letter to Hope Broadcasting, Inc.*, Ref. 1800B3-KAW (MB May 10, 2011) (“*License Expiration Letter*”).

(“STA”) to continue operations pending consideration of the license renewal application.⁴ The staff granted the STA on June 9, 2011.⁵ Additionally, a supplemental renewal application was due for the Station by August 1, 2011.⁶ Licensee did not file such an application until September 2, 2011.

4. On December 1, 2011, the Bureau issued the *NAL* in the amount of \$10,000 for apparent violations of Sections 73.3539 of the Rules and 301 of the Act. In response, Licensee filed the subject Response, stating that cancellation or reduction of the proposed forfeiture is warranted because the Station’s co-owner is ill and because it operates a struggling AM radio station in a small town and payment of the proposed forfeiture will cause it financial hardship.⁷

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission’s *Forfeiture Policy Statement*.¹⁰ In determining the appropriate forfeiture amount, 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.¹¹

6. Licensee does not dispute that it twice failed to file a timely license renewal application for the Station and operated the Station without authority between the time the Station’s license expired and the grant of its STA to continue operation. Licensee argues that the forfeiture should be cancelled or reduced because one of the Station’s co-owners has been battling heart failure and cancer, and his illness contributed to the oversight in timely filing the renewal application.¹² Illness of a principal, however, does not warrant a cancellation or reduction of the forfeiture amount, particularly where the principal is not a sole owner.¹³ While we are sympathetic to the health problems of the co-owner and the difficulties it created for the

⁴ See File No. BLSTA-20110601AFW.

⁵ *Letter to Hope Broadcasting, Inc.*, Ref. 1800B3 (MB Jun. 9, 2011).

⁶ A licensee whose renewal application is in deferred status must file a supplemental renewal application on the date a regular renewal application would otherwise be due. See *Faith Center, Inc.*, Memorandum Opinion and Order, 99 FCC 2d 1164 (1984) (citing *Carlisle Broadcasting Associates*, Memorandum and Opinion and Order, 59 FCC 2d 885 (1976)).

⁷ Response at 1.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² Response at 1.

¹³ See *Bruce MacAfee*, Forfeiture Order, 24 FCC Rcd 13254, 13255 (MB 2010) (holding that the licensee’s illness did not excuse a late-filed application); see, e.g., *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 361(EB 2008) (holding that a forfeiture reduction was not warranted where the sole principal/owner’s illness contributed to the violation).

Station, Licensee was ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.¹⁴

7. Licensee further asserts that the forfeiture should be reduced or cancelled because the Station is a struggling AM radio station in a small town and paying the forfeiture amount would cause Licensee financial hardship.¹⁵ The Commission will not consider reducing or cancelling 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 In support of its position, Licensee provided its federal tax returns for 2008, 2009, and 2010.¹⁷

8. The Commission uses gross revenue as the primary metric by which it evaluates a licensee's ability to pay.¹⁸ In this case, Licensee's tax returns for 2008, 2009, and 2010 show gross revenues of approximately \$86,437, \$88,947, and \$103,707, respectively. Based on these gross revenue figures, Licensee is entitled to a reduction of the forfeiture amount. Previously, the Bureau has found forfeitures of approximately 5 percent of a licensee's average gross revenue to be reasonable.¹⁹ The current proposed forfeiture of \$10,000 constitutes approximately 11 percent of Licensee's average gross revenue from 2008 to 2010. Accordingly, we find that reducing the forfeiture amount to \$4,600 will align this case with the 5 percent standard used in prior cases, and we believe that such a reduction is reasonable based on the facts of this case.

9. 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 and repeatedly²¹ violated Section 73.3539 of the Rules and willfully and repeatedly violated Section 301 of the Act. However, for the reasons set forth above, we find that reducing the forfeiture amount to \$4,600 is appropriate in this case.

¹⁴ See *Westport Board of Education*, Forfeiture Order, 26 FCC Rcd 1088, 1089 (MB 2011).

¹⁵ Response at 1.

¹⁶ *Southern Broadcasting and Investment Co., Inc.*, Forfeiture Order, 26 FCC Rcd 442, 443 (MB 2011) ("*Southern Broadcasting*").

¹⁷ Licensee also provided a Statement of Revenues and Expenses for the period of January 1, 2011 through October 31, 2011. This unaudited statement, which is not prepared according to GAAP, is not included in the analysis and does not affect our conclusion.

¹⁸ *CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411, 1413 (MB 2010) ("*CARE Broadcasting*").

¹⁹ *CARE Broadcasting*, 25 FCC at 1413; see *Southern Broadcasting*, 26 FCC Rcd at 444.

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. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

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).

IV. ORDERING CLAUSES

10. 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,²² that Hope Broadcasting, Inc. SHALL FORFEIT to the United States the sum of four thousand six hundred dollars (\$4,600) for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

11. 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.²³ 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).²⁴ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Jason.Davila@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 20554.²⁵

12. 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: Mr. Charles Allen Montgomery, Sr., Hope Broadcasting, Inc., 470 Leadmine Road, P.O. Box 1388, Gaffney, SC 29340.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

²³ 47 U.S.C. § 504(a).

²⁴ See 47 C.F.R. § 1.1914.

²⁵ *Id.*