

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

In the Matter of)	
)	Facility ID No. 468
BISIBLUE, L.L.C.)	NAL/Acct. No. MB-200741410409
)	FRN: 0009828039
Former Licensee of WIPS(AM))	File No. BR-20060530AJN
Ticonderoga, New York)	

FORFEITURE ORDER

Adopted: April 27, 2012

Released: April 30, 2012

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of one thousand two hundred dollars (\$1,200) to Bisiblu, L.L.C. ("Licensee"), former licensee¹ of Station WIPS(AM), Ticonderoga, New York ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file a license renewal application for the Station.²

II. BACKGROUND

2. On November 7, 2007, the Media Bureau ("Bureau") issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a forfeiture amount of one thousand five hundred dollars (\$1,500) to Licensee for this violation.³ As noted in the NAL, Licensee's renewal application for the Station's license term was due on February 1, 2006, four months prior to the June 1, 2006, expiration date.⁴ Licensee did not file the application until May 30, 2006, and provided no explanation for the untimely filing of the renewal application. Licensee submitted a Petition for Reduction or Cancellation ("Response") to the NAL on November 27, 2007.

3. In its Response, Licensee asserts that the proposed forfeiture should be cancelled because: (1) its failure to timely file its renewal application was inadvertent, (2) imposition of a forfeiture is barred by the statute of limitations, and (3) Licensee has a history of compliance with the Rules.

¹ Licensee submitted a letter asking to cancel its license on August 4, 2011. The Bureau cancelled the license and updated its CDBS database to reflect the cancellation and to identify the Station accordingly as DWIPS. Despite this cancellation, Licensee remains liable for forfeiture for those violations occurring when the Station was under its stewardship. See, e.g., *Oberlin College Student Network, Inc.*, Forfeiture Order, 25 FCC Rcd 8240, 8243 n.3 (2010) (former licensee of station liable for violations occurring prior to its assignment of the station's license).

² 47 C.F.R. § 73.3539.

³ *Bisiblu, L.L.C.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 19245 (MB 2007). The Commission granted the license renewal application on November 7, 2007.

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a).

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ 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.⁸

5. Licensee does not dispute that it failed to timely file a renewal application for the Station, but explains that the violation was not "willful." Licensee states that prior to the renewal filing period, its counsel had agreed to file the renewal application on its behalf, but, because of inadvertence, failed to do so.⁹ Upon discovering the omission, counsel immediately filed the renewal application.

6. As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁰ Moreover, the Commission has long held generally that "licensees are responsible for the acts and omissions of their employees and independent contractors,"¹¹ and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."¹² It has also specifically held that an alleged failure on the part of an applicant's counsel is not the basis on which the Commission would ordinarily grant relief.¹³

7. Licensee next argues that the imposition of a forfeiture is barred by the statute of limitations because the *NAL* was issued on November 9, 2007, more than a year after the violation ended on May 30, 2006.¹⁴ We disagree. Section 503(b)(6) of the Act states that "no Forfeiture penalty shall be determined or imposed against any person ... if the violation charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; **or** (ii) prior to the date of commencement

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ Response at 1.

¹⁰ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹¹ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoort Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

¹² See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹³ See *Crystal Broadcast Partners*, Memorandum Opinion and Order, 11 FCC Rcd 4680, 81 (1996) (denying petition to accept late-filed application for review where delay in filing was caused by counsel's inaction).

¹⁴ Response at 2, citing 47 U.S.C. § 503(b)(6).

of the Station's current license term, **whichever is earlier.**"¹⁵ Here, the grant of the renewal application and the issuance of the *NAL* occurred concurrently. Because the Bureau took these two actions simultaneously, there was no intervening renewal which would have triggered the restricting provisions of the statute of limitations and prevented us from considering Licensee's conduct during the license term under review.¹⁶

8. Licensee next notes that it has had an unblemished record of compliance with the Rules. Commission records confirm this, and thus we will reduce the forfeiture on this basis from \$1,500 to \$1,200.¹⁷

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 willfully¹⁸ violated Section 73.3539 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$1,200.

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,¹⁹ that Bisiblu, L.L.C. SHALL FORFEIT to the United States the sum of one thousand two hundred dollars (\$1,200) for willfully violating Section 73.3539 of the Commission's Rules.

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.²⁰ 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

¹⁵ 47 U.S.C. § 503(b)(6) (2006) (emphasis added).

¹⁶ *Emmis Broadcasting Corporation of Boston*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 8541, 8543 (1996).

¹⁷ 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.

¹⁸ 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. 97-765, 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).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²⁰ 47 U.S.C. § 504(a).

code).²¹ Licensee will also send electronic notification on the date said payment is made to Kelly. Donohue@fcc.gov and Alexander.Sanjenis@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, DC 20554.²²

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, and by First-Class Mail to, Bisiblu, L.L.C., P. O. Box 275, Crown Point, NY 12928, and to its counsel, George L. Lyon, Jr., Esq., Lucas, Nace, Gutierrez & Sachs, Chartered, 1650 Tyson's Blvd., Ste. 1500, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ See 47 C.F.R. § 1.1914.

²² *Id.*