

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

In re Application of)	
)	
Vision Broadcasting, Inc.)	Facility I.D. No. 70355
)	NAL/Acct. No. MB200641410323
For Renewal of License for)	FRN: 0013780630
Station KPXS(FM))	File No. BRH-20051207ADV
Vidalia, Louisiana)	

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

Adopted: May 1, 2007

Released: May 3, 2007

By the Associate Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Vision Broadcasting, Inc. (the "Licensee") for renewal of its expired license for Station KPXS(FM), Vidalia, Louisiana (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules")¹ by the Associate Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully violated Section 73.3539 of the Rules, by failing to timely file a license renewal application for the Station,³ and willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in unauthorized operation of the Station after its license had expired, and Section 73.3526 of the Rules,⁵ by failing to retain required documentation in the KPXS(FM) public inspection file. 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 eight thousand dollars (\$8,000), and we grant the captioned KPXS(FM) license renewal application.

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." An application for renewal of KPXS(FM)'s license should have been filed by February 1, 2004, four months prior to the Station's June 1, 2004, license expiration date,⁶ but was not. In fact, the KPXS(FM) license renewal application was not filed until December 7, 2005,

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 U.S.C. § 301.

⁵ See 47 C.F.R. § 73.3526.

⁶ See 47 C.F.R. §§ 73.1020, 73.3539(a).

more than 18 months after the Station's license had expired.⁷ On December 15, 2005, the Station requested special temporary authorization ("STA") to continue Station operations pending consideration of the untimely renewal application. The staff granted that request on December 23, 2005.⁸ That STA was to expire on June 23, 2006; on that date, the Licensee sought extension of the STA, which request remains pending.⁹ The Licensee indicates in its STA request that it inadvertently failed to timely file the KPXS(FM) license renewal application.

3. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.¹⁰ Section III, Item 3 of the KPXS(FM) license renewal application form, FCC Form 303-S, requests that the Licensee certify that the documentation required by Section 73.3526 has been placed in the station's public inspection file at the appropriate times. The Licensee indicated "No" to that Item, explaining that:

As of December 7, 2005, the station public inspection file did not contain any issues/programs lists as required by Section 73.3526 of the Commission's rules. . . . The station public inspection file was adequately maintained until June 20, 2004. However, as a result of the station going silent for almost nine months¹¹ and no one occupying the station studio, the station facility was repeatedly vandalized and all of the public files as well as some of the station equipment were removed and/or destroyed . . . as of December 7, 2005, the KPXS public inspection file did not contain any of the ownership, employment and political reports required to be kept in the file pursuant to Section 73.3526 of the Commission's rules. . . . All material accumulated prior to June 2004 is missing, other than those documents which have been replicated, such as FCC authorizations and filings. . . . The station public inspection file contains those documents from prior to December 2005 which the station has been able to recreate. The station has been unable to recreate those issues/programs lists and political reports removed from the public file for that period of time occurring prior to June 2004. Since December 2005, the station has maintained a proper public inspection file containing those documents required under the Commission's rules.¹²

III. DISCUSSION

4. *Proposed Forfeiture. Section 73.3539/Section 301 violations.* In this case, the Licensee failed to timely file a license renewal application for KPXS(FM) as required by Section

⁷ File No. BLSTA-20051215ABS.

⁸ *Letter to Lee J. Peltzman, Esq.*, Reference 1800B3 (Chief, Audio Division, Media Bureau, Dec. 23, 2005).

⁹ File No. 20060623ABY.

¹⁰ *Cf. Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (April 3, 1997), 13 FCC Rcd 4102 (1997) *citing License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993).

¹¹ In a request for STA to remain silent filed on January 5, 2005, the Licensee reported that the Station went off the air on June 20, 2004 due to the departure of the general manager and insufficient staff to remain on the air. *See* BLSTA-20050105ADA.

¹² Application, Ex. 11.

73.3539(a) of the Rules. Moreover, it does not dispute that it continued Station operation for more than eighteen months after its license had expired on April 1, 2004, before filing the renewal application and seeking special temporary authority to so operate, in violation of Section 301 of the Act. The Licensee was obligated to fully comply with the Rules, including timely filing the Station's renewal application and maintaining in effect the Station authorization.¹³ It did not do so.

5. *Section 73.3526 violation.* As the Licensee has acknowledged, at the time of filing of the KPXS(FM) license renewal application, the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3526 of the Rules. Although it recreated many of the missing materials and returned them to the file, it could not do so for others. In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.¹⁴

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ 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."¹⁹

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.²⁰ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service and \$10,000 for violation of Section 73.3526.²¹ 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

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 Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

¹⁴ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Letter, 71 RR 2d 882 (FOB 1992).

¹⁵ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ 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 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

²¹ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

offenses, ability to pay, and such other matters as justice may require.”²²

8. In this case, the Licensee failed to timely file the KPXS(FM) renewal application and continued Station operations for over eighteen months before filing the renewal application and seeking an STA. Nevertheless, because it had previously been licensed to operate Station KPXS(FM), the latter transgressions are not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to timely file the renewal application, but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000.²³

9. With respect to the public file rule violations, although the Licensee has admitted to the violations, it did so only in the context of the question contained in its captioned license renewal application that compelled such disclosure. Moreover, the violations involved issues/programs lists covering nearly the entire license term. However, we credit the Licensee's representation that many of the missing materials were recreated and placed in the file, although they were later destroyed or removed when the Station's facilities were vandalized. Considering the record as a whole, we believe that a \$1,000 forfeiture is appropriate for the violations in this case.²⁴ Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$1,000 for its apparent willful and repeated violation of Section 73.3527. Thus, we propose a forfeiture in the total amount of \$8,000.

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²⁵ 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.²⁶ 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.”²⁷

²² 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

²³ *See, e.g., Discussion Radio Incorporated*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7438 (2004); *Gospel Media, Inc.*, Letter, 19 FCC Rcd 15600 (MB 2004). Although in *Gospel Media*, the Bureau imposed a proposed forfeiture of \$3,000 for unauthorized operation, the unauthorized operation lasted only two weeks and the applicant did not allow an STA for continued operations to expire. The \$4,000 forfeiture proposed here for unauthorized operation is analogous to use of an unauthorized frequency by a land mobile station holding a license for a different frequency. *See, e.g., In the Matter of Dave Mitchell*, Forfeiture Order, 20 FCC Rcd 1366 (EB 2005); *In the Matter of Joselyn Gordon*, Forfeiture Order, 19 FCC Rcd 23557 (EB 2004).

²⁴ *See, e.g., Milwaukee Board of School Directors*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 1143 (MB 2007) (\$1,000 NAL appropriate where issues/programs lists for the entire license term were misplaced during station studio move), citing *The Trustees of Davidson College*, Forfeiture Order, 20 FCC Rcd 17190 (MB 2005) (reduction of forfeiture amount to \$1,000 appropriate where issues/programs lists were misplaced during station studio move).

²⁵ 47 U.S.C. § 309(k).

²⁶ 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).

²⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

11. We find that the Licensee's violations of Sections 73.3526 and 73.3539 of the Rules and Section 301 of the Act do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²⁸ Further, we find that Station KPXS(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Vision Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$8,000 for the apparent willful violation of Section 73.3539 of the Commission's Rules and the apparent willful and repeated violation of Section 73.3526 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

13. 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 *NAL*, Vision Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

16. 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.

17. 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, D.C. 20554.²⁹

²⁸ 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*, 32 FCC2d 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." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

²⁹ *See* 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED that the license renewal application of Vision Broadcasting, Inc. for Station KPXS(FM), Vidalia, Louisiana (File No. BRH-20051207ADV) IS GRANTED.

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Vision Broadcasting, Inc. 381 John R. Junkin Drive, Natchez, Mississippi 39120, and to the Licensee's counsel, Lee J. Peltzman, Esquire, Shainis & Peltzman, Chartered, 1850 M Street, NW, Suite 240, Washington DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman
Associate Chief, Media Bureau