

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
AUGUSTUS FOUNDATION, INC.)	NAL/Acct. No. MB-202241410025
)	FRN: 0021956404
Application for Renewal of License)	Facility ID No. 68309
Station WALQ(AM), Carrville, Alabama)	Application File No. 193952
)	

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

Adopted: October 19, 2022

Released: October 19, 2022

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, we find Augustus Foundation, Inc. (Augustus), apparently willfully and repeatedly violated (1) Section 73.561(d) of the Commission's rules (Rules)¹ by failing to obtain Commission authorization for the Station's silence between November 16, 2021, and March 16, 2022, (2) section 301 of the Communications Act of 1934, as amended (Act),² and sections 73.1350, 73.1560, 73.1635, and 73.1745(a) of the Rules³ by operating WALQ(AM), Carrville, Alabama (Station), at a variance from its authorized parameters between September 22, 2022, and the present without Commission authorization to do so, and (3) section 73.3539 of the Commission's Rules (Rules) by failing to timely file a license renewal application for the Station.⁴ Based upon our review of the facts and circumstances before us, we conclude that Augustus is apparently liable for a monetary forfeiture in the amount of eleven thousand dollars (\$11,000). Upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude such action, we will grant Augustus' pending application (Renewal Application) to renew the Station's license for a period of two years.⁵

II. BACKGROUND

2. The Station is a Class D AM station, authorized to operate only during daytime hours. It is authorized to operate non-directionally with a nominal power of 25 kilowatts, subject to a requirement to operate non-directionally at 1 kilowatt during critical hours.⁶

¹ 47 CFR § 73.561(d).

² 47 U.S.C. § 301.

³ 47 CFR §§ 73.1350, 73.1560, 73.1635, 73.1745(a).

⁴ See 47 CFR § 73.3539.

⁵ See Application File No. 193952 (Renewal Application).

⁶ See Application File No. BL-20081022ACO; *Broadcast Actions*, Public Notice, Report No. 46873, at 4 (MB Dec. 1, 2008), and 47 CFR § 73.187.

3. Augustus acquired the Station's license from Westburg Broadcasting Montgomery, LLC (Westburg) on November 30, 2020.⁷ Prior to this acquisition, on June 17, 2020, we had renewed the Station's license for a term of one year based on its spotty operational history during that license term.⁸

4. When Augustus acquired the Station, the Station was operating with its licensed facilities. The Station continued to do so until March 22, 2021, when it went silent. Augustus requested special temporary authority (STA) for the Station to remain off the air, stating that the Station's transmitter was damaged in a storm, and that it was awaiting the parts needed to repair the transmitter.⁹ We granted its request for silent STA on May 19, 2021.¹⁰ This silent STA expired on November 15, 2021.

5. The Station was silent until March 17, 2022, when it resumed operations with its licensed facilities. However, shortly thereafter, on March 21, 2022, the Station began operating with reduced power after its main transmitter was damaged. Augustus requested STA for the Station's reduced power operations, which we granted on March 25, 2022.¹¹ Although this reduced power STA expired on September 21, 2022, the Station continues to operate at reduced power.

6. Augustus filed the Renewal Application on June 27, 2022.¹² Augustus acknowledged that the Renewal Application was not timely filed, and indicated that the board member responsible for the Station's daily operations was unable to file in a timely manner due to health issues.¹³ Concurrent with the filing of the Renewal Application, Augustus sought STA, citing the fact that the Station's license term had expired and the fact that it had filed and was awaiting approval of the Renewal Application.¹⁴ We dismissed this STA request because the reduced power STA granted on March 25, 2022, remained in effect.

III. DISCUSSION

A. Operational History¹⁵

7. We find that the Station's unauthorized silence between November 16, 2021 and March 16, 2022, apparently violated section 73.561(d) of the Rules.¹⁶ In addition, we find that Augustus' failure

⁷ See Application File No. BAL-20200819AAN; *Broadcast Actions*, Public Notice, Report No. 49862, at 1 (MB Nov. 10, 2020); Westburg Broad. Montgomery, LLC, Consummation Notice, Application File No. BAL-20200819AAN (filed Dec. 1, 2020).

⁸ See *Westburg Broad. Montgomery, LLC*, Application File No. 97834, Letter Order, at 1 (MB June 17, 2020). The Station's previous license term ran from April 1, 2012, to April 1, 2020. *Id.*

⁹ See Application File No. BLSTA-20210322AAD.

¹⁰ See Letter from Victoria McCauley, Attorney, Audio Division, to Bryan Covey, Augustus Foundation, Inc. (dated May 19, 2021).

¹¹ See Application File No. BSTA-20220321AAD. See also Letter from Jerome J. Manarchuk, Audio Division, Media Bureau, to Augustus Foundation, Inc. (dated Mar. 25, 2022).

¹² An application for renewal of the Station's license should have been filed by February 1, 2021, the first day of the fourth full calendar month prior to the Station's license expiration date of June 17, 2021. 47 CFR § 73.3539(a).

¹³ Renewal Application at Attach. 1 (WALQ AM STA PDF June 26 2022).

¹⁴ Application File No. BLSTA-20190703ADD, Exh. 1.

¹⁵ Section 309(k) of the Act limits that inquiry to whether, during the preceding license term, (1) the station served the public interest, convenience, and necessity, (2) "there have been no serious violations by the licensee" of the Act or the Rules, and (3) "there have been no other violations by the licensee" of the Act or the Rules "which, taken together, would constitute a pattern of abuse." 47 USC § 309(k)(1) (emphasis added). Accordingly, we have reviewed the Station's operational history only since Augustus acquired its license on November 30, 2020.

¹⁶ 47 CFR § 73.561(d) (requiring that a broadcast station obtain Commission authorization for discontinued operations exceeding 30 days). Augustus incorrectly certified in the Renewal Application that the Station had not

(continued....)

to maintain its STA to operate the Station at reduced power operations apparently violated section 301 of the Act, and sections 73.1350, 73.1560(a)(1), 73.1635, and 73.1745(a) of the Rules.¹⁷ Below, we propose forfeitures totaling eight thousand dollars (\$8,000) for these apparent violations.

B. Late-Filed Renewal Application

8. We find that Augustus apparently violated Section 73.3539(a) of the Rules.¹⁸ An application for renewal of the Station’s license should have been filed by February 1, 2021, the first day of the fourth full calendar month prior to the Station’s license expiration date of June 17, 2021. Augustus did not file the Application by that date.¹⁹ Below, we propose a forfeiture of three thousand dollars (\$3,000) for this apparent violation.

C. Proposed Forfeiture

9. 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

been silent for any period of more than 30 days during the preceding license term. Renewal Application, AM/FM/LPFM Certification, Adherence to Minimum Operating Schedule. We admonish Augustus for this violation of section 1.17(a)(2) of the Rules. 47 CFR § 1.17(a)(2).

¹⁷ 47 U.S.C. §301; 47 CFR §§ 73.1350, 73.1560, 73.1635, 73.1745. Section 301 of the Act and sections 73.1350(a), and 73.1745 of the Rules each require licensees to operate in accordance with their Commission-granted authorizations. Section 73.1560 requires AM stations to maintain their antenna input power “as near as practicable to the authorized antenna input power” and specifies that it “may not be less than 90 percent nor greater than 105 percent of the authorized power.” Section 73.1635 requires a licensee to obtain STA in order to operate “a broadcast facility for a limited period at a specified variance from the terms of the station authorization.”

¹⁸ 47 CFR § 73.3539(a) (requiring applications for renewal of license for broadcast stations to 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”).

¹⁹ Augustus did not file the Renewal Application prior to the June 17, 2021, license expiration date either. However, we did not—as is our standard procedure—notify Augustus of the license’s impending expiration. *See Atl. City Bd. of Educ.*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9384, n. 30 (2016) (noting that the Bureau “has modified its processing policies to promptly notify stations that have failed to file their renewal applications”). *See also, e.g., Radio License Expirations*, Public Notice, DA 22-491 (MB May 5, 2022); *Radio License Expirations*, Public Notice, DA 22-228 (MB Mar. 4, 2022); *Radio License Expirations*, Public Notice, DA 22-23 (MB Jan. 11, 2022) (all reminding licensees that had missed the deadline for filing renewal applications for their station licenses of the upcoming expiration date for those licenses). Nor did we cancel the Station’s license, its silent STA, or its call sign, or otherwise notify Augustus of the license’s expiration. *Cf., e.g., Broadcast Actions*, Public Notice, Report No. 49920 (MB Feb. 5, 2021) (cancelling radio station licenses for failure to file renewal applications). Instead, we granted Augustus STA to operate the Station at reduced power on March 25, 2022. *See supra* note 11. Our grant of this STA after the date the Station’s license expired may have contributed to the Licensee’s confusion over the renewal deadline. Given these unique factors, we do not believe it would be appropriate to pursue enforcement action related to operation of the Station after June 17, 2021. *See Redrock Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 11320, 11320, n.6 (MB 2021); *Cultural Energy*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 5524, 5524 n. 6 (MB 2021) (both declining to impose forfeiture for unauthorized operations where, among other things, (1) the Bureau had not—as is its standard procedure—notified the Licensee of the impending expiration of the Station’s license, (2) the Bureau did not cancel the Station’s license, or otherwise notify the Licensee of the license’s expiration, and (3) the Licensee promptly filed the Application and a new request for STA to continue operating the Station as soon as it was made aware of the license’s expiration). *Cf. Ward Broad. Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5592, 5592, para. 2 (MB 2020) (proposing a forfeiture for unauthorized operation of a station where renewal application was not filed prior to expiration of station’s license; Bureau notified licensee that 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, and thus licensee was “on notice” that any further operation of station was unauthorized). We note, however, that if this case were in a different procedural posture (*i.e.*, had we cancelled the Station’s license and had that cancellation become final), we would not be able to accept and process a late-filed application to renew the Station’s license.

rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.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.²¹ 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,²² and the Commission has so interpreted the term in the section 503(b) context.²³ 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 omission of such act more than once or, if such commission or omission is continuous, for more than one day.”²⁴

10. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a of \$5,000 for unauthorized discontinuance of service, and a base forfeiture amount of \$3,000 for failure to file required forms or information.²⁵ 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.”²⁶

11. As noted above, the Station was silent without Commission authorization between November 16, 2021, and March 16, 2022. 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 \$5,000 amount for this apparent violation of section 73.561(d). We likewise propose a forfeiture for the full \$3,000 amount in relation to the Station’s failure to request an extension of its STA to operate the Station at reduced power, which resulted in the Station’s reduced power operations between September 22, 2022, and the present in apparent violation of section 301 of the Act, and sections 73.1350, 73.1560(a)(1), 73.1635, and 73.1745(a). Finally, we propose a forfeiture for the full \$3,000 amount for Augustus’ failure to file the Renewal Application by February 1, 2021, which apparently violated section 73.3539 of the Rules.

D. Renewal Application

12. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁷ 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.²⁸ 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

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

²¹ 47 U.S.C. § 312(f)(1).

²² *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²³ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

²⁴ 47 U.S.C. § 312(f)(2).

²⁵ *The Commission’s Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table 1.

²⁶ 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)(10).

²⁷ 47 U.S.C. § 309(k).

²⁸ *Id.* § 309(k)(1).

conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²⁹

13. In this case, Augustus’ operation of the Station during its most recent license term does not warrant routine license renewal. As discussed above, the Station was silent without Commission authorization. In addition, Augustus failed to request an extension of its reduced power STA, and has engaged in unauthorized reduced power operation of the Station since that STA expired. Finally, Augustus filed the Renewal Application more than a year late.

14. Despite this, we find that Augustus’ apparent violations of the Act and the Rules do not constitute “serious violations” under section 309(k) of the Act. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse. Finally, we find that the Station served the public interest, convenience, and necessity during the subject license term.

15. Based on these findings, we do not conclude that designation of the Renewal Application for evidentiary hearing is warranted here, particularly in light of the forfeiture proposed herein. Instead, we put in place additional measures to ensure that the Station complies with the Act and the Rules in the future. Specifically, pursuant to Section 309(k)(2) of the Act, upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude grant, we will renew the Station’s license for a term of two years. This short-term renewal will afford the Commission an opportunity to review the Station’s compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED**, that Augustus Foundation, Inc., **IS HEREBY ADMONISHED** for its violation of Section 1.17 of the Commission’s rules.

17. **IT IS FURTHER 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, that Augustus Foundation, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and sections 73.561(d), 73.1350, 73.1560(a)(1), 73.1635, and 73.1745(a) of the Commission’s rules.

18. **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 Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, Augustus Foundation, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission’s online payment system), or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

- 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). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing->

²⁹ *Id.* § 309(k)(2), (k)(3).

[databases/fees/wire-transfer](#).

- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. 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 “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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.

20. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

21. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules. The written response must be filed with the 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. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. A courtesy copy emailed to Heather.Dixon@fcc.gov will assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

22. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526(e)(10) of the Commission’s rules, Augustus Foundation, Inc., **SHALL PLACE** a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the online public inspection file of Station WALQ(AM), Carrville, Alabama (Facility ID No. 68309).

23. **IT IS FURTHER ORDERED** that copies of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Augustus Foundation, Inc., 2902 Main Street, La Marque, TX 77568.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau