

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

In re Application of
Discussion Radio, Inc.
for Renewal of License of
WDIS(AM) Norfolk, Massachusetts
File No. BR-19990603AAA
Facility ID No. 16977
FRN 0006092571
NAL Account No. 20041810004

MEMORANDUM OPINION AND ORDER
AND FORFEITURE ORDER

Adopted: February 18, 2009

Released: February 19, 2009

By the Chief, Media Bureau:

1. We have under consideration, Lensee’s Request for Extension of Time in Which to File Written Response to Notice of Apparent Liability (“Request”), Licensee’s Preliminary Written Response to Notice of Apparent Liability (“Preliminary Response”), Licensee’s First Supplement to its Written Response to Notice of Apparent Liability (“First Supplement”) and Licensee’s Second Supplement to its Written Response to Notice of Apparent Liability (“Second Supplement”), filed by Discussion Radio, Inc. (“DRI”), licensee of WDIS, Norfolk, Massachusetts. DRI seeks rescission of the \$ 16,500 forfeiture specified in the Commission’s Memorandum Opinion and Order and Notice of Apparent Liability. The Notice of Apparent Liability (NAL) portion of the decision specified a cumulative forfeiture amount of \$16,500 for DRI’s violation of the Commission’s Rules respecting license renewal, unauthorized operation of its station and maintenance of its Public File. For the reasons set out below, we reduce the forfeiture amount to \$1,200.

1 Filed May 20, 2004. DRI requested the extension, inter alia, because it required additional time to assemble financial documents. It provided the documents within a reasonable time and we will, therefore, grant the request.

2 Discussion Radio, Inc., Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd. 7433 (2004) (“Order”).

3 See 47 C.F.R. § 73.3539. (“Application for Renewal of License”).

4 See 47 C.F.R. § 73.1020 (“Station License Period”). See also 47 U.S.C. § 301.

5 See 47 C.F.R. § 73.3526 (“Local public inspection file of commercial stations”).

I. BACKGROUND

2. In response to the NAL, DRI contends that it “does not have funds to pay the Federal Communications Committee [sic] determination of \$16,500 fine” and requests that the forfeiture specified in the NAL be rescinded.⁶ In support of its request, it submits copies of its 2001, 2002 and 2003 Federal tax returns.⁷ The returns show: (a) for 2001, a loss of \$ 5,332 on gross receipts of \$11,879, (b) for 2002, an income of \$1,622 on gross receipts of \$ 18,786, and (c) for 2003, a loss of \$ 7,009 on gross receipts of \$15,343.⁸

II. DISCUSSION

3. Section 1.80(b)(4) of the Commission’s Rules states that “in determining the amount of forfeiture penalty, the Commission . . . will take into account . . . ability to pay, and such other matters as justice may require.”⁹ In general, the Commission looks to gross revenues as the principal factor in determining inability to pay.¹⁰ A station’s lack of profitability over a period of time, however, is also a factor in reassessing a forfeiture amount.¹¹ Both factors are present here. DRI’s inability to pay the forfeiture specified in the NAL is supported by the fact that the \$16,500 forfeiture amount in the NAL exceeds the station’s revenues in tax years 2001 and 2003, and approaches the station’s revenues in 2002. Moreover, the station encountered losses in tax years 2001 and 2003, and had only a modest income in tax year 2002.

III. DECISION

4. The violations leading to the NAL were particularly egregious to the extent that the Commission found that renewal of the WDIS license presented a “very close question.”¹² Accordingly, we will not rescind the forfeiture as DRI urges, but, in light of the financial information provided by DRI, will reduce the forfeiture amount to \$1,200.¹³

⁶ Second Supplement, Affidavit of Albert E. Grady at 7. Mr. Grady is president of DRI. *Id.* at 4.

⁷ In addition to the tax returns, DRI has submitted affidavits from its president and operations manager. These affidavits claim, *inter alia*, that the station’s losses are greater than reflected in the tax returns, that WDIS offers public service programming and that DRI’s president relied on the WDIS station manager to properly maintain the public file. *See generally*, First Supplement and Second Supplement. These matters are irrelevant to our determination of DRI’s inability to pay the \$16,500.00 forfeiture amount and, if considered, would not affect the amount of the revised forfeiture imposed herein.

⁸ DRI also provided copies of tax returns for tax years 1993-1996 and 1998-99, showing, in most instances, even greater losses on similar gross receipts. When considering tax returns as the basis of claims of inability to pay, the Commission deems the most recent three-year period adequate. *See, e.g., A&L Broadcasting*, 22 FCC Rcd. 256 (MB 2007). Accordingly we are disregarding the earlier DRI tax returns.

⁹ 47 C.F.R. § 1.80(b)(4). *See* 47 U.S.C. § 503(b)(2)(D).

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

¹¹ *See e.g., First Greenville Corporation*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996).

¹² 19 FCC Rcd at 7440.

¹³ The forfeiture of \$1,200 is less than 8% of the average of the station’s revenues for tax years 2001-2003. Although forfeiture amounts are significantly fact-dependant, we note that the \$1,200 forfeiture imposed herein is (continued....)

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that the Request for Extension of Time in Which to File Written Response to Notice of Apparent Liability filed by Discussion Radio Inc. IS GRANTED.

6. IT IS FURTHER ORDERED that the relief sought in Licensee's Preliminary Written Response to Notice of Apparent Liability, Licensee's First Supplement to its Written Response to Notice of Apparent Liability and Licensee's Second Supplement to its Written Response to Notice of Apparent Liability IS DENIED.

7. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules,¹⁴ that within thirty days of the release hereof, Discussion Radio, Inc., SHALL PAY to the United States, a forfeiture of \$1200.00. 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. 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).

8. IT IS FURTHER ORDERED that copies of this *Memorandum Opinion and Order and Forfeiture Order* shall be sent, by First Class and Certified Mail, to Albert E. Grady, President, Discussion Radio, Inc. 226 Montello Street, Brocton, MA 02301.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

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not excessive, especially in view of the seriousness of DRI's multiple violations of the Rules. *See, e.g., Hoosier Broadcasting*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture of 7.6% of gross revenues deemed not excessive); *Local Long Distance, Inc.*, Order on Reconsideration, 16 FCC Rcd 10016, 10025 (2001) (forfeiture of 7.9% of gross revenues deemed not excessive).

¹⁴ 47 C.F.R. § 1.80.