

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

In re Application of)
)
Crawford County Community Radio, Inc.) Facility I.D. No. 76439
) NAL/Acct. No. MB-2010
For Renewal of License for) FRN: 0015175128
Station DDWBRO(FM)) File No. BRED-20060615ABF
Marengo, Indiana)

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

Adopted: November 29, 2010

Released: November 30, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau has before it the captioned application of Crawford County Community Radio, Inc. (the “Licensee”), for renewal of its license for Station DDWBRO(FM), Marengo, Indiana (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”),¹ by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully violated Section 73.3539 of the Rules,³ by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act,⁴ 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 thirteen thousand dollars (\$13,000), and we grant the captioned DDWBRO(FM) renewal application, and reinstate the Station’s call sign.

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 DDWBRO(FM)’s license should have been filed by April 1, 2004, four months prior to the Station’s, license expiration date August 1, 2004,⁶ but was not. Accordingly, on June 8, 2006, the staff wrote to the Licensee indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and

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.

⁵ 47 C.F.R. § 73.3539(a).

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

(2) the Station's call letters were deleted from the Commission's database. The Licensee was advised that any further operation of the Station was unauthorized and must cease immediately.⁷ Upon receipt of the letter, on June 15, 2006, the Licensee filed a license renewal application.⁸ On that same date, the Licensee also filed a petition for reconsideration of the canceled license and a request for special temporary authority ("STA") to continue Station operations pending consideration of the untimely renewal application.⁹ The staff granted the STA Request on June 28, 2006, and it expired on December 28, 2006.¹⁰ The Licensee did not file for extension of the STA. In the STA Request, the Licensee stated that it failed to file a renewal application because its founder and Chief Executive Officer, Dr. Herbert E. Smith, encountered repeated "server error" when he attempted to file on July 6, 2004.¹¹ Dr. Smith subsequently took ill and died without informing anyone of the status of the Station's renewal application.¹²

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee has failed to file a timely license renewal application for Station DDWBRO(FM), as required by Section 73.3539(a) of the Rules. Moreover, it continued operating the Station for almost two years after the license expired on August 1, 2004, before filing its renewal application and STA Request, in violation of Section 301 of the Act. In addition, the Licensee has apparently continued to operate the Station since its STA expired on December 28, 2006, without seeking extension of the STA, also in violation of Section 301 of the Act. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization.¹³ Here, the Licensee did not do so.

4. 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 failed willfully or repeatedly 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.¹⁴ 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.¹⁵ 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,¹⁶ and the Commission has so interpreted the term in the Section 503(b) context.¹⁷ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with

⁷ Letter to Crawford County Community Radio, Inc., Ref. 1800B3 (Chief, Audio Division, Media Bureau, June 8, 2006).

⁸ File No. BRED-20060615ABF.

⁹ See File No. BLSTA-20060619ACO (the "STA Request").

¹⁰ Letter to Mr. Shawn E. Scott, 1800B3 (Chief, Audio Division, Media Bureau, June 28, 2006).

¹¹ See STA Request at 1.

¹² Id. at 2.

¹³ See, e.g., Hemmingford Media, Inc., Forfeiture Order, 14 FCC Rcd 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)).

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

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁷ See Southern California Broadcasting Co., Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

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.”¹⁸

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

6. In this case, the Licensee failed to file a timely license renewal application for the Station, and continued operating the Station for 22 months after the license expired on August 1, 2004, before filing the appropriate renewal application and seeking STA to continue to operate. Further, Licensee has apparently continued to operate the station without authority since its STA expired on December 28, 2006. Taking into consideration these facts, the fact that the renewal application was not filed prior to expiration of the Station’s license, and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to file a timely renewal application, and for the full \$10,000 amount for the Licensee’s extended periods of unauthorized operation of the Station.²² Thus, we propose forfeiture in the total amount of \$13,000.

7. *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

8. We find that the Licensee’s violation 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

¹⁸ 47 U.S.C. § 312(f)(2).

¹⁹ 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.

²⁰ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

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 See *Application of James Rouse*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 5602 (MB 2008)(proposing a \$13,000 forfeiture for untimely filing of renewal application and extended periods of unauthorized operation).

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) 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).

find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁶ Further, we find that Station DDWBRO(FM) served the public interest, convenience, and necessity during the 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 Crawford Community Radio, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful violation of Section 73.3539 of the Commission's Rules and its apparent willful and repeated violation of Section 301 of the Communications Act.

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*, Crawford County Community Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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). Licensee will also send electronic notification on the date said payment is made to Victoria.McCauley@fcc.gov and Kelly.Donohue@fcc.gov.

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. 20554.²⁷

²⁶For 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 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." *Id.* at 200. Compare *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).

15. IT IS FURTHER ORDERED, that the June 19, 2006, Petition for Reconsideration IS GRANTED.

16. IT IS FURTHER ORDERED, that the call sign WBRO(FM) IS REINSTATED.

17. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Crawford County Community Radio, Inc. for Station DDWBRO(FM), Marengo, Indiana (File No. BRH-20060615ABF) IS GRANTED.

18. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Mr. Shawn Scott, Crawford County Community Radio, Inc., 1130 State Highway 66, P.O. Box 181, Marengo, Indiana 47140.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁷ See 47 C.F.R. § 1.1914.