

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

In the Matter of)	
)	
WDKA Acquisition Corporation)	Facility ID No. 39561
Licensee of Station WDKA(TV))	NAL/Acct. No.: 201341420049
Paducah, Kentucky)	FRN: 0005013164

MEMORANDUM OPINION AND ORDER

Adopted: August 6, 2014

Released: August 7, 2014

By the Commission:

1. In this Memorandum Opinion and Order we deny the Application for Review filed by the WDKA Acquisition Corporation (“WDKA”), licensee of Station WDKA(TV), Paducah, Kentucky. WDKA seeks review of a *Forfeiture Order* issued by the Video Division, Media Bureau (the “Bureau”),¹ which found that WDKA was liable in the amount of \$1,500 for its violation of Section 73.3539(a) of the rules² for failing to file its broadcast license renewal application (FCC Form 303-S) in a timely manner.³ WDKA raises three issues on review, two of which it also argued below. With respect to these two issues, WDKA’s Application for Review is essentially a word-for-word copy of its Response to the Bureau’s *Notice of Apparent Liability for Forfeiture* (“NALF”).⁴

2. First, WDKA contends that the Bureau erred when it “failed to explain its different treatment of similarly situated parties.”⁵ The Application for Review goes on to claim that the Bureau’s “distinction of just a few days” is not sufficient to justify the \$1,500 forfeiture.⁶ Stated simply, in light of the facts before us, WDKA and the licensees in the cases that it has cited are not “similarly situated.”⁷ The difference between the cases at issue was more than “a few days,”⁸ and WDKA’s untimely filing had a “greater detrimental impact on the public interest” by delaying both public and Commission review of the license renewal application by over one month.⁹

¹ *WDKA Acquisition Corp.*, Forfeiture Order, 28 FCC Rcd 16398 (Vid. Div. 2013) (“*Forfeiture Order*”).

² 47 C.F.R. § 73.3539(a).

³ See File No. BRC DT-20130506ACG.

⁴ Compare Application for Review (filed Dec. 17, 2013) to Response (filed Oct. 17, 2013).

⁵ Application for Review at 2-4; Response 2-3.

⁶ Application for Review at 3.

⁷ See *Forfeiture Order*, 28 FCC Rcd at 16399-400, ¶¶ 6-7.

⁸ As the Bureau pointed out, WDKA filed its renewal application one month and five days late, whereas the licensees in the cases cited by WDKA filed their renewal applications nine and ten days late. *Forfeiture Order*, 28 FCC Rcd at 16400, ¶ 7 (citing *Channel Eleven, Inc.*, Admonishment Letter, 28 FCC Rcd 13844 (Vid. Div. 2013); *PTP Holdings, Inc.*, Admonishment Letter, 28 FCC Rcd 13845 (Vid. Div. 2013)).

⁹ *Forfeiture Order*, 28 FCC Rcd at 16400, ¶ 7. In the *Forfeiture Order* the Bureau notes that WDKA’s late filing “caused the petition to deny period...to run until the license had already expired.” *Id.* Because a broadcast license is continued in effect pending a final decision on a station’s renewal application, 47 U.S.C. § 307(c)(3), we note that

(continued...)

3. The Commission has adopted a process, as set forth in Section 73.1020 of the rules,¹⁰ which staggers the filing of license renewal applications in order to solicit public input, as well as evaluate and grant applications in an organized, timely, and administratively efficient manner.¹¹ Here the impact of the late filing is materially worse than in the cases cited by WDKA because it pushed the petition to deny period past the expiration date listed on the license.¹² This may disrupt, to a greater extent, Commission processes established for review of license renewal applications and public participation in the license renewal process.¹³

4. Second, WDKA argues that the Bureau improperly found that its failure to timely file a license renewal application was “willful.”¹⁴ WDKA cites *Vernon Broadcasting*¹⁵ as evidence that its failure was not “conscious and deliberate” and thereby “wholly inadvertent,” not “willful.”¹⁶ For the reasons stated in the *Forfeiture Order*, we find that the Bureau’s interpretation of the term “willful” was

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the license did not actually “expire” before the petition to deny period ran. Nonetheless, the Bureau’s underlying rationale for imposing a forfeiture – that the late filing delayed public and Commission review of the license renewal application – is sound and consistent with past practice. *See, e.g., Alpha Broadcast Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 14920 (Med. Bur. 2006) (proposing a \$1,500 forfeiture against a full power television station for filing its license renewal application one month and 23 days late); *Davis Community Television*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2902 (Med. Bur. 2007) (proposing a \$1,500 forfeiture against a low power FM station for filing its license renewal application one month and five days late).

¹⁰ 47 C.F.R. § 73.1020. *See also Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S License Renewal Application; Television License Renewal Filings Accepted Beginning May 1, 2012*, Public Notice, 27 FCC Rcd 2460 (Med. Bur. 2012) (establishing the filing deadlines for the current television license renewal cycle).

¹¹ *Viper Communications*, Memorandum Opinion and Order and Notice of Apparent Liability, 20 FCC Rcd 20254, 20255, ¶ 4 (Med. Bur. 2005) (noting that “licensees are responsible for the timely submission of required forms” and that “untimely filings disrupt the orderly processing of renewal applications”).

¹² Because WDKA’s license renewal application was filed late its petition to deny period runs 90 days from when its application is placed on Public Notice. *See* 47 C.F.R. § 73.3516(e)(1). Accordingly, WDKA’s application was placed on Public Notice on May 9, 2013, resulting in a petition to deny period that ran until August 7, 2013.

¹³ Public participation in the renewal process is crucial to helping the Commission meet its statutory obligation and determine if in the previous license term a station has served the public interest, convenience and necessity. *See* 47 U.S.C. § 309(k)(1)(A). Pre and post-filing announcements are a means to encourage public participation in the license renewal process. *See* 47 C.F.R. § 73.3580. However, according to the certification placed in WDKA’s electronic public file, WDKA ran its post-filing license renewal announcement prior to actually filing its license renewal application. *See* WDKA Post-Filing Announcement, <https://stations.fcc.gov/station-profile/wdka/more-public-files/> (follow “Local public notice announcements” hyperlink; then follow “WDKA post-filing PSAs – 2013.pdf” hyperlink) (last visited Jul. 15, 2014). Not only would the public have been unable to reference WDKA’s license renewal application when the announcement was aired, but the announcement stated that the public had until July 1, 2013, to file comments and petitions with the Commission even though the the public had until August 7, 2013. *See supra* note 12.

¹⁴ Application for Review at 4-5; Response at 3-4.

¹⁵ *Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1275 (1986).

¹⁶ Application for Review at 5; Response at 4.

proper and consistent with Commission precedent,¹⁷ and that the Bureau appropriately distinguished the facts of this case from those at issue in *Vernon Broadcasting*.¹⁸

5. The Application for Review also argues that the *Forfeiture Order* did not take into account WDKA's prior compliance with the rules. Because WDKA raises this argument for the first time in its Application for Review, we dismiss this portion of the Application under Section 1.115(c) of the rules.¹⁹ As a separate and independent basis for our decision, we note that the Bureau's *NALF* already took into account such prior compliance when issuing its proposed forfeiture, as called for by Section 503(b)(2)(E) of the Act.²⁰ Accordingly, we deny this portion of the Application for Review in the alternative.

6. Upon consideration of the Application for Review and the entire record, we conclude that WDKA has not demonstrated that the Bureau erred. The Bureau, in the *Forfeiture Order*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and Sections 1.115(c) and (g) of the Commission's rules, 47 C.F.R. §§ 1.115(c), (g), the Application for Review IS DISMISSED to the extent discussed in paragraph 5 above and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ See *Forfeiture Order*, 28 FCC Rcd at 16400, ¶ 8 (noting that statute instructs the Commission to evaluate the term "willful" irrespective of intent and that the Commission has held that an inadvertent error, oversight or failure to become familiar with Commission requirements are willful violations); see also 47 U.S.C. § 312(f)(1).

¹⁸ See *Forfeiture Order*, 28 FCC Rcd at 16401, ¶ 9 (finding that the violation in *Vernon Broadcasting* was not the result of the licensee's conduct and therefore was not "willful," and to conclude that WDKA's conduct was not "willful" would require a finding that ignorance of the rules is an excuse, which would be contrary to well-established Commission precedent).

¹⁹ Application for Review at 2; 47 C.F.R. § 1.115(c).

²⁰ See *WDKA Acquisition Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 13731, 13732, ¶ 5 (Vid. Div. 2013) (citing 47 U.S.C. § 503(b)(2)(E)); see also 47 C.F.R. § 1.80(b)(8) and note to paragraph (b)(8), Section II, Adjustment Criteria for Section 503 Forfeitures.