

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

In the Matter of	)	
	)	NAL/Acct. No. MB20051810005,
	)	MB20051810006
<b>Jason Communications, Inc.</b>	)	FRN: 0005014584
	)	Facility ID Nos. 69803, 69804
Licensee of Station WDOWN(AM), Dowagiac, MI and Station WHPD-FM, Dowagiac, MI	)	File No. BR-20040826ADJ, BRH- 20040826ADU

**FORFEITURE ORDER**

**Adopted: November 10, 2008**

**Released: November 12, 2008**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of three thousand dollars (\$3,000) to Jason Communications, Inc. (“Jason”),<sup>1</sup> licensee of Station WDOWN(AM), Dowagiac, Michigan (“WDOWN”) and Station WHPD-FM, Dowagiac, Michigan (“WHPD”)<sup>2</sup> for willful and repeated violation of Section 73.3539 of the Commission’s Rules (“Rules”)<sup>3</sup> by failing to timely file a license renewal application for the station.

**II. BACKGROUND**

2. On February 14, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of three thousand (\$3,000) to Jason for this violation.<sup>4</sup> Jason filed a Request for Cancellation or Reduction of Proposed Forfeiture (“Request”) on March 10, 2005.

3. As noted in the NAL, Jason’s renewal applications for the current WDOWN and WHPD license terms were due on June 1, 2004, four months prior to the October 1, 2004 expiration date.<sup>5</sup> Jason did not file the applications until August 26, 2004. On February 14, 2005, the staff advised Jason of its apparent liability for a forfeiture of \$3,000 for willfully and repeatedly violating Section 73.3539 of the Rules, based on the fact that Jason failed to timely file the WDOWN and WHPD renewal applications.<sup>6</sup>

<sup>1</sup> On February 14, 2005, Jason’s license for WDOWN was assigned to Langsford Broadcasting, LLC (“Langsford”) and the license for WHPD was assigned to Lesea Broadcasting Corporation (“Lesea”). See BAL-20041207ABO and BALH-20041207ABP, respectively.

<sup>2</sup> Effective September 28, 2006, Station WDOWN-FM’s call sign was changed to WHPD-FM.

<sup>3</sup> 47 C.F.R. § 73.3539.

<sup>4</sup> Letter to James A. Koerner, Esq. from Peter H. Doyle, Chief, Audio Division, reference 1800B3 (MB Aug. 4, 2004).

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

<sup>6</sup> The Commission granted the captioned license renewal applications on February 14, 2005.

4. In its Request, Jason seeks reduction or cancellation of the forfeiture. To support its Request, Jason admits that its renewal applications were due by June 1, 2004, but argues that its owner, Joseph Urbanski, made a good faith attempt to file its renewal applications before August 26, 2004, the date referenced in the NAL.<sup>7</sup> Jason indicates that Mr. Urbanski first attempted to file the renewal application on June 14, 2004, but was unable to log in into the Commission's CDBS electronic filing system. Jason further states that Mr. Urbanski believed that he had completed the application process on June 22, 2004, but the completed application never appeared in the Commission's database.<sup>8</sup> The error was later realized by the proposed assignee of the licenses and brought to Jason's attention, after which Jason, on August 26, 2004, correctly filed its renewal applications.<sup>9</sup>

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>10</sup> Section 1.80 of the Rules,<sup>11</sup> and the Commission's *Forfeiture Policy Statement*.<sup>12</sup> In examining Jason's Request, Section 503(b)(2)(D) 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 other such matters as justice may require.<sup>13</sup>

6. Jason does not dispute that it failed to file a timely renewal application for the Station, but argues that the violation should be reduced because it attempted to file the renewal earlier than the date stated in the NAL and that its attempts to renew were twice frustrated by technical issues. Jason argues that the forfeiture should be reduced based upon its "completely reasonable belief" that the WDW and WHPD renewal applications were filed as of June 22, 2004. However, Jason's first instance of purported technical problems occurred two weeks *after* the deadline for filing the applications had passed and the second instance a full three weeks after the deadline. Jason has made no showing of any effort to file the WDW and WHPD renewal applications *prior* to the filing deadline. Our precedent only supports reductions for good faith efforts at compliance made before the filing deadline.<sup>14</sup> We therefore find that Jason's unsuccessful attempts to file the renewal applications after the renewal deadline do not warrant any reduction in the forfeiture amount.

7. Jason further argues that the forfeiture should be reduced or cancelled because of its history of overall compliance with the Rules. We disagree. At the time of the violations, Jason was the licensee of two stations and failed to file a timely license renewal application for either of these stations.

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<sup>7</sup> Request at 1.

<sup>8</sup> Id. at 2.

<sup>9</sup> The staff has since determined that although Jason did file the renewal applications on June 22, 2004, it failed to pay the correct filing fees and its application was held in a "Ready" state and never accepted for filing and proceeding.

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 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.

<sup>13</sup> 47 U.S.C. C503(b)(2)(D).

<sup>14</sup> See, e.g., *Matter of Praise Communications, Inc.*, Forfeiture Order, 23 FCC Rcd 9139 (MB 2008) (reducing forfeiture amount where the licensee had made two "good faith" attempts to file a renewal application for the Station in a timely manner).

Moreover, both applications were at least three weeks late. We therefore find that Jason's history of compliance does not warrant reduction of the forfeiture amount.<sup>15</sup>

8. We have considered Jason's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Jason willfully<sup>16</sup> and repeatedly<sup>17</sup> violated Section 73.3539 of the Rules and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.

#### IV. ORDERING CLAUSES

9. 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>18</sup> that Jason Communications, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of three thousand dollars (\$3,000) for willfully and repeatedly violating Section 73.3539 of the Rules.

10. 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).<sup>19</sup>

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<sup>15</sup> *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006), *application for review granted in part, denied in part, Paulino Bernal Evangelism*, Order on Review, FCC 08-252 (rel. Oct. 28, 2008) (in determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations.),

<sup>16</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. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

<sup>17</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>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>19</sup> *See* 47 C.F.R. § 1.1914.

11. 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 Jason Communications, Inc., 26914 Marcellus Highway, P.O. Box 150, Dowagiac, MI 49047 and to its counsel, James A. Koerner, Esq., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau