

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Notice of Apparent Liability for Forfeiture of
KNFL, Inc.
Licensee of Broadcast Station KNFL(FM),
Tremonton, Utah Facility ID # 20304
Control No. 9805196(a)
NAL No. X32080026

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 30, 2000

Released: November 1, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that KNFL, Inc., licensee of FM broadcast station KNFL(FM), Tremonton, Utah, engaged in the transfer of control of KNFL(FM) without prior Commission consent, in apparent violation of Section 310(d) of the Communications Act of 1934, as amended ("Act"), and Section 73.3540 of the Commission's rules. We conclude that KNFL, Inc. is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. KNFL, Inc., then known as Evergreen Media Corporation, acquired Station KNFL(FM) in September 1993 by assignment of the license from an unrelated party. At that time, the licensee's stock was wholly owned by Lavon Randall. In October 1995, the licensee issued additional stock to the Bear River Trust ("Trust"), the sole beneficiary of which was Morgan Skinner. As a result, Randall owned 50

1 47 U.S.C. § 310(d).

2 47 C.F.R. § 73.3540.

3 File No. BAPLH-930719EC, granted August 30, 1993.

4 The record reflects that Skinner originally controlled the Trust as both the trustee and the beneficiary. In an Ownership Report filed by the licensee dated June 30, 1997, the licensee reported that John Allen had become the trustee. However, Skinner created the Trust for estate planning purposes. Skinner remains the beneficiary of the Trust and continues to manage its affairs. Moreover, Allen serves as trustee at Skinner's

percent of the licensee's stock and the Trust owned 50 percent. This transaction was reported to the Commission in an Ownership Report (FCC Form 323) dated June 30, 1996. However, no Commission approval was sought for the transaction at that time.

3. On November 6, 1997, the licensee filed an application seeking approval of a *pro forma* transfer of control of the licensee to Legacy Communications, Inc. ("Legacy") (File No. BTCH-971106HF). In the course of processing the application, the Commission staff raised questions concerning prior changes in the ownership of the KNFL(FM) licensee and other related licensees. As a result, the licensee filed on December 2, 1997, an application seeking approval, after the fact, of the Trust's 1995 acquisition of a 50 percent interest in the licensee (File No. BTCH-971202GF). Thereafter, on February 20, 1998, the licensee filed an amendment to the application seeking approval of the *pro forma* transfer to Legacy, which was executed by Randall ("Randall Amendment"). The amendment conceded that the licensee had not timely filed an appropriate transfer of control application for approval of the acquisition of 50 percent control by the Trust in October 1995. The amendment indicated that the failure to seek approval was the result of inadvertence and the belief on Skinner's part that a transfer of control would not occur unless one party acquired a 51 percent interest in the licensee. The amendment also indicated that Randall, who lacked prior broadcast experience, has provided funding for this and related stations. Skinner, whose principal trade is broadcast station management, has been responsible for day-to-day operation of the stations.

4. On March 3, 1998, the Commission staff granted the application seeking belated approval of the Trust's interest in the licensee "without prejudice to whatever further action, if any, may be appropriate with respect to the matter of unauthorized control as set forth in the [Randall Amendment]." The Commission staff also granted the application for approval of the *pro forma* transfer of control to Legacy. Thereafter, the Enforcement Division of the Mass Media Bureau⁵ directed two letters of inquiry to the licensee dated July 22, 1998, and May 26, 1999, concerning the ownership of this and related stations. The licensee responded to the first letter of inquiry on August 26, 1998, and supplemented that response on December 2, 1998, and January 20, 1999. The licensee responded to the second letter of inquiry on June 14, 1999.

III. DISCUSSION

5. Section 310(d) of the Communications Act provides in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to

election, primarily so that there will be someone to operate the Trust if Skinner dies or becomes incapacitated. Accordingly, the evidence indicates that Skinner controls the Trust.

⁵ The duties of the former Enforcement Division of the Mass Media Bureau have since been assumed, in large part, by the Enforcement Bureau.

the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.⁶

6. We find that the licensee violated Section 310(d) of the Act and Section 73.3540 of the Commission's rules by failing to seek and obtain prior approval of the Trust's acquisition of its 50 percent interest in the licensee. This failure continued from October 1995 until March 3, 1998, when the Commission staff granted approval of the acquisition. After reviewing the entire record, including the licensee's responses to the staff letters of inquiry, we find no evidence that the licensee's failure was the product of an intent to evade the applicable requirement or to conceal facts from the Commission. As noted, although the licensee did not obtain timely approval of the Trust's ownership interest, it was reported in an Ownership Report. Nonetheless, we find that the violations were willful. The Commission has held that an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule.⁷ Under these circumstances, we conclude that the violations warrant the imposition of a monetary forfeiture.

7. Section 503(b)(2)(D) of the Act⁸ and Section 1.80(b)(4) of the Commission's rules⁹ require us to 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."¹⁰ The Commission's *Forfeiture Guidelines* establish a base amount of \$8,000 for an unauthorized substantial transfer of control. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997). We find that imposition of a forfeiture in the base amount is warranted. Although we find that the licensee's failure was not the product of an intent to evade the applicable requirement or conceal facts from the Commission, the violations continued for a significant period of time and were ultimately corrected only because of the filing of an application seeking approval of an unrelated transfer of control. Further, the record supports a finding that Skinner is an experienced broadcaster who should have been aware of the need to make serious efforts to determine whether the proposed transaction required Commission approval. Accordingly, based on the information before us and taking into consideration the factors expressed in Section 503(b)(2)(D) of the Act, we find that a forfeiture in the amount of eight thousand dollars (\$8,000) is appropriate.

8. The licensee contends in a letter from counsel dated July 22, 1998, that we are precluded from imposing a forfeiture by virtue of the statute of limitations specified in Section 503(b)(6) of the Act.¹¹

⁶ 47 U.S.C. § 310(d). *See also* 47 C.F.R. § 73.3540.

⁷ *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991) (the definition of willfulness contained in 47 U.S.C. § 312(f) applies equally to 47 U.S.C. § 503).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. § 1.80(b)(4).

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ 47 U.S.C. § 503(b)(6).

Pursuant thereto, a notice of apparent liability for a forfeiture may not be issued to a broadcast licensee for a violation that occurred more than one year prior to the date of the notice of apparent liability, or prior to the date of commencement of the current license term, whichever is earlier. The licensee contends that it is no longer subject to a forfeiture because the unauthorized transfer of control occurred prior to the current license term which commenced on January 14, 1998, when the Commission granted the most recent renewal application for KNFL(FM). We disagree with the licensee's contention that we are precluded from issuing a notice of apparent liability in these circumstances. The licensee does not dispute its potential liability for a forfeiture based on violations occurring on or after January 15, 1998 (the day after the grant of its renewal application). As noted above, the licensee's violations at issue here, although they commenced prior to January 15, 1998, continued until the Commission approved the transfer of control on March 3, 1998. A notice of apparent liability for a forfeiture may therefore be issued consistent with Section 503(b)(6) based on the licensee's continuing violations from January 15, 1998, through March 2, 1998, all of which are during its current license term. *Lester T. Pritchard*, 6 FCC Rcd 2210 (1991).

IV. ORDERING CLAUSES

9. ACCORDINGLY, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹² Section 1.80 of the Commission's rules,¹³ and the authority delegated in Section 0.311 of the Commission's rules,¹⁴ KNFL, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000) for willfully and repeatedly violating Section 310(d) of the Communications Act of 1934,¹⁵ as amended, and Section 73.3540 of the Commission's rules.¹⁶

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules,¹⁷ that within thirty days of the release of this Notice, KNFL, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture 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 number of this proceeding (NAL No. X32080026). 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. 20554.¹⁸

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80.

¹⁴ 47 C.F.R. § 0.311.

¹⁵ 47 U.S.C. § 310(d).

¹⁶ 47 C.F.R. § 73.3540.

¹⁷ 47 C.F.R. § 1.80.

¹⁸ See 47 C.F.R. § 1.1914.

11. IT IS FURTHER ORDERED, that a copy of this Notice of Apparent Liability for forfeiture SHALL BE SENT by Certified Mail – Return Receipt Requested, to: Lavon Randall, President, KNFL, Inc., 210 North 1000 East, P.O. Box 1450, St. George, Utah 84770.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau