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Washington, D.C. 205543

August 31, 2009

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In Reply Refer to:

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

M. Scott Johnson, Esq.
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1300 N. 17th St., 11th floor
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In re: WRMG(AM), Red Bay, Alabama
Jack W. Ivy, Sr.
Facility ID: 55419
File No. BR-20050421AAV

Dear Mr. Johnson:

The Chief, Audio Division, has before him the March 9, 2007, Petition for Reconsideration (“Petition”), filed on behalf of Jack W. Ivy, Sr. (“Licensee”), licensee of Station WRMG(AM), Red Bay, Alabama (“Station”). The Petition requests cancellation of a February 7, 2007, Notice of Apparent Liability for a Forfeiture (“NAL”)¹ in the amount of seven thousand dollars (\$7,000) for violation of Section 73.3539 of the Commission’s Rules (“Rules”) and Section 301 of the Communications Act of 1934, as amended (“Act”).² The violations involve Licensee’s failure to file a timely license renewal application for the Station and his unauthorized operation of WRMG(AM) after his license for the Station had expired. By this action, we cancel the NAL and admonish Licensee for violating Sections 73.3539 of the Rules and 301 of the Act.

Background. As noted in the NAL, Licensee’s renewal application for the current WRMG(AM) license term was due on December 1, 2003, four months prior to the April 1, 2004, license expiration date. According to Commission records, no such application was filed, and the Station’s license expired on April 1, 2004. Subsequently, on March 17, 2005, the staff wrote to Licensee, indicating that the Station’s license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station’s call letters were deleted from the Commission’s data base. Upon receipt of this letter, Licensee properly tendered a license renewal application for WRMG(AM) and a request for special temporary authorization (“STA”) to continue operation pending consideration of the license renewal application. Licensee provided no explanation for his failure to timely file the renewal application. The staff granted

¹Jack W. Ivy, Sr., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2312 (MB 2007).

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

the STA request on April 29, 2005. On February 7, 2007, the Bureau issued a *NAL* in the amount of seven thousand dollars to Licensee.³ Licensee filed his Petition requesting cancellation of the forfeiture on March 9, 2007. In support of his Petition, Licensee states that he is financially unable to pay the proposed forfeiture, and asserts that this reason warrants a cancellation of the assessed forfeiture.

Discussion. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission's *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.⁷

Licensee asserts that he is the sole proprietor of the Station and has a limited income. As such, Licensee claims that he is financially unable to pay the proposed forfeiture. 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 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.⁸

In general, a licensee's gross revenues (or in the case of a sole proprietorship, gross income)⁹ are the best indicator of its ability to pay a forfeiture.¹⁰ 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.¹¹ In support of his request for cancellation of the forfeiture, Licensee submits copies of his 2003, 2004, and 2005 personal federal income tax returns.¹²

We have examined Licensee's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Licensee

³ *Jack W. Ivy, Sr.*, 22 FCC Rcd at 2312.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004).

⁹ *See William Saunders*, Memorandum Opinion and Order, 21 FCC Rcd 1028, 1030 (EB 2006) (financial documentation, including personal tax returns, considered to determine inability to pay when antenna structure was operated as a sole proprietorship); *Maria L. Salazar*, Memorandum Opinion and Order, 19 FCC Rcd 5050, 5052 (2004) (federal individual tax returns of licensee of radio station considered to determine licensee's ability to pay forfeiture).

¹⁰ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) ("*PJB Communications*").

¹¹ *Id.*

¹² Licensee has asked for confidential treatment of the tax returns pursuant to 47 C.F.R. § 0.459. We grant his request.

willfully violated Section 73.3539 of the Commission's Rules and willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended. However, after reviewing Licensee's claim and the supporting documentation, we believe that payment of the \$7,000 forfeiture, or any reduction thereof consistent with Commission precedent,¹³ would pose a financial hardship in view of Licensee's documented gross income. Accordingly, we cancel the proposed forfeiture. Nevertheless, we find that it is appropriate to admonish Licensee for his willful violation of Section 73.3539 of the Rules and willful and repeated violation of Section 301 of the Act.

Conclusion. In view of the foregoing, the Notice of Apparent Liability (NAL/Acct. No. MB200741410123) for violation of Sections 73.3539 of the Rules and 301 of the Act is HEREBY CANCELLED. Jack W. Ivy, Sr., is instead hereby ADMONISHED for his willful violation of Section 73.3526 of the Rules and willful and repeated violation of Section 301 of the Act.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Jack W. Ivy, Sr.

¹³ *PJB Communications*, 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*, Memorandum Opinion and Order, 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 Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).