

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

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| In the Matter of |) | |
| |) | |
| Berkshire |) | File No. EB-00-TS-026 |
| Communicators, Inc. |) | |
| |) | |
| Licensee of Stations KCA237, KNKC731 and |) | NAL/Acct. No. X20EF0002 |
| KNKC816 |) | |
| |) | |
| Pittsfield, Massachusetts |) | |

FORFEITURE ORDER

Adopted: September 15, 2000

Released: September 19, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of four thousand five hundred dollars (\$4,500) against Berkshire Communicators, Inc. (“Berkshire”), for willful violation of Section 1.949 of the Commission’s Rules (“Rules”).¹ The noted violation involved Berkshire’s failure to file license renewal applications for Stations KCA237, KNKC731, and KNKC816 prior to the expiration of the authorizations for the stations.

2. On November 5, 1999, the Chief of the former Enforcement and Consumer Information Division of the Wireless Telecommunications Bureau (“Wireless Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of four thousand five hundred dollars (\$4,500) to Berkshire for the noted violation.² Berkshire filed a response to the NAL on November 29, 1999.

II. BACKGROUND

3. Berkshire’s authorizations for Stations KCA237, KNKC731, and KNKC816 expired on April 1, 1999. Berkshire did not file applications for renewal of the authorizations until June 24, 1999. On September 9, 1999, the Wireless Bureau granted the late-filed renewal applications.

4. On November 5, 1999, the Wireless Bureau, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Rules,³ issued an NAL in the amount of \$4,500 to Berkshire for the late filing of its license renewal applications.

¹ 47 C.F.R. § 1.949.

² Berkshire Communicators, Inc., 15 FCC Rcd 8428 (WTB 1999).

³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

5. On November 29, 1999, Berkshire filed a response with the Commission in which it requests cancellation of the forfeiture. Berkshire asserts that the forfeiture should be cancelled because, although the Commission stated that it would send renewal notices prior to license expiration, Berkshire received no such notices of the impending expirations.

III. DISCUSSION

6. Section 1.949 of the Rules states, in pertinent part, that “[a]pplications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought”⁴ We find that Berkshire violated Section 1.949 of the Rules by filing the renewal applications for Stations KCA237, KNKC731, and KNKC816 after the expiration of the authorizations.

7. Further, though the Commission stated in the *ULS Report and Order*⁵ that it would “provide all licensees with pre-expiration notification ninety days prior to the expiration of their licenses,”⁶ it also stated that “our decision to use this reminder letter as a convenience to licensees does not in any way absolve licensees from timely filing their renewal applications.”⁷ In the same document, the Commission further states:

Finally, the ULS notification procedure does not replace the license renewal provisions set forth in the Commission's rules. Accordingly, even if a licensee does not receive a renewal reminder notice, the licensee still must timely file its renewal application. Also, not receiving a renewal notice does not excuse the licensee's failure to seek a timely renewal.⁸

This language makes it clear that the notices were to be sent only as a convenience and were not meant to remove any responsibility from the licensee for timely filing its renewal applications. Therefore, we deny Berkshire's request for cancellation of the forfeiture.

8. Finally, Berkshire indicates that the forfeiture amount is 20 percent of its total income for the three frequencies for fiscal year 1999. By itself, this is not enough information to warrant mitigation. Although the Commission does consider inability to pay as a factor in assessing forfeitures, the information Berkshire has provided does not establish such a claim. Berkshire has not provided any documentation from which its financial condition can be assessed.⁹ Thus, we do not find any basis for mitigation on this ground.

⁴ 47 C.F.R. § 1.949.

⁵ *ULS Report and Order*, 13 FCC Rcd 21027 (1998), *recon. granted in part and denied in part*, 14 FCC Rcd 11476 (1999).

⁶ *Id.* at 21071.

⁷ *Id.* at 21071.

⁸ *Id.* at 21073 (footnote omitted).

⁹ Claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting principles for the most recent three-year period.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ Berkshire IS LIABLE FOR A MONETARY FORFEITURE in the amount of four thousand five hundred dollars (\$4,500) for violating Section 1.949 of the Rules by failing to file license renewal applications for Stations KCA237, KNKC731, and KNKC816 prior to the expiration of the authorizations for the stations.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,¹¹ within 30 days of the release of this 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.¹² Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. X20EF0002. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹³

11. **IT IS FURTHER ORDERED** that, a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Berkshire Communicators, Inc. in care of its counsel, Laura H. Phillips at Dow, Lohnes & Albertson, PLLC., 1200 New Hampshire Avenue, N.W., Suite 800, Washington, DC 20036-6802.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.