



Federal Communications Commission
Washington, D.C. 20554

October 7, 2008

DA 08-2244

In Reply Refer to:

1800B3-JWR

NAL/Acct No.: MB20051810029

FRN: 0006362651

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Peter Gutmann, Esq.
Womble, Carlyle, Sandridge & Rice, PLLC
1401 I Street, NW
Washington, DC 20005

In re: WBLT(AM), Bedford, VA
 WBLT, Inc.
 Facility ID: 4534
 File No. BR-20031211AAV

Dear Mr. Gutmann:

The Chief, Audio Division, has before him the April 13, 2005, letter filed on behalf of WBLT, Inc. (“WBLT”), former licensee of Station WBLT(AM), Bedford, Virginia (the “Station”).¹ The Response requests the cancellation or substantial reduction of a March 16, 2005, Notice of Apparent Liability for a Forfeiture (“NAL”)² in the amount of six thousand dollars (\$6,000) for violation of Section 73.3539 of the Commission's Rules (the “Rules”) and Section 301 of the Communications Act of 1934, as amended (the “Act”).³ The violations involve WBLT's failure to timely file a license renewal application for the Station and its unauthorized operation of WBLT(AM) after its license for the Station had expired. By this action, we cancel the *NAL* and admonish WBLT for filing the renewal application in paper format without demonstrating good cause.⁴

Background. As noted in the *NAL*, WBLT's renewal application for the current WBLT(AM) license term was due on June 1, 2003, four months prior to the October 1, 2003, license expiration date.² According to Commission records, no such application was filed, and the station's license expired on October 1, 2003. Subsequently, on December 3, 2003, the staff wrote to WBLT 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

¹ Response to Notice of Apparent Liability for Forfeiture, filed by WBLT, Inc. on April 13, 2005 (“Response”).

² See *Letter to Peter Gutmann Esq. from Peter Doyle, Chief, Audio Division*, reference 1800B3 (March 16, 2005).

³ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

⁴ WBLT, Inc. acquired the Station in April of 2002. See File No. BAL-20020225AAX, granted on April 12, 2002. An application to assign WBLT(AM)'s license to 3 Daughters Media, Inc. was granted on September 19, 2005. See File No. BAL-20050721ABJ.

deleted from the Commission's data base.³ Upon receipt of this letter, WBLT contacted communications counsel and properly tendered the subject license renewal application for WBLT(AM), a request for special temporary authorization ("STA") to continue operation pending consideration of the license renewal application, and one day later, a Petition for Reconsideration of the December 3 letter terminating WBLT's operating authority and deleting the call sign.⁴ The staff granted the STA request on December 16, 2004.

In its Response, WBLT states that the untimely filing of the subject application is not a situation in which it ignored or neglected its renewal obligation. Referencing the explanation in its December 11, 2003, STA request, WBLT states that it made a good-faith effort to file its renewal application on a timely basis. Specifically, WBLT states that it filed the subject application in paper form on May 27, 2003, five days prior to the due date, together with the filing fee and FCC Form 159.⁵ WBLT states that the items were sent to the Commission's lockbox in Pittsburgh, Pennsylvania. WBLT states that its bank statement subsequently showed that its check was deposited by the Commission on June 13, thus it assumed that its renewal application had been accepted and would be processed routinely. In early December 2003, WBLT states that it became aware that the Commission's database showed no record of the renewal application, and further showed that its license had expired. "At that point," WBLT states, it contacted communications counsel, who prepared and electronically filed both the renewal application and an STA request. WBLT states, among other things, that WBLT(AM) is the only AM station, and one of only two stations licensed to Bedford, Virginia, and that it serves a small community in competition with an FM station licensed to Cumulus. WBLT maintains that "in all candor," it is not fair to impose the same magnitude of forfeiture upon its "small, marginal operation" as would be imposed upon a profitable, major market broadcast facility. WBLT states that it does not claim an inability to pay the proposed forfeiture, but that it would impose a "disproportionately heavy burden" upon its operations.

Discussion. Section 73.3539 of the Rules requires a broadcast licensee to file its license renewal application four months before the license expiration date. Moreover, Section 301 of the Act requires any person operating apparatus for the transmission of communications by radio to obtain a license under the provisions of the Act. It is undisputed that, not only was WBLT's renewal application untimely, it was filed 10 weeks after WBLT(AM)'s license had expired. Despite WBLT's assertion that it neither "ignored nor neglected its renewal obligation," we find that its violation of Section 73.3539 of the Rules was willful⁶ and repeated.⁷

As noted in the *NAL*, the proposed forfeiture amount in this case was determined in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy*

⁵ In WBLT's STA request and the petition for reconsideration, WBLT states that it attempted to timely file the WBLT(AM) license renewal application in paper form. *See NAL*, n.4. In the Response, WBLT also indicates that it erroneously tendered a check with the WBLT(AM) renewal application in the amount of \$325.00, more than twice the \$150.00 application fee required of license renewal applicants at the time. *See* 47 C.F.R. § 1.1104 (2003).

⁶ For purposes of Section 503(b) of the Act, 47 U.S.C. § 503(b), the term "willful" means the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.

⁷ 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*, Memorandum Opinion and Order, 6 FCC Rcd 4387-4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (applying this definition of repeated to Sections 312 and 503(b) of the Act).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

*Statement.*¹⁰ In considering WBLT's response, Section 503(b) of the Act requires that the Bureau 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 other such matters as justice may require.¹¹ Given the close proximity of the date established for mandatory electronic filing of license renewal application (March 21, 2003) and the due date for Virginia license renewal applications (June 1, 2003), we believe that favorable action on WBLT's Response is warranted.

We cannot completely excuse WBLT's failure to file its license renewal application properly, however. WBLT filed its renewal application in paper format rather than electronically, as required.¹² Licensees are responsible for knowing and observing the rules affecting their activities, including the timely submission of required forms.¹³ Untimely or improperly filed renewal applications disrupt the orderly processing of renewal applications in accordance with the staggered filing set forth in Section 73.1020 of the Rules.¹⁴ Because it appears that its license renewal application for the Station was improperly filed in paper form, and WBLT does not provide any showing of good cause for its failure to file electronically, we will admonish WBLT for its failure properly to file its license renewal application for WBLT(AM).

Conclusion/Actions. In view of the foregoing, WBLT, Inc.'s April 13, 2005, response to our March 16, 2005, *NAL* in the amount of \$6,000 IS GRANTED, and the Notice of Apparent Liability (MB-200531810029) for violation of Sections 73.3539 of the Rules and 301 of the Act is HEREBY CANCELLED. WBLT, Inc. is instead hereby ADMONISHED for filing the renewal application in paper format without demonstrating good cause.¹⁵

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc : WBLT, Inc.

¹⁰ See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (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.

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² See *New FCC Form 303-S Available for Use*, Public Notice, 18 FCC Rcd 5088 (MB Mar. 21, 2003); see also Instructions for FCC 303-S (*"Application for Renewal of Broadcast Station License"*).

¹³ See, e.g. *Rego, Inc.*, Forfeiture Order, 16 FCC Rcd 16795, 16797 (EB 2001).

¹⁴ 47 C.F.R. § 731020.

¹⁵ See, e.g., *American Family Association*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (EB 2003) (*NAL* cancelled and licensee admonished based on response to *NAL*).