

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

In the Matter of	)	
	)	Facility ID No. 65389
<b>The Alamo Navajo School Board, Inc.</b>	)	NAL/Acct. No. MB-200741410450
	)	FRN: 0010004588
Licensee of KABR(AM)	)	File No. BR-20060112AAI
Isleta, New Mexico	)	

**FORFEITURE ORDER**

**Adopted: December 06, 2010**

**Released: December 07, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600) to The Alamo Navajo School Board, Inc. (“Licensee”), licensee of KABR(AM), Isleta, New Mexico (“Station”),<sup>1</sup> for its willful violation of Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station,<sup>2</sup> and its willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>3</sup>

**II. BACKGROUND**

2. On February 13, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Licensee for these violations.<sup>4</sup> As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on June 1, 2005, four months prior to the October 1, 2005, expiration date.<sup>5</sup> Licensee did not file the application until January 12, 2006, over three months after the Station’s license had expired, and provided no explanation for the untimely filing of the renewal application.<sup>6</sup> Licensee submitted a response (“Response”) to the NAL on January 11, 2008. On November 22, 2010, Licensee filed a separate Supplement to Response to Notice

<sup>1</sup> The Station’s community of license was changed to Isleta, New Mexico from Alamo Community, New Mexico in 2010. See File No. BP-20100222ADO (granted Sept. 3, 2010).

<sup>2</sup> 47 C.F.R. § 73.3539.

<sup>3</sup> 42 U.S.C. § 301.

<sup>4</sup> *The Alamo Navajo School Board, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21481 (MB 2007). The Commission granted the license renewal application on December 12, 2007.

<sup>5</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>6</sup> On February 8, 2006, Licensee filed a request for special temporary authority (“STA”) to continue operations pending consideration of the untimely renewal application. The staff granted the STA on February 10, 2006. *Letter to Earl Apachito*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Feb. 10, 2006). On August 1, 2006, Licensee filed a timely request for extension of the STA. The staff dismissed the request as moot on December 12, 2007, when the renewal application was granted.

of Apparent Liability (“Supplement”) attaching financial information to support its claim of financial hardship.

3. In its Response, Licensee asserts that the proposed forfeiture should be cancelled because: (1) payment of the proposed forfeiture would cause it financial hardship due to its limited financial resources, (2) it made a good faith effort to comply with the Rules in a timely manner, and (3) it has a history of overall compliance with the Rules.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>9</sup> 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.<sup>10</sup>

5. We turn first to Licensee’s claim of financial hardship. The Commission will not consider reducing or cancelling a proposed forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the licensee’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.<sup>11</sup> In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.<sup>12</sup> If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.<sup>13</sup>

6. Here, Licensee has provided the Station’s 2009 Financial Summary Report, prepared by the Corporation for Public Broadcasting, which details the Station’s expenses and revenues for 2009.<sup>14</sup> We have consistently held that a *station’s* financial information is an insufficient basis upon which to evaluate a *licensee’s* ability to pay.<sup>15</sup> Licensee has provided no documentation detailing its own finances. The Response and Supplement contain various unsupported bits of demographic information that provide, at best, indirect clues as to Licensee’s general financial standing, but in no way provide any meaningful

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<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> *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).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> *See, e.g., CARE Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 1411, 1413 (MB 2010) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship); *Discussion Radio, Inc.*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (same).

<sup>12</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992).

<sup>13</sup> *See id.* (forfeiture not deemed excessive where it represented 2.02 percent of violator’s gross revenues).

<sup>14</sup> Supplement Ex. A.

<sup>15</sup> *See, e.g., Manchester College*, Forfeiture Order, 25 FCC Rcd 3638 (MB 2010) (rejecting licensee’s financial hardship argument because one-page summary of station’s budget and no information about licensee’s finances was an insufficient basis upon which to evaluate licensee’s ability to pay); *College of the Holy Cross*, Forfeiture Order, 24 FCC Rcd 5508, 5510 (MB 2009) (same).

indication of Licensee's available resources. These unsubstantiated and unrelated factual assertions clearly fail to meet the standard of "other reliable and objective documentation" sufficient to establish Licensee's financial status.<sup>16</sup> Accordingly, in the absence of sufficient information to support a finding of Licensee's inability to pay the proposed forfeiture, we decline to cancel or reduce the forfeiture on the basis of financial hardship.

7. Licensee also contends that the proposed forfeiture should be reduced or canceled because of its good faith efforts to comply with the Rules in a timely manner and because its failure to properly file the renewal application was inadvertent.<sup>17</sup> Specifically, Licensee alleges that it believed it had correctly filed its renewal application on June 13, 2005, although it does not admit when it became aware of its failure to file.<sup>18</sup> It alleges only that its staff was "simply daunted and confused by the arcane requirements" of the electronic filing system,<sup>19</sup> and argues that, because of its staff's lack of familiarity with the Commission's electronic filing procedures, it mistakenly believed that it had electronically filed the renewal application before the expiration of the license.<sup>20</sup> The Commission has held, however, that violations resulting from inadvertent error or failure to become familiar with the Commission's requirements are willful violations.<sup>21</sup> Moreover, the Media Bureau has specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.<sup>22</sup> Accordingly, we find Licensee's argument is meritless.

8. Finally, Licensee notes that it has a history of overall compliance with the Rules. Commission records confirm this, and we will reduce the forfeiture on this basis from \$7,000 to \$5,600.<sup>23</sup>

9. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>24</sup>

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<sup>16</sup> See, e.g., *Friends of Christian Radio*, Forfeiture Order, 25 FCC Rcd 2580 (MB 2010) (holding that notarized copies of handwritten account book reflecting "[r]eceipts and [d]isbursements" was an insufficient basis upon which to evaluate licensee's ability to pay); *Washington and Lee University*, Forfeiture Order, 23 FCC Rcd 15821, 15825 (MB 2008) (holding that one-page statement of operating budget and separate listing of general manager salaries was an insufficient basis upon which to evaluate licensee's ability to pay).

<sup>17</sup> Response at 3.

<sup>18</sup> Our records reveal that Licensee initiated its online renewal application on June 13, 2005, but did not actually file the application until January 12, 2006.

<sup>19</sup> Response at 4.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> See *Ritenour Consol. School Dist.*, Forfeiture Order, 25 FCC Rcd 3266, 3267 (MB 2010) (rejecting licensee's good faith argument where station manager had misinterpreted the meaning of "pending" in CDDBS).

<sup>22</sup> See, e.g., *University of Southern Mississippi*, Forfeiture Order, 2010 WL 3632177 (MB 2010) (declining to reduce forfeiture amount based on mistaken belief that "validating" renewal application constituted completion); *Bible Broadcast Church School*, Forfeiture Order, 25 FCC Rcd 1978 (MB 2010) (declining to reduce forfeiture amount based on failure to press the "File Form" button).

<sup>23</sup> See, e.g., *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (MB 2009) (reducing forfeiture amount based on licensee's history of compliance); *Wayne State College*, Forfeiture Order, 24 FCC Rcd 2484, 2486 (MB 2009) (same); *Christian Center, Inc.*, Forfeiture Order, 24 FCC Rcd 1128, 1129 (MB 2009) (same); *John Brown University*, Forfeiture Order, 24 FCC Rcd 1536, 1537 (MB 2009) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

<sup>24</sup> 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-

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violated Section 73.3539 of the Rules and willfully and repeatedly<sup>25</sup> violated Section 301 of the Act. However, given Licensee's history of overall compliance with the Rules, we reduce the forfeiture amount to \$5,600.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>26</sup> that The Alamo Navajo School Board, Inc. SHALL FORFEIT to the United States the sum of five thousand, six hundred dollars (\$5,600) for willfully violating Section 73.3539 of the Commission's Rules and willfully and repeatedly violating Section 301 of the Act.

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.<sup>27</sup> 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. 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).<sup>28</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Joshua.Parker@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>29</sup>

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765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4387-88 (1991).

<sup>25</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>26</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>27</sup> 47 U.S.C. § 504(a).

<sup>28</sup> *See* 47 C.F.R. § 1.1914.

<sup>29</sup> *Id.*

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Sarah Apache, Alamo Navajo School Board, Inc., P.O. Box 907, Magdalena, NM 87825, and to counsel for Licensee, Barry D. Wood, Esq. and Nathaniel J. Hardy, Esq., Wood, Maines & Nolan, PC, 4600 Fairfax Drive, Suite 604, Arlington, VA 22203.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau