

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

In re Application of
Aframsouth
For Renewal of License for
WUMO-LP, Montgomery, Alabama
Facility ID No. 196044
NAL/Acct. No. MB-202241410031
FRN: 0023105067
Application File No. 190912

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 18, 2022

Released: November 18, 2022

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)1 of Aframsouth (Licensee) for renewal of its license for WUMO-LP, Montgomery, Alabama (Station). In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL),2 we find the Licensee apparently willfully violated section 73.3539 of the Commission’s Rules (Rules)3 by failing to timely file the Application. 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 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.”4 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, 2021.5

1 Application File No. 190912 (Renewal 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 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 Id. § 73.3539(a).

5 See id.; Aframsouth, Application File No. 90882, Letter Order (MB June 17, 2020) (Aframsouth Letter).

3. The Application was not filed until May 17, 2022.⁶ In the Application, the Licensee indicates that its failure to timely file was due to “oversight.”⁷ The Licensee notes that the FCC’s Licensing and Management System (LMS) “confusingly shows the renewal expiration date” as April 1, 2028.⁸

III. DISCUSSION

4. *Proposed Forfeiture.* This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the section 503(b) context.¹² 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,

⁶ While the Application was not filed until after the Station’s license expired, we did not—as is our standard procedure—notify the Licensee 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, or its call sign upon 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). Further, the Licensee filed the Application as soon as it was made aware of the license’s expiration. Given these factors, we do not believe it would be appropriate to pursue enforcement action related to operation of the Station between June 18, 2021, and May 16, 2022. *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 renewal application 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.

⁷ Renewal Application at Attach.

⁸ *Id.*

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

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹³

5. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to timely file a required form.¹⁴ 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.”¹⁵

6. In this case, the Licensee failed to timely file a license renewal application for the Station, as required by section 73.3539(a) of the Rules. Although the Licensee indicates that the failure to timely file was an “oversight,” we note that “‘inadvertence,’ . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”¹⁶ Further, while LMS did show a later expiration date for the Station’s license, the letter granting the Licensee’s last application to renew the Station’s license specifically stated “the date set in this letter for the new license term supersedes any notice generated from [LMS].”¹⁷ 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 in the base forfeiture amount of one thousand five hundred dollars (\$1,500) for the failure to file a timely renewal application.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁸ 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.¹⁹ 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.”²⁰

8. We find that the Licensee’s apparent violation of section 73.3539 of the Rules does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²¹ Further, based on our review of the Application, we find that the Station served the public interest,

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ 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)(10), Table I.

¹⁵ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 C.F.R. § 1.80(b)(10).

¹⁶ *Southern California*, 6 FCC Rcd at 4387, para. 3.

¹⁷ *Aframsouth Letter* at 3 (emphasis in original).

¹⁸ 47 U.S.C. § 309(k).

¹⁹ *Id.* § 309(k)(1).

²⁰ *Id.* §§ 309(k)(2), 309(k)(3).

²¹ For example, we do not find here that the 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, 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

convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that 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 FCC's rules, that Aframsouth 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 FCC's rules.

10. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the FCC's Rules, that, within thirty (30) days of the release date of this *NAL*, Aframsouth **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 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-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

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).

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.

12. 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.

13. 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.

14. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Aframsouth, 13 Arlington Road, Montgomery, AL 36105.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau