

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

In re Application of)	
)	
Robert John Williamson)	Facility I.D. No. 7902
)	NAL/Acct. No. MB-200741410319
For Renewal of License for)	FRN: 0010296325
Station WGYV(AM))	File No. BR-20040224AAC
Greenville, Alabama)	

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

Adopted: March 3, 2008

Released: March 4, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it (1) the captioned application of Robert John Williamson (the "Licensee") for renewal of its license for Station WGYV(AM), Greenville, Alabama (the "Station"); and (2) the Informal Objection (the "Objection") to the application filed on June 23, 2004, by Great Eastern Media Broadcasters, LLC ("GEMB").¹ 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")² by the Commission by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,³ 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.⁴ Based upon our review of the facts and circumstances before us, we grant the Objection in part, conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500), and grant the captioned WGYV(AM) 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."⁵ An application for renewal of the Station's license should have been filed by December 1, 2003, four months prior to the Station's April 1, 2004, license expiration date,⁶ but was not. However, the Licensee did file the renewal application on February 24, 2004, approximately one month before the Station's license expired.

¹ The Licensee filed an Opposition to the Objection on July 20, 2004.

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

³ See 47 C.F.R. § 0.283.

⁴ See 47 C.F.R. § 73.3539.

⁵ 47 C.F.R. § 73.3539(a).

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

III. DISCUSSION

3. *Informal Objection. Procedural Matters.* Initially, Williamson challenges GEMB's informal objection as procedurally defective because it is titled as an "Informal Objection" but in its opening paragraph petitions the Commission to deny Williamson's license renewal application, in effect making GEMB's pleading a petition to deny. Williamson states that GEMB's informal objection cannot be considered a petition to deny because it was filed after the deadline for petitions to deny had passed and GEMB does not have standing as a party in interest. We find that GEMB properly filed an informal objection under Section 73.3587 of the Rules.⁷

4. *Substantive Matters.* In its Objection, GEMB first argues that Williamson "clearly falls short of the Commission's norm of 'continued compliance'" with the Rules because he failed to timely file the license renewal application for the Station.⁸ GEMB is correct that the WGYV(AM) license renewal application was not timely filed under Section 73.3539 of the Rules. However, as discussed below, Williamson's apparent violation of Section 73.3539 of the Rules by failing to timely file the Station's license renewal application warrants a Notice of Apparent Liability for the late-filing but does not constitute a "serious violation" warranting designation for evidentiary hearing.⁹

5. Next, GEMB alleges that it is "unclear whether Williamson broadcast the appropriate pre-and post-renewal application filing announcements."¹⁰ GEMB has not provided any information to support this claim. Accordingly, we find GEMB's unsupported allegation contains neither adequate nor specific factual allegations sufficient to warrant further inquiry into the matter.¹¹

6. Finally, GEMB states that Williamson's license should not be renewed because Williamson has a pending major modification application to move WGYV(AM) to Aurora, Indiana.¹² GEMB states that grant of the renewal license is not in the public interest because it will result in Greenville, Alabama losing one of only three local services. GEMB's allegation is misplaced. A grant of the license renewal application is not materially related to the grant of Williamson's major modification application. The pending major modification application is mutually exclusive with several other proposals filed in the AM Auction 84 filing window¹³ and will be considered independently under Section 73.3571(h) of the

⁷ 47 C.F.R. § 73.3587.

⁸ Objection at 2.

⁹ See, e.g., *Des Moines Independent School District*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 6342 (MB 2006); *RealRadio, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 6346 (MB 2006); *Best Media Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 6354 (MB 2006).

¹⁰ Objection at 2. Section 73.3580(d) of the Rules, 47 C.F.R. § 73.3580(d), requires licensees of broadcast stations to make certain announcements alerting the public that the licensee is applying to renew the Station's license and informing the public that they may provide information to the Commission regarding the licensee's qualifications. These announcements must be made prior to and following the filing of a license renewal application.

¹¹ See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegation sufficient to warrant the relief requested).

¹² See File No. BMJP-20040130BBK. The application was accepted for filing on September 21, 2007.

¹³ See applications of RAMS, II for a new AM station at Maxwell AFB, Alabama, File No. BNP-20040130AZU, and Ether Mining Corporation for a new AM station in Jeffersonville, Indiana, File No. BNP-20040130BMK.

Rules.¹⁴ Should GEMB wish to oppose Williamson's major modification application, it should file an objection in that proceeding in connection with the filing of a Williamson "long form" application.¹⁵

7. *Proposed Forfeiture.* In this case, the Licensee has admitted that it failed to timely file a license renewal application for WGYV(AM), as required by Section 73.3539(a) of the Rules.

8. 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.¹⁶ 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.¹⁷ 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,¹⁸ and the Commission has so interpreted the term in the Section 503(b) context.¹⁹

9. 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 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 offenses, ability to pay, and such other matters as justice may require."²¹

10. In this case, the Licensee failed to timely file the WGYV(AM) renewal application. Taking into consideration this fact, the fact that the renewal application was filed prior to expiration of the Station's license, and all of the factors required by Section 503(b)(2)(D) of the Act²² and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 for the late filing.

11. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²³ 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.²⁴ 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

¹⁴ 47 C.F.R. § 73.3571(h).

¹⁵ See 47 C.F.R. § 73.3571(h)(3).

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

¹⁷ 47 U.S.C. § 312(f)(1).

¹⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

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 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).

²² 47 U.S.C. § 503(b)(2)(D).

²³ 47 U.S.C. § 309(k).

²⁴ 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)*

application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."²⁵

12. GEMB has not established a substantial or material question of fact to warrant further inquiry into Williamson's basic qualifications to hold a Commission authorization. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²⁶ Further, we find that Station WGYV(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore deny the remaining allegations GEMB's informal objection and grant the license renewal application below.

IV. ORDERING CLAUSES

13. 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 Robert John Williamson is hereby NOTIFIED of his APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for his apparent willful violation of Section 73.3539 of the Commission's Rules.

14. 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*, Robert John Williamson SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

16. 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.

17. 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

and 204(c) of the Telecommunications Act of 1996 (*Broadcast License Renewal Procedures*), Order, 11 FCC Rcd 6363 (1996).

²⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁶ 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 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*, Hearing Designation Order, 6 FCC Rcd 4622 (1991) and *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

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.

18. 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. 20554.²⁷

19. IT IS FURTHER ORDERED that the June 24, 2004, Informal Objection of Great Eastern Media Broadcasters, LLC IS GRANTED to the extent indicated and IS DENIED in all other respects.

20. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Robert John Williamson for Station WGYV(AM), Greenville, Alabama (File No. BR-20040224AAC) IS GRANTED.

20. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Robert John Williamson, P.O. Box 585, Greenville, Alabama 36037, his counsel, Mark N. Lipp, Esquire, 1776 K Street, NW, Washington, D.C. 20006, and to Great Eastern Media Broadcasters, LLC via counsel Scott C. Cinnamon, Esquire, 1090 Vermont Avenue, Suite 800, #144, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁷ See 47 C.F.R. § 1.1914.