



Federal Communications Commission
Washington, D.C. 20554

June 28, 2010

DA 10-1180

In Reply Refer to:

1800B3-ATS

NAL/Acct. No. MB-2006414140110

FRN: 0009221169

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Gary S. Smithwick, Esq.
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5028 Wisconsin Ave., N.W.
Suite 301
Washington, D.C. 20016

Re: Station WZOO(AM), Asheboro, NC
Faith Enterprises, Inc.
Facility ID No. 20558
File No. BR-20040308ABK

Dear Mr. Smithwick:

We have before us a March 26, 2007, Response to Notice of Apparent Liability ("Response") filed on behalf of Faith Enterprises, Inc. ("Faith"), licensee of Station WZOO(AM), Asheboro, North Carolina ("Station"). The Response seeks cancellation or substantial reduction of the February 22, 2007, Notice of Apparent Liability for Forfeiture ("NAL")¹ in the amount of seven thousand dollars (\$7,000), issued to Faith for willfully violating Section 73.3539 of the Commission's Rules ("Rules") and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act") for its failure to timely file a license renewal application ("Application") and for unauthorized operation of the Station after its license had expired.² For the reasons set forth below, we cancel the monetary forfeiture issued on February 22, 2007, and assess Faith a 25 percent late-fee penalty for its late payment of its filing fee.

Background. 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."³ An application for renewal of the Station's license should have been filed by August 1, 2003. No such application was filed, and the Station's license expired on December 1, 2003. Accordingly, in a March 2, 2004, letter ("*Staff Letter*"), the staff informed Faith 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.⁴ Faith was advised that any further operation of the Station was unauthorized and must cease immediately. Subsequent to receipt of the *Staff Letter*,

¹ *Faith Enterprises, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3734 (MB 2007).

² 47 C.F.R. § 73.3539; 47 U.S.C. § 301. The Commission granted the above-referenced license renewal application on February 22, 2007.

³ 47 C.F.R. § 73.3539(a).

⁴ *Letter to Faith Enterprises, Inc. from Chief, Audio Division, Media Bureau*, Ref. 1800B3-DW (Mar. 2, 2004).

on March 8, 2004, Faith filed a request for special temporary authorization (“STA”) to continue operations and on the same day, tendered the subject license renewal application. In the STA Request, Faith explained that it had filed a renewal application on June 30, 2003, prior to the required filing date, and was assigned File Number “CDBS20030630ADK.”⁵ The staff granted the STA on March 19, 2004, and it was to expire on September 19, 2004;⁶ however, Faith filed a request for extension of the STA on September 10, 2004.⁷ On February 22, 2007, the staff advised Faith of its apparent liability for a forfeiture of \$7,000 for failure to file a timely renewal application for the Station and for unauthorized operation of the Station after its license expired. Faith filed its Response on March 26, 2007.

In its Response, Faith acknowledges that it did not properly tender the requisite filing fee with its June 30th submission and “did not tender its application filing fee until July 21, 2003, three weeks later. . . .”⁸ Faith states, however that it “believed that, so long as the filing fee was filed by August 1, 2003, the renewal deadline, its renewal application would be timely filed.”⁹ Faith further notes that “the Commission kept the filing fee, leaving Faith with the impression that all was well. This was reasonable because Faith was acting *pro se*.”¹⁰ Faith states that upon receipt of the March 2004 *Staff Letter*, it contacted its counsel and filed the Application and STA Request.¹¹

Faith avers that the proposed forfeiture is improper and excessive because (1) its conduct does not meet the statutory standard for forfeiture,¹² and (2) the forfeiture amount would impose a financial hardship.¹³

Discussion. We have reviewed the record in this case and the Commission’s CDBS database, and we find that Faith did in fact tender a license renewal application for the Station on June 30, 2003, but failed to timely pay the requisite filing fee. We further note that Faith acknowledged its error in the STA Request and refiled its renewal application prior to any Commission action on its license renewal application.¹⁴ For the reasons set forth below, we will cancel the *NAL* and impose a 25% penalty as provided in Section 1.1118 of the Rules.

⁵ Response at 2.

⁶ File No. BLSTA-20040308AEA (“STA Request”).

⁷ File No. 20040910ABF. The staff dismissed the STA extension request as moot when it granted the Station’s license renewal application.

⁸ Response at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2. *See also* File No. BLSTA-20040308AEA.

¹² *Id.* at 3-4.

¹³ *Id.* at 5.

¹⁴ Faith recognized its original application was not properly filed and refiled its renewal application with the appropriate filing fee and an explanation about its error prior to any action against its license. *Cf. MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688 (MB 2009) (licensee required to pay forfeiture when it files application without fee and later re-files, but only provides an explanation of its initial filing error in response to an *NAL*).

Under Section 1.1118(a) of the Rules,¹⁵ if the defective fee is discovered within 30 days of filing, the application is dismissed and can be refiled with a new filing date. If the defective fee is discovered after 30 days have passed and the application has not been “forwarded to Commission staff for substantive review,” pursuant to Section 1.1118(b) of the Rules,¹⁶ a filer is billed the fee amount due plus a 25 percent penalty. Under current electronic application filing procedures, Faith’s June 30, 2003, submission was never “forwarded to Commission staff for substantive review” because it did not contain the requisite filing fee. Because the Rules provide that the Commission’s recourse, once 30 days have elapsed from the date an application is submitted with no fee, is to bill the applicant retroactively and impose the 25 percent penalty,¹⁷ we will do so here. As Faith has already paid the renewal fee, it will presently only be required to pay the 25 percent penalty. In light of this disposition, we need not address Faith’s remaining arguments.

Conclusion/ Action. In view of the foregoing, Faith Enterprises, Inc.’s March 26, 2007, Response to our February 22, 2007, NAL in the amount of \$7,000 IS GRANTED, and the Notice of Apparent Liability (NAL/Acct. No. MB-2006414140110) for violation of Section 73.3539 of the Commission’s Rules and Section 301 of the Communications Act of 1934, as amended, is HEREBY CANCELLED. Pursuant to Section 1.1118(b) of the Rules, Faith Enterprises, Inc. will be assessed a penalty charge equal to 25 percent of the filing fee. Therefore, Faith Enterprises, Inc. will be billed a total of \$37.50 under separate cover.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Faith Enterprises, Inc.

¹⁵ 47 C.F.R § 1.1118(a).

¹⁶ 47 C.F.R § 1.1118(b).

¹⁷ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 957, Supplemental Order, 2 FCC Rcd 1882 (1987), *recon. granted in part*, 3 FCC Rcd 5987 (1988), *aff’d sub nom. Brown v. FCC*, 888 F.2d 898 (D.C. Cir. 1989) (“On further review, we believe that a clearer demarcation point is necessary to avoid industry confusion and uncertainty as to the consequences of an insufficient fee payment. Generally, when applications are received, tracking information is put into a data base. Although some bureaus and offices may enter data faster than others [sic], the process generally takes approximately 30 days. During this same 30 day period we will expect bureau and office staff to take a second review of the fee and enter identifying codes into the fee system. Thus, this timeframe allows the Commission to complete its initial review of fees and return unprocessable applications before authorizations are granted. Therefore, fee underpayments identified by Commission staff in 30 calendar days or less from the time of receipt of the application at the Commission or Treasury lockbox bank will result in dismissal of the application and its return to the applicant. . . . Underpayments identified after this time will result in a bill to the applicant that includes a penalty charge of 25 percent of the amount due.”). See also *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25 percent penalty).