

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

In re Application of)	
)	
Ward Broadcasting Corporation)	Facility ID No. 29210
)	NAL/Acct. No. MB-202041410002
For Renewal of License for)	FRN: 0021010038
Station DWTOY(AM))	File Nos. 0000087659, 0000105757
Salem, Virginia)	

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

Adopted: June 03, 2020

Released: June 04, 2020

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Ward Broadcasting Corporation (Licensee) for renewal of its license for Station DWTOY(AM), Salem, Virginia (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*² issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), we find that Licensee apparently willfully and repeatedly violated: (1) section 73.3539 of the Rules,³ by failing to file a timely license renewal application for the Station; and (2) section 301 of the Act,⁴ by engaging in unauthorized operation of the Station after its authorization had expired. Based upon our review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand dollars (\$7,000) and that the Application should be granted for a period of two years instead of a full term of eight years.

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.”⁵ An application for renewal of DWTOY(AM)’s license should have been filed by June 3, 2019, four months prior to the Station’s license expiration date

¹ File No. 0000087659. On February 10, 2020, Licensee filed an amendment to the Application. File No. 0000105757.

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 FCC’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 See 47 U.S.C. § 301.

⁵ 47 CFR § 73.3539(a).

of October 1, 2019,⁶ but was not. Accordingly, on October 2, 2019, the staff, by Public Notice,⁷ notified the Licensee that the Station's license had expired, that all authority to operate the Station was terminated, and that the Station's call letters were deleted from the Commission's database. Licensee was therefore on notice that any further operation of the Station was unauthorized and must cease immediately. Upon receipt of notice, on October 30, 2019, Licensee filed a license renewal application.⁸ On that same date, Licensee also filed a Petition for Reconsideration (Petition) seeking reconsideration of the staff's cancellation of the license and a request for special temporary authority (STA) to continue Station operations pending consideration of the untimely renewal application.⁹ The staff granted the STA Request on November 7, 2019; it expired on May 7, 2020.¹⁰ Licensee filed for extension of the STA on May 4, 2020.¹¹ In the Petition, Licensee states that it failed to file a renewal application because its sole shareholder Irwin L. Ward, Sr., suffered a stroke, was moved into a skilled care facility in June 2019, and died on August 18, 2019.¹²

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, Licensee has failed to file a timely license renewal application for Station DWTOY(AM), as required by section 73.3539(a) of the Rules. Moreover, it continued operating the Station for several weeks after the license expired on October 1, 2019, before filing its renewal application and STA Request, in violation of section 301 of the Act. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization.¹³ Here, Licensee did not do so.

4. Under section 503(b)(1)(B) of the Act, 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.¹⁴ 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.¹⁵ 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,¹⁶ and the Commission has so interpreted the term in the section 503(b) context.¹⁷ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or

⁶ See 47 CFR §§ 73.1020, 73.3539(a).

⁷ See *Broadcast Actions*, Public Notice, Report No. 49587 (rel. Oct. 7, 2019).

⁸ See n.1, *supra*.

⁹ See File No. BLSTA-20191030AAN (STA Request).

¹⁰ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, FCC, to Dennis J. Kelly, Counsel for Ward Broadcasting Corporation (Nov. 7, 2019).

¹¹ See File No. BELSTA-20200504AAR.

¹² See Petition at 2.

¹³ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broad. Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

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

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁷ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para.5 (1991).

omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹⁸

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁹ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.²⁰ 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.”²¹

6. Based on our review of the facts and circumstances, we tentatively find that a \$7,000 forfeiture is appropriate. Licensee failed to file a timely license renewal application for the Station and continued operating the Station for several weeks after the license expired on October 1, 2019, before filing the appropriate renewal application and seeking STA to continue to operate. Nevertheless, because it had previously been licensed to operate the Station, the latter transgression is not comparable to “pirate” operations, which typically have been subject to forfeitures of \$10,000 or higher.²² Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to file a timely renewal application but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000. It is a licensee’s responsibility to comply with the Rules.²³ Accordingly, we tentatively find that, considering the record as a whole, a \$7,000 forfeiture is appropriate for the violations in this case.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.²⁴ 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.²⁵ 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

¹⁸ 47 U.S.C. § 312(f)(2).

¹⁹ 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)(8), note to paragraph (b)(8), Section I.

²⁰ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²¹ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(8).

²² See 47 CFR § 1.80, note to paragraph (b)(8), sec. I, Base Amounts for Section 503 Forfeitures.

²³ See, e.g., *Chisholm Trail Commc'ns, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 107 (MB 2018) (\$7,000 forfeiture assessed where licensee was issued a two-year renewal, failed to timely file renewal application, and continued station operations after expiration of license).

²⁴ 47 U.S.C. § 309(k).

²⁵ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²⁶

8. We find that Licensee’s violation of section 73.3539 of the Rules and section 301 of the Act do not constitute “serious violations” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁷ Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. Nonetheless, on the facts presented here, we conclude that a short-term license renewal is the appropriate sanction.²⁸ We believe that additional measures are necessary in order to ensure that Licensee endeavors in the future to provide the broadcast service it is licensed to provide and comply with its obligations as a licensee. Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Station a short-term license renewal by separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than the apparent violations addressed herein that would preclude grant of the Application.²⁹ The new license term, if granted, will be limited to a period of two years.³⁰ This limited renewal period will afford the Commission an opportunity to review the Station’s compliance with the Act and the FCC’s rules and to take whatever corrective actions, if any, that may be warranted at that time.

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 FCC’s rules, that Ward Broadcasting Corporation, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand dollars (\$7,000) for its apparent willful violation of section 73.3539 of the Rules and its apparent willful and repeated violation of section 301 of the Act.

10. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Rules, that, within thirty (30) days of the release date of this *NAL*, Ward Broadcasting Corporation 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 Civil Penalty 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

²⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁷ For example, we do not find here that Licensee’s operation of the Station “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 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. Compare with *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁸ See, e.g., *Crawford County Community Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16329, 16333 (MB 2010) (petition for reconsideration granted; call sign reinstated; renewal application granted; and \$13,000 forfeiture assessed where licensee failed to timely file renewal application, and continued station operations for 22 months after expiration of license).

²⁹ See 47 U.S.C. § 309(k)(2).

³⁰ See, e.g., *Rama Commc’ns, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 6939 (MB 2016) (two-year renewal granted for failing to prepare issues and programs lists during the license term).

system),³¹ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³²

- 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).³³ 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.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, Albert.Shuldiner@fcc.gov, 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 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.

³¹ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

³² 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.

³³ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554, ARINQUIRIES@fcc.gov.³⁴

15. IT IS FURTHER ORDERED, that the Petition for Reconsideration filed by Ward Broadcasting Corporation on October 30, 2019, IS GRANTED.

16. IT IS FURTHER ORDERED, that call sign WTOY(AM), IS REINSTATED.

17. IT IS FURTHER ORDERED, that a copy of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ward Broadcasting Corporation, 80 Gracie Court, Evington, VA 24550, and to its counsel Dennis J. Kelly, Esq., P.O. Box 41177, Washington, DC 20018.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁴ See 47 CFR. § 1.1914.