

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

In re Applications of)	
)	
Jimmy Dale Media, LLC)	NAL/Acct. No. MB-202041410011
For Renewal of License for)	FRN: 0020096277
)	
Station WFMH(AM))	Facility ID No. 24577
Cullman, Alabama)	File No. 0000109964
)	
Station WMCJ(AM))	Facility ID No. 70451
Cullman, Alabama)	File No. 0000109966

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

Adopted: December 1, 2020

Released: December 2, 2020

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the applications (Applications)¹ of Jimmy Dale Media, LLC (Licensee), for renewal of license for WFMH(AM) and WMCJ(AM), Cullman, Alabama (Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that the Licensee apparently willfully violated section 73.3539³ of the Rules by failing to timely file license renewal applications for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of six thousand dollars (\$6,000).

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.”⁴ Applications for renewal of the Stations’ licenses should have been filed by December 2, 2019.⁵ The Applications were not filed until March 30, 2020.

3. Initially, the Licensee provided no explanation for the untimely filing of the Applications. However, in amendments to the Applications filed on July 16, 2020, the Licensee attributed his failure to timely file the Applications to the fact that, at the time the Applications were due, he was “struggling

¹ File Nos. 0000109964 (WFMH Application), 0000109966 (WMCJ Application).

² 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 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

³ *See* 47 CFR § 73.3539.

⁴ 47 CFR § 73.3539(a).

⁵ *See* 47 CFR §§ 73.1020, 73.3539(a). Because December 1, 2019—the first day of the fourth full calendar month prior to the Station’s license expiration date of April 1, 2020—was a Sunday, applications to renew the Stations’ licenses were due on the next business day, December 2, 2019.

financially”—and “working days and many nights”—to keep the Stations on the air.⁶ The Licensee states that he was not “advised by legal counsel as to the FCC’s rules and requirements for the license renewal process or other filings.”⁷ He notes that he engaged counsel prior to the expiration of the Stations’ licenses, and that counsel assisted him in filing the Applications and updated him on the Commission’s rules and regulations.⁸ The Licensee further indicates that he “will sincerely endeavor to comply with all FCC rules and regulations” in the future, and notes he now has counsel to advise him.⁹ Finally, he states that he has joined the Alabama Broadcasters Association, which will “keep [him] up to date on deadlines and requirements.”¹⁰

III. DISCUSSION

4. *Proposed Forfeiture.* 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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the section 503(b) context.¹⁴

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(9) of the Rules establish a base forfeiture amount of \$3,000 for the failure to timely file a required form.¹⁵ 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)(E) 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.”¹⁶

6. In this case, the Licensee does not dispute that he failed to file timely renewal applications for the Stations. Instead, he claims he failed to timely file because he was unaware of the Commission’s rules and requirements regarding license renewals. The Commission has held, however, that violations resulting from a failure to become familiar with the Commission’s requirements are willful

⁶ WFMH Application, Attach. 2 (WFMH(AM) Renewal Application Amendment); WMCJ Application, Attach. 2 (WMCJ(AM) Renewal Application Amendment).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

¹² 47 U.S.C. § 312(f)(1).

¹³ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁵ *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 CFR § 1.80(b)(9), note to paragraph (b)(9), Section I.

¹⁶ 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(9).

violations.¹⁷ Further, while the Licensee asserts that the Stations are struggling financially, he provided no documentation that would allow us to evaluate his ability to pay. Finally, to the extent that the Licensee indicates he has taken steps to ensure full compliance with the Commission's rules and requirements going forward, we applaud his efforts. However, we note that those efforts do not excuse or mitigate the violations at issue here. The Commission has repeatedly held that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁸

7. Based on the record before us, we find that there are no factors that would justify a downward adjustment of the forfeiture amount. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose the full \$3,000 forfeiture amount for each late-filed renewal application. Accordingly, we propose a total forfeiture of six thousand dollars (\$6,000).

8. *License Renewal Applications.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.¹⁹ That section provides that 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.²⁰ If, however, the licensee fails to meet that standard, the Commission may deny the 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 permitted.”²¹

9. We find that the Licensee's apparent violations of section 73.3539 of the Rules do not present “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²² Further, based on our review of the Applications, we find that the Stations served the public interest, convenience, and necessity during the subject license terms. We will therefore grant the Applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the Applications.

¹⁷ *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (explaining that the Commission does not consider “ignorance of the law” to be a mitigating circumstance”).

¹⁸ *See, e.g., Cumulus Radio, LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7289, 7296, para. 18 (2019) (“Commission licensees are required to take corrective action in order to come into compliance with Commission rules, and taking such required corrective action does not mitigate the violations themselves or reduce the associated penalties.”).

¹⁹ 47 U.S.C. § 309(k).

²⁰ 47 U.S.C. § 309(k)(1).

²¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²² For example, we do not find here that the Licensee's operation of the Stations “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, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the 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, para. 11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

IV. ORDERING CLAUSES

10. 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 Jimmy Dale Media, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand dollars (\$6,000) for its apparent willful violations of section 73.3539 of the Commission's rules.

11. 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*, Jimmy Dale Media, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²³ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁴

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁵ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the *NAL* Account—the bill number is the *NAL* Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the *NAL* Account—the bill number is the *NAL* Account number with the first two digits excluded—and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street

²³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁵ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

NE, Washington, DC 20554.²⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

15. 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 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.

16. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Jimmy Dale Burgess, 1642 Katherine Street, Cullman, AL 35055, and M. Scott Johnson, Esq., Smithwick & Belendiuk PC, 5028 Wisconsin Avenue NW, Suite 301, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁶ See 47 CFR § 1.1914.