

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

In the Matter of)	
)	File No. EB-05-SE-247
Journal Broadcast Corporation)	NAL/Acct. No. 200632100002
Ku-Band FSS Earth Station, Call Sign E940294)	FRN # 0002710192
Las Vegas, Nevada)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 18, 2005

Released: November 22, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Journal Broadcast Corporation (“Journal”), licensee of satellite earth station, E940294, Las Vegas, Nevada, apparently liable for a forfeiture in the amount of five thousand, two hundred dollars (\$5,200) for operating its earth station without Commission authority and for failing to timely file a renewal application. Journal acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 25.102(a) and 25.121(e) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. Journal was granted a license for its fixed-satellite service earth station, E940294, on July 15, 1994, with an expiration date of July 15, 2004. On July 27, 2005, Journal filed with the Commission’s International Bureau an application for renewal of its expired license and a request for special temporary authority (“STA”) to continue operating its earth station pending Commission action on the license application. The International Bureau granted Journal’s STA on August 2, 2005,³ and reinstated its license for E940924 on September 6, 2005.⁴

3. Since it appeared that Journal may have operated the earth station after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On September 13, 2005, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”)⁵ to Journal.

¹47 U.S.C. § 301.

²47 C.F.R. §§ 25.102(a) and 25.121(e).

³See File No. SES-STA-20050727-00999 (granted August 2, 2005).

⁴See File No. SES-LIC-20050727-00996 (granted September 6, 2005). The renewal of E940294 was granted by the International Bureau without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁵See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Dale R. Oswald, President, Journal Broadcast Corporation (September 13, 2005).

4. In its September 29, 2005 response to the LOI,⁶ Journal claimed that it discovered the expiration of its station's license "on or about June 2, 2005."⁷ Citing "an administrative oversight" as the basis for its failure to timely renew its license,⁸ Journal explained that once it discovered the expiration of its license, it immediately took the necessary steps to have the license reinstated.⁹ According to Journal, it worked with its FCC counsel and consulting engineer to prepare the STA and license application for submission on July 27, 2005.¹⁰ Further, Journal admitted that it continued to operate its earth station "on only a limited basis" beyond the license expiration date without Commission authorization.¹¹ Specifically, Journal explained that its unauthorized operation consisted of transmitting local news feeds "between approximately 30 and 90 minutes per day."¹²

III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization. Additionally, Section 25.121(e) of the Rules requires that licensees file renewal applications for earth stations "no earlier than 90 days, and no later than 30 days, before the expiration of the license."¹³ Absent a timely filed renewal application, an earth station license automatically terminates.¹⁴

6. As a Commission licensee, Journal was required to maintain its authorization in order to operate its earth station. Based upon the information before us, Journal operated the earth station without Commission authority from the station's license expiration date of July 15, 2004, until the STA grant date of August 2, 2005. By operating its earth station for approximately 12 months without an instrument of authorization, Journal apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Journal also acted in apparent violation of Section 25.121(e) of the Rules by filing its license renewal application on July 27, 2005, more than one year beyond the 30-day requirement prescribed by the Rules.

7. Section 503(b) of the Act,¹⁵ and Section 1.80(a) of the Rules,¹⁶ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules,

⁶See Letter from Douglas G. Kiel, Vice President, Journal Broadcast Corporation to Karen Mercer, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 29, 2005).

⁷*Id.* at 1.

⁸*Id.* at 2.

⁹*Id.*

¹⁰*Id.*

¹¹*Id.* at 1.

¹²*Id.* at 4.

¹³47 C.F.R. § 25.121(e).

¹⁴47 C.F.R. § 25.161(b).

¹⁵47 U.S.C. § 503(b).

¹⁶47 C.F.R. § 1.80(a).

and “repeatedly” means more than once.¹⁷ Based upon the record before us, it appears that Journal’s violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs us to consider factors, such as “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.”¹⁸ Having considered the statutory factors, as explained below, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$6,500 to \$5,200 based on Journal’s voluntary disclosure of its violations.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority.¹⁹ As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁰ Accordingly, we herein propose separate forfeiture amounts for Journal’s separate violations.

10. Consistent with precedent,²¹ we propose a \$1,500 forfeiture for Journal’s failure to file the renewal application for its earth station within the time period specified in Section 25.121(e) of the Rules. Additionally, we propose a \$5,000 forfeiture for Journal’s continued operation of its earth station beyond July 15, 2004. In proposing \$5,000 for unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjusts the \$10,000 base forfeiture amount accordingly.²² Thus, we propose an aggregate forfeiture of \$6,500 (\$5,000 for unauthorized operation and \$1,500 for failure to file a timely renewal application).

¹⁷See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *WCS Communications, Inc.*, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div. 1998) (finding that a licensee’s inadvertent failure to file timely renewal applications, constitutes a repeated violation that continues until the date the license is renewed).

¹⁸47 U.S.C. § 503(b)(2)(D). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17110 (1997), recon. denied (1999).

¹⁹47 C.F.R. 1.80(b).

²⁰See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (assessing proposed forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application).

²¹See *Discussion Radio, Inc.*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Self Communications, Inc.*, 15 FCC Rcd 18661, 18664-65 (WTB, Public Safety and Private Wireless Div., 2000) (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a 218-219 MHz service); *Vincent Communications, Inc.*, 15 FCC Rcd 8432 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$4,500 forfeiture for failure to timely renewal applications for three paging stations), *forfeiture ordered*, 15 FCC Rcd 18263 (Enf. Bur. 2000); *Snider Communications Corp.*, 14 FCC Rcd 20047, 20048 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate \$21,000 forfeiture for failure to file timely renewal applications for 14 paging stations). See also *American Paging, supra* (imposing separate forfeitures for the unauthorized operation of two transmitters).

²²See *Discussion Radio, Inc.*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license).

11. As a Commission licensee, Journal is charged with the responsibility for knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely renew the authorization for its earth station.²³ Journal asserts that once it became aware of its expired license, it took immediate steps to reinstate the license. We are not persuaded by Journal's claim that it acted straightaway, since Journal took almost 60 days from the date it discovered the expiration of its license to file a renewal application. We also find no merit in Journal's argument that it operated its earth station without Commission authority *only* on a limited basis. Journal admitted to unauthorized operation of its station and, in this instance, is not entitled to a downward adjustment based upon the temporal nature of the violation. We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$5,200 is warranted because Journal made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action.²⁴

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act²⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁶ Journal **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand, two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁷ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Journal **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²⁸

²³See *Discussion Radio*, 19 FCC Rcd at 7437; *William S. Mills*, 15 FCC Rcd 20071, 20072 (Enf. Bur. 2000); see also *Peacock's Radio and Wild's Computer Service, Inc.*, 16 FCC Rcd 15016, 15017 (2001).

²⁴See, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *Emery Telephone*, 13 FCC Rcd 23854, 23858 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999); *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-98 ¶¶ 5-6 (Enf. Bur. 2004); *American Family Association*, 17 FCC Rcd 181135, 18137 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 2413 (Enf. Bur. 2003); *but see American Paging, Inc.*, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that the mitigating effect of voluntary disclosure was abrogated by the licensee's delay).

²⁵47 U.S.C. § 503(b).

²⁶47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁷47 C.F.R. § 1.80.

²⁸See 47 C.F.R. § 1.1914.

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Dale R. Oswald, President, Journal Broadcast Corporation, 3355 South Valley View Boulevard, Las Vegas, Nevada 89102, and to Journal's counsel, Mace J. Rosenstein, Hogan and Hartson L.L.P., 555 13th Street, N.W., Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau