

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

In the matter of)	
)	File No.: EB-02-ST-208
Butterfield Broadcasting Corporation)	
Licensee, KULE(AM))	NAL/Acct. No. 200332980005
Ephrata, Washington)	
)	FRN: 0001567817

FORFEITURE ORDER

Adopted: October 1, 2004

Released: October 4, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Butterfield Broadcasting Corporation (“Butterfield”), licensee of radio station KULE(AM), Ephrata, Washington, for its willful and repeated violation of Section 73.3526(e)(1) of the Commission’s Rules (“Rules”).¹ The violation involves Butterfield’s failure to maintain a copy of station KULE(AM)’s authorization in the station’s public inspection file.

2. On April 30, 2003, the Commission’s Seattle, Washington Office (“Seattle Office”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Butterfield for a forfeiture in the amount of two thousand dollars (\$2,000).² Butterfield filed a response on May 29, 2003, seeking cancellation of the forfeiture.

II. BACKGROUND

3. On May 17, 1999, the Seattle Office issued an Official Notice of Violation to Mirage Communications (“Mirage”)³ for violations at station KULE(AM), which included violation of Section 73.3526(e)(1) of the Rules. Specifically, Mirage had failed to maintain a copy of station KULE(AM)’s station authorization in its public inspection file. According to Butterfield, all of Mirage’s licenses had been destroyed during a major roof leak. On May 25, 1999, staff from the Commission’s former Mass Media Bureau (“Media Bureau”) advised Mirage how to obtain a reissued authorization. On June 30, 2001, Butterfield became the licensee of station KULE(AM).⁴ On November 19, 2002, staff from the Media Bureau notified Butterfield that, according to Commission records, the station authorization still had not been reissued for station KULE(AM). At that time, Commission staff also specifically advised

¹ 47 C.F.R. § 73.3526(e)(1).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332980005, (Enf. Bur., Seattle Office, released April 30, 2003).

³ Mirage was KULE(AM)’s licensee prior to Butterfield.

⁴ See Application for Consent to Assignment of Broadcast Station Construction Permit or License, File Number BAL-20010130ABL, granted June 14, 2001 (consummated June 30, 2001).

Butterfield to ensure that station KULE(AM) had an accurate and current license in the public file, and warned of possible monetary forfeitures if a subsequent inspection revealed continuing non-compliance.

4. On January 28, 2003, a Commission agent from the Seattle Office inspected station KULE(AM)'s license folder contained within the public inspection file. The agent determined that station KULE(AM)'s authorization was not in the station's public inspection file. KULE(AM) personnel were unable to locate a copy of the station's authorization anywhere at the station. On April 30, 2003, the Seattle Office issued the subject *NAL* to Butterfield finding that Butterfield had apparently willfully and repeatedly violated Section 73.3526(e)(1) of the Rules. Although the base forfeiture amount for a violation of the public file rules is \$10,000,⁵ after considering the facts of the case the Seattle Office concluded that a \$2,000 forfeiture was appropriate. In its response, Butterfield seeks cancellation of the forfeiture because it was "in the process of dealing with the problem and it has since been resolved," and because it is unable to pay the forfeiture.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Policy Statement").⁸ In examining Butterfield's response to the *NAL*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the alleged 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.⁹

6. Section 73.3526(e)(1) of the Rules requires that the station's public inspection file include a copy of the current FCC authorization to operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorization. The Rules require the station authorization to be retained in the public inspection file until replaced by a new authorization, at which time a copy of the new authorization and any related material must be placed in the file. Butterfield had been advised in 2002 by Commission staff of the requirement to maintain a copy of the station's authorization in the station's public inspection file. However, Butterfield failed to comply with the rule and on January 28, 2003, Butterfield still did not have a copy of the authorization in its public file. Accordingly, we conclude that Butterfield willfully¹⁰ and repeatedly¹¹ violated Section 73.3526(e)(1) of the Rules.

⁵ See 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹ As provided by 47 U.S.C. § 312(f)(2), "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co.*, *supra*.

7. Butterfield seeks cancellation of the forfeiture because it contends that it “was in the process of dealing with the problem in question and it has since been resolved.” Although Butterfield claims that Mirage Communications, prior licensee of station KULE(AM), requested a copy of station KULE(AM)’s station license after it was destroyed by water, Butterfield also admits that after only receiving an auxiliary license in response to the request, the matter of station KULE(AM)’s authorization “fell through the cracks” until 2001. Butterfield further states that the license problem resurfaced in late 2002, when questions arose about the accuracy of its authorization and that its operations manager had located a copy of the authorization, but he had it in his possession to investigate the discrepancies when the inspection occurred on January 28, 2003. However, we note that Butterfield had not had a copy of station KULE(AM)’s license in the station file since 2001. At the time of the inspection on January 28, 2003, it still did not have a copy of the authorization in the public inspection file. Although Butterfield states that it now has a copy of the license in the public file, we note that its remedial measures, while commendable, are not mitigating factors.¹² Finally, Butterfield also claims that it is unable to pay the forfeiture and provides financial documentation in support of its contention. We have reviewed the financial documentation submitted by Butterfield and find that this information does not provide a basis for cancellation or reduction of the forfeiture. Indeed, the forfeiture is a very small percentage of Butterfield’s gross revenues.¹³

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Butterfield **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for willful and repeated violation of Section 73.3526(e)(1).

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules 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.¹⁵ 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 above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank “Bank One,” and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C.

¹² See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

¹³ See *Alpha Ambulance, Inc.*, FCC 04-19, 2, n.15 (February 5, 2004), citing *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues). In this case, the forfeiture represents a smaller percentage of gross revenues than those issued in the *Local Long Distance, Inc.*, *Hoosier Broadcasting Corp.*, and *PJB Communications of Virginia, Inc.* cases.

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

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10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Butterfield Broadcasting Corporation, 706 Butterfield Road, Yakima, Washington 98901.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.