

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

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| In re Application of |) | |
| |) | |
| Southern Broadcasting & Investment Co., Inc. |) | Facility ID No. 61255 |
| |) | NAL/Acct. No. MB-202441410014 |
| For Renewal of License for |) | FRN: 0010695773 |
| Station WBTY(FM) |) | File No. 0000110206 |
| Homerville, Georgia |) | |

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

Adopted: August 23, 2024

Released: August 23, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the Application¹ of Southern Broadcasting & Investment Co., Inc. (Licensee) for renewal of its license for Station WBTY(FM), Homerville, Georgia (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that Licensee apparently willfully violated section 73.3539³ of the Commission's rules (Rules) by failing to file a timely license renewal application for the Station. Based upon our review of the facts and the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of three thousand dollars (\$3,000).

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 An application for the renewal of the Station's license should have been filed by December 1, 2019, the first day of the fourth full calendar month prior to the Station's April 1, 2020, license expiration date.⁵ The Application was not filed until March 30, 2020. The Licensee provides no explanation for its untimely filing of the Application.

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee failed to file the Application on or before December 1, 2019, as required by section 73.3539(a) of the Rules. The Application was not received

¹ Application File No. 0000110206 (filed Mar. 30, 2020) (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 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 Commission's 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).

until March 30, 2020. Moreover, as noted above, Licensee did not provide an explanation for 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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁰ 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.”¹¹

6. In this case, the Licensee failed to file a timely renewal application for the Station and has not provided any explanation for its untimely filing. However, the Licensee did file the Application prior to the expiration of the Station's license. 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.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that Southern Broadcasting & Investment Co., Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful violation of section 73.3539 of the Commission's rules.

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) days of the release date of this *NAL*, Southern Broadcasting & Investment Co., Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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),¹² or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Southern Broadcasting & Investment Co., Inc. must send notice that payment has been made to**

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

⁷ 47 U.S.C. § 312(f)(1).

⁸ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ *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).

¹⁰ *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)(11), note to paragraph (b)(11), Section I.

¹¹ 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(11).

¹² Payments made using CORES do not require the submission of an FCC Form 159.

Alexander.Sanjenis@fcc.gov and Ariane.Rangel@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:¹³

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. A completed FCC 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).¹⁴ 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 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.

10. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules, 47 CFR §§ 1.16 and 1.80(g)(3). The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, Alexander Sanjenis and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to Alexander.Sanjenis@fcc.gov and Ariane.Rangel@fcc.gov to assist in processing the response.**

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
 - Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at

¹³ 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.

¹⁴ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.¹⁵

- 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.

11. 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.¹⁶

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.¹⁷ Requests can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service in the manner specified above. A copy of the request must also be sent to **Alexander.Sanjenis@fcc.gov** and **Ariane.Rangel@fcc.gov**. 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. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Southern Broadcasting & Investment Co., Inc., P.O. BOX 9, Dupont, GA 31630. A copy will also be sent to Licensee's technical representative, Chris Hall, PO Box P.O. Box 9, Homerville, GA 31630.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁵ Hand-delivered or messenger delivered paper filings continue to NOT be accepted at FCC Headquarters.

¹⁶ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

¹⁷ See 47 CFR § 1.1914.