

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

In re Application of
LIFE AT ITS BEST, INC.
Licensee of Low Power FM Station KLBG-LP
Glide, Oregon
Application for Renewal of License
NAL/Acct. No. MB200941410036
FRN: 0007622079
Facility I.D. No. 134808
File No. BRL-20090707ACD

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 14, 2009

Released: December 15, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Life At Its Best, Inc. (the "Licensee") for renewal of its license for Low Power FM Station KLBG-LP, Glide, Oregon (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"), by the Chief, Audio Division, Media Bureau by authority delegated under Section 0.283 of the Rules, 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 (the "Application"), and willfully and repeatedly violated Section 301 of the Act, by engaging in unauthorized operation of the Station after its authorization had expired. 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 five hundred dollars (\$500), and we grant the KLBG-LP 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

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.

expiration date of the license sought to be renewed."⁵ An application for renewal of KLBG-LP's license should have been filed by October 1, 2005. No such application was filed, and the Station's license expired on February 1, 2006. Accordingly, on June 4, 2009, 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. The Licensee was advised that any further operation of the Station was unauthorized and must cease immediately.⁶ Upon receipt of the *License Expiration Letter*, on July 7, 2009, the Licensee filed a petition for reconsideration of that letter (the "Petition"), a request for special temporary authorization ("STA")⁷ to continue operations, and tendered the captioned license renewal application.⁸ The staff granted the STA on August 20, 2009.⁹

3. In the Petition, Licensee states that, not being familiar with the Commission's online filing process, it attempted to timely file the Application, without legal or technical assistance, and believed it had successfully done so. Licensee states that the Commission's grant of a modification application for the Station on May 7, 2008,¹⁰ justified its assumption that the underlying renewal application was in "good order," and that upon receipt of the *License Expiration Letter*, it immediately ceased Station operation and on July 7, 2009, properly filed the Application along with an application for license to cover construction permit and a request for an STA to allow the Station to operate pending consideration of the Application. Licensee states that the Station has served the local community since it began operation in 2004 and requests that its renewal application be granted.

III. DISCUSSION

4. *Proposed Forfeiture.* In this case, the record indicates that the Licensee has failed to timely file a license renewal application for the Station, as required by Section 73.3539 of the Rules. The Licensee does not dispute that it continued operating the Station for three years and five months after the license had expired on February 1, 2006, before filing the appropriate renewal application and seeking an STA to operate.¹¹

5. 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.¹² Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission

⁵ 47 C.F.R. § 73.3539 (a).

⁶ *Letter to Life At Its Best, Inc.*, Ref. 1800B3-KAW (MB Jun. 4, 2009) ("*License Expiration Letter*").

⁷ File No. BLSTA-20090707ACA.

⁸ On that same date, Licensee also filed an application for license to cover construction permit (File No. BLL-20090707ACF) (the "License Application").

⁹ *Letter to Donald E. Martin, Esq.*, Reference 1800B3 (MB Aug. 20, 2009).

¹⁰ File No. BPL-20080505ACI, granted May 7, 2008.

¹¹ See, e.g. *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Red 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)).

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

or omission of [any] act, irrespective of any intent to violate" the law.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ 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."¹⁶

6. 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.¹⁷ The guidelines also specify a base forfeiture amount of \$10,000 for station construction and/or operation without an instrument of authorization for the service.¹⁸ 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."¹⁹

7. In this case, the Licensee failed to timely file the KLBG-LP renewal application and continued operating the Station for three years and five months after its license expired on February 1, 2006, before filing the appropriate application and seeking an STA to so operate.²⁰ Nevertheless, because it had previously been licensed to operate the Station, 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*, and given the Commission's recent decisions assessing forfeitures against licensees of "secondary" services,²¹ we reduce the proposed forfeiture for violation of Section 73.3539 of the Rules from the \$3,000 base amount to \$250 and reduce

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Red 4387, 4388 (1991).

¹⁶ 47 U.S.C. § 312(f)(2).

¹⁷ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Red 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Red 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁸ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁹ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Red at 17100-01; 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

²⁰ We acknowledge that the staff erroneously granted an application for modification of the Station's facilities after its license had expired but prior to issuance of the *License Expiration Letter*. See n.10, *supra*. Although the staff should not have granted that application, its grant is now final. That grant, however, did not extend the Station's license term. Nevertheless, in light of our action here, we will process expeditiously the License Application.

²¹ Low Power FM stations are "secondary" services, which generally "primary" stations are not required to protect. See 47 C.F.R. § 73.809.

the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$250.²² Thus, we propose a forfeiture in the total amount of \$500.

8. *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 application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."²⁵ We find that the Licensee's apparent violations of Section 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.²⁶ Further, we find that Station KLBG-LP served the public interest, convenience, and necessity during its subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

9. 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 Life At Its Best, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five hundred dollars (\$500) for the apparent willful violation of Section 73.3539 of the Commission's Rules and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

10. 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*, Life At Its Best, Inc. SHALL PAY the full amount

²² See, e.g., *Calvary Chapel Church of Menomonie*, Forfeiture Order, 24 FCC Rcd 9044, 9046 (MB 2009) (forfeiture for late-filing and unauthorized operation reduced to a total of \$500 due to station's LPFM status).

²³ 47 U.S.C. § 309(k).

²⁴ 47 U.S.C. § 309(k)(l). 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).

²⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁶ For example, we do not find here that the Licensee's operation of the Station "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 FCC 2d 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), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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.²⁷ 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).

12. 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.

13. 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.

14. 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. 20554.²⁸

15. IT IS FURTHER ORDERED that the July 7, 2009, Petition for Reconsideration filed by Life At Its Best, Inc. IS GRANTED to the extent indicated.

16. IT IS FURTHER ORDERED that the call sign KLBG-LP IS REINSTATED.

17. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application for Station KLBG-LP, Glide, Oregon (File No. BRL-20090707ACD) IS GRANTED.

²⁷ 47 U.S.C. § 504(a).

²⁸ See 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Life At Its Best, Inc., P.O. Box 48, Glide, Oregon 97443 and to its counsel, Donald E. Martin, Esq., P.O. Box 8433, Falls Church, Virginia 22041.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau