

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

In re Application of	)	
	)	
<b>Crawford County Community Radio, Inc.</b>	)	Facility ID No. 76439
	)	NAL/Acct. No. MB-20134140019
For Renewal of License for	)	FRN: 0015175128
Station WBRO(FM)	)	File No. BRED-20120731ALG
Marengo, Indiana	)	

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 21, 2013**

**Released: November 21, 2013**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (“Bureau”) has before it the application of Crawford County Community Radio, Inc. (“Licensee”), for renewal of its license for Station WBRO(FM), Marengo, Indiana (“Station”). In this *Notice of Apparent Liability for Forfeiture* (“NAL”),<sup>1</sup> we find that Licensee apparently willfully violated Section 73.3539 of the Commission’s Rules<sup>2</sup> by failing to timely file its license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of one thousand, five hundred dollars (\$1,500).

**II. BACKGROUND**

2. Section 73.3539(a) of the Rules requires that applications for renewal of license 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> The Station’s license renewal application should have been filed by April 1, 2012.<sup>4</sup> No such application was filed until July 31, 2012, the day before the license’s expiration date. Licensee did not provide any explanation for the untimeliness of its renewal application.

**III. DISCUSSION**

3. *Proposed Forfeiture.* Licensee in this case failed to file a timely license renewal application for Station WBRO(FM), as required by Section 73.3539(a) of the Rules. Licensee’s renewal

<sup>1</sup> This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

<sup>2</sup> See 47 C.F.R. § 73.3539.

<sup>3</sup> 47 C.F.R. § 73.3539(a).

<sup>4</sup> As a courtesy, the Bureau staff contacted Licensee’s principal, Shawn Scott, several times during the month of April 2012 to advise that a renewal application for the Station’s license was overdue. Despite these efforts, Licensee did not file the renewal application until July 31, 2012.

application was not received until July 31, 2012, nearly four months after the renewal filing deadline and the day before the license would have expired. Moreover, Licensee did not provide an explanation or extenuating circumstances that would excuse the late filing.

4. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>5</sup> 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.<sup>6</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>7</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>8</sup>

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>9</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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>10</sup>

6. In this case, Licensee failed to file a timely renewal application for the Station and has not provided any explanation for untimely filing. However, Licensee filed its renewal application prior to the expiration of its current license. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely renewal application.<sup>11</sup>

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>12</sup> If, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>13</sup> If, however, the licensee fails to meet that standard, the Commission may deny the

<sup>5</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. 1.80(a)(1).

<sup>6</sup> 47 U.S.C. § 312(f)(1).

<sup>7</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>8</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>9</sup> *See 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); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4). Section 312(f)(2) of the Act further provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of an act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

<sup>11</sup> *See, e.g., Bethany College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC 4369 (MB 2012) (similarly reducing forfeiture from the base amount to \$1,500 for late filing); *Little Miami Local Schools*, Forfeiture Order, 25 FCC Rcd 3553 (MB 2010) (affirming forfeiture of \$1,500 for failure to file a renewal application on time); *Barnesville Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 3561 (MB 2010) (same); *Faith Trinity Assemblies*, Forfeiture Order, 25 FCC Rcd 2593 (MB 2010) (same).

<sup>12</sup> 47 U.S.C. § 309(k).

<sup>13</sup> 47 U.S.C. § 309(k)(1).

application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise provided.”<sup>14</sup>

8. We find that Licensee’s apparent violation of Section 73.3539 of the Rules does not constitute a “serious violation” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.<sup>15</sup> Further, based on our review of the license renewal application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the captioned license renewal application by separate action upon the conclusion of this forfeiture proceeding if no other issues would preclude grant of the application.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Crawford County Community Radio, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand, five hundred dollars (\$1,500) for its apparent willful violation of Section 73.3539 of the Commission’s Rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Crawford County Community Radio, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Alexander.Sanjenis@fcc.gov.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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

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<sup>14</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>15</sup> For example, we do not find here that Licensee’s Station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200.

respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>16</sup>

15. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Crawford County Community Radio, Inc., P.O. Box 181 South Hwy 66, Marengo, IN 47140.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.