

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

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| <p>In the Matter of KNFL, Inc. Tremonton, Utah</p> |)))))) | File No. EB-99-DV-025 NAL/Acct. No. 915DV0003 |
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MEMORANDUM OPINION AND ORDER

Adopted: October 5, 2000

Released: October 10, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“Order”), we deny a petition for reconsideration filed on May 15, 2000, by KNFL, Inc. (“KNFL”), licensee of Station KNFL(FM), Tremonton, Utah. KNFL seeks reconsideration of a *Forfeiture Order*¹ which issued a monetary forfeiture against KNFL in the amount of \$16,000 for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).² The noted violation involves operation of a radio station without a license. For the reasons discussed below, we affirm the \$16,000 monetary forfeiture.

II. BACKGROUND

2. On October 21, 1998, the FCC’s Denver, Colorado, Field Office (“Denver Office”) received information indicating that an unauthorized FM translator station operating on frequency 105.1 MHz was rebroadcasting the signal of KNFL(FM), which is authorized to transmit on frequency 104.9 MHz. On the same day, an FCC agent from the Denver Office contacted KNFL(FM)’s general manager, Morgan Skinner, by telephone. Morgan Skinner admitted that the KNFL(FM) signal was being rebroadcast by an FM translator station operating on 105.1 MHz. In response to the agent’s request for further information about the translator station, Morgan Skinner sent the Denver Office a letter dated October 21, 1998. In that letter, Morgan Skinner admitted that “KNFL [Inc.] purchased the translator, antenna and coaxial cable and had it installed.” On November 12, 1998, an agent from the Denver Office informed Morgan Skinner by telephone that his letter contained no information establishing KNFL’s authority to operate an FM translator on 105.1 MHz, and warned him that he must cease operation of the FM translator station unless he provided evidence of an authorization. Morgan Skinner stated that he would contact his attorney and have the appropriate information faxed to the agent, but the agent never received any such information.

¹ *KNFL, Inc.*, 15 FCC Rcd 10286 (Enf. Bur. 2000).

² 47 U.S.C. § 301.

3. On March 16, 1999, agents from the Denver Office detected an FM translator station on 105.1 MHz in Logan, Utah, which was rebroadcasting the signal of KNFL(FM). The agents went to the main studio for KNFL(FM) in Logan, Utah, where Steve Skinner (Morgan Skinner's brother) was in charge of the station's operation. Steve Skinner admitted that KNFL was operating an FM translator station on 105.1 MHz. At the request of the agents, Steve Skinner terminated the FM translator's operation.

4. On July 2, 1999, the District Director of the Denver Office issued a *Notice of Apparent Liability* ("NAL") to KNFL in the amount of \$16,000 for the unauthorized operation of the FM translator station in repeated and willful violation of Section 301 of the Act.³ In its response to the NAL, KNFL admitted that it had operated an FM translator station in the Logan, Utah, area on 105.1 MHz without Commission authorization, but presented several arguments for cancellation or reduction of the proposed forfeiture. In the *Forfeiture Order*, we agreed with KNFL's argument that the base amount used for calculation of the proposed forfeiture should have been \$10,000 rather than \$11,000. However, we concluded that KNFL's egregious conduct in continuing to operate an unauthorized FM translator station after receiving a specific warning from the Commission fully justified increasing the forfeiture from the base amount of \$10,000 to \$16,000. In addition, we concluded (1) that it was irrelevant whether KNFL had requested an authorization to operate the FM translator since the mere filing of an application does not constitute authority to operate; (2) that it was irrelevant whether the FM translator's signal had extended beyond KNFL(FM)'s protected contour; (3) that KNFL's violation could not be considered "minor" in view of its extended duration and continuance after a warning; (4) that nothing in the record justified a reduction of the proposed forfeiture based on good faith or voluntary disclosure or a history of overall compliance; and (5) that we could not establish the reliability of the 1996, 1997 and 1998 financial statements submitted by KNFL in support of its inability to pay argument because the statements were unaudited and did not include a certification as to their correctness.

III. DISCUSSION

5. In its petition for reconsideration, KNFL argues that the \$16,000 forfeiture should be reduced due to its inability to pay. In support of this argument, KNFL provides tax returns for 1997 and 1998. Both the NAL and the *Forfeiture Order* informed KNFL that claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three-year period.⁴ See *Barry A. Stevenson*, 12 FCC Rcd 1976, 1977 (Compl. & Inf. Bur. 1997); *Morradios Inc.*, 14 FCC Rcd at 5201, 5203-04 (Compl. & Inf. Bur. 1999). KNFL did not provide a tax return or any other financial information for the most recent year, 1999. KNFL's 1998 tax return covers only the first three months of 1998.⁵ We are unable to accurately assess

³ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 915DV0003 (Compl. & Inf. Bur., Denver Office, released July 2, 1999).

⁴ NAL at note 3; *KNFL, Inc.*, 15 FCC Rcd at 10289.

⁵ KNFL states that its 1998 tax return covers only the first three months of 1998 because KNFL changed its status from an "S-Corporation" to a "C-Corporation" effective April 1, 1998. KNFL further states that it had requested an extension of time to file a tax return as a "C-Corporation" for the nine month period of April 1, 1998

KNFL's ability to pay the forfeiture on the basis of a three-month tax return. According to KNFL's 1997 tax return, KNFL had no income in 1997. However, the 1997 financial statement previously provided by KNFL with its response to the *NAL* showed that KNFL earned gross revenues of \$80,888 in 1997.⁶ Without an explanation for this apparent discrepancy, we cannot consider KNFL's 1997 tax return. In sum, we cannot determine based on the information provided by KNFL that KNFL is unable to pay the forfeiture.⁷

6. KNFL also argues that it qualifies for a reduction in the forfeiture under the downward adjustment factors for minor violation, history of overall compliance and good faith or voluntary disclosure set forth in the Commission's forfeiture guidelines. KNFL's argument regarding its history of overall compliance is the only argument that warrants further comment here. Legacy Communications, Inc., which owns 100% of the stock of KNFL, also owns 100% of the stock of KEOT, Inc., the licensee of KEOT(FM), St. George, Utah, and KGNT, Inc., the licensee of KGNT(FM), Smithfield, Utah.⁸ Both of these licensees recently engaged in an unauthorized transfer of substantial control. *KEOT, Inc.*, 15 FCC Rcd 2710 (Enf. Bur. 2000); *KGNT, Inc.*, 15 FCC Rcd 5806 (Enf. Bur. 2000). Considering these other violations, which the licensees have admitted, we do not believe that KNFL is entitled to any reduction of the forfeiture amount based on its history of overall compliance. KNFL's remaining arguments were fully considered and rejected in the *Forfeiture Order*.⁹ Thus, we find no basis for modifying the *Forfeiture Order*.

IV. ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁰ and Section 1.106 of the Rules,¹¹ KNFL, Inc.'s petition for reconsideration **IS DENIED**.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹² within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the specified

to December 31, 1998, and that it anticipated filing a tax return for this nine month period in June 2000. Although KNFL indicated that it would provide additional tax information as it becomes available, it did not submit any additional tax information to the Commission.

⁶ *KNFL, Inc.*, 15 FCC Rcd at 10288.

⁷ We also note that the tax returns provided by KNFL are neither signed nor dated.

⁸ Lavon Randall and the Bear River Trust, the sole beneficiary of which is Morgan Skinner, each own approximately 48% of the stock of Legacy Communications, Inc.

⁹ *KNFL, Inc.*, 15 FCC Rcd at 10289.

¹⁰ 47 U.S.C. § 405.

¹¹ 47 C.F.R. § 1.106.

period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ 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 the NAL/Acct. No. 915DV0003. 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.

9. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by certified mail, return receipt requested, to counsel for KNFL, Inc., Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, Virginia 22201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹² 47 C.F.R. § 1.80.

¹³ 47 U.S.C. § 504(a).