

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

In the Matter of)	
)	
A&L Broadcasting, Inc.)	Facility ID No. 54616
)	NAL/Acct. No. MB20051810028
Licensee of Station WSQL(AM))	FRN: 0010039576
Brevard, North Carolina)	File No. BR-20031219AAC

FORFEITURE ORDER

Adopted: January 10, 2007

Released: January 12, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand one hundred dollars (\$2,100) to A&L Broadcasting, Inc. (“A&L”), licensee of Station WSQL(AM), Brevard, North Carolina (the “Station”), for its willful and repeated violation of Section 73.3539 of the Commission’s Rules (the “Rules”) and Section 301 of the Communications Act of 1934, as amended (the “Act”).¹ The violations involve A&L’s failure to have timely filed a license renewal application for the Station and its unauthorized operation of WSQL(AM) after its license for the Station had expired.

2. On March 16, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of six thousand dollars (\$6,000) to A&L.² A&L filed a Request for Cancellation of the Forfeiture on April 12, 2005 (the “Request”).

II. BACKGROUND

3. As noted in the NAL, WSQL(AM)’s license renewal application was due on August 1, 2003, four months prior to the December 1, 2003, license expiration date.³ A&L did not file the application until December 19, 2003, nearly three weeks after the Station’s license had expired. On January 13, 2004, A&L requested a special temporary authorization (“STA”) to continue operation, pending consideration of the license renewal application. This request was granted on January 26, 2004.⁴ The NAL concluded that A&L had violated Section 73.3539 of the Rules and Section 301 of the Act and

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² Letter to Peter Gutmann, Esq. from Peter Doyle, Chief, Audio Division, reference 1800B3 (Mar. 16, 2005).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ Letter to Peter Gutmann, Esq. from Peter Doyle, Chief, Audio Division, reference 1800B3-MFW (Jan. 26, 2004). A&L timely sought an extension of the STA on July 20, 2004; that STA extension request was dismissed as moot on February 14, 2006.

proposed the \$6,000 forfeiture.

4. In its Request, A&L maintains that the proposed forfeiture should be cancelled, asserting that the violations occurred as the result of an “innocent mistake” because it had assumed the eight-year license period began in 1997, when it acquired WSQL(AM). A&L also submits copies of its 2002, 2003, and 2004 federal income tax returns to establish its inability to pay the proposed forfeiture.⁵

III. DISCUSSION

5. Section 73.3539 of the Rules requires a broadcast licensee to file its license renewal application four months before the license expiration date. Moreover, Section 301 of the Act requires any person operating apparatus for the transmission of communications by radio to obtain a license under the provisions of the Act. It is undisputed that, not only was A&L’s renewal application untimely, it was filed nearly three weeks after WSQL(AM)’s license had expired. Despite A&L’s assertion that the tardiness of renewal application was based upon an “innocent mistake,” we find that its violation of Section 73.3539 of the Rules was willful and repeated.⁶

6. A&L’s “innocent mistake” does not mitigate its violations. Licensees are responsible for knowing and observing the rules affecting their activities,⁷ including the timely submission of required forms. Untimely renewal applications disrupt the orderly processing of renewal applications in accordance with the staggered filing deadlines set forth in Section 73.1020 of the Rules. Moreover, Section 301 of the Act sets forth the general mandate that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and in accordance with the terms of a license. A&L’s violation not only involved its untimely application for renewal of WSQL’s license, but also its unauthorized operation of a radio station for more than one month after the Station’s license had expired before it requested an STA for continued operation, pending consideration of its untimely renewal application.

7. As noted in the *NAL*, the proposed forfeiture amount in this case was determined in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission’s *Forfeiture Policy Statement*.¹⁰ In considering A&L’s Request, Section 503(b) of the Act requires that the Bureau take into account 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 other such matters as justice may require.¹¹

8. A&L also asserts that payment of the proposed \$6,000 forfeiture would result in a substantial hardship. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the party against which the forfeiture is proposed submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally

⁵ A&L has asked for confidential treatment of the tax returns pursuant to 47 C.F.R. § 0.459. We grant its request.

⁶ For purposes of Section 503(b) of the Act, 47 U.S.C. § 503(b), the term “willful” means the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.

⁷ See, e.g., *In the Matter of Rego, Inc.*, 16 FCC Rcd 16795, 16797 (EB 2001).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (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.

¹¹ 47 U.S.C. § 503(b)(2)(D).

accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflected the party'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.¹²

9. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ The Commission has found that the staff's use of gross revenues is a reasonable and useful yardstick to analyze a company's financial condition for forfeiture purposes.¹⁴ In support of its Request for cancellation of the forfeiture, A&L submits copies of its 2002, 2003 and 2004 federal income tax returns. We have examined A&L's Request pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that, while cancellation of the forfeiture is not appropriate, reduction of the \$6,000 proposed forfeiture to \$2,100 is warranted in this case.¹⁵

IV. ORDERING CLAUSES

10. Accordingly, IT IS 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,¹⁶ that A&L Broadcasting, Inc. SHALL FORFEIT to the United States the sum of \$2,100 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the 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, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1-A625, Washington, DC 20554.¹⁸

¹² See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7441 (2004).

¹³ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹⁴ *Id.*

¹⁵ See *PJB Communications of Virginia, Inc.*, *supra* 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

¹⁶ 47 C.F.R. §§ 0.283, 1.80.

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.

12. IT IS FURTHER ORDERED, that copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to A&L Broadcasting, Inc., P.O. Box 1240, Brevard, North Carolina, 27812, and to its counsel, Peter Gutmann, Esq., Womble, Carlyle, Sandridge & Rice, PLLC, 7th Floor, 1401 Eye Street, N.W., Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau