

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

In the Matter of)	
)	File No. EB-06-SE-299
Twin Cities Public Television, Inc.)	NAL/Acct. No. 200732100004
St. Paul, Minnesota)	FRN # 0002644037
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 14, 2006

Released: November 16, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Twin Cities Public Television, Inc. (“Twin Cities”), licensee of satellite earth stations, call signs E930472 and E960083, St. Paul, Minnesota, apparently liable for forfeiture in the amount of six thousand, six hundred dollars (\$6,600) for operating its two earth stations without Commission authority and for failing to file timely renewal applications. Twin Cities 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. Twin Cities’ licenses for its Ku-band fixed-satellite service earth stations, E930472 and E960083, expired on February 4, 2004 and April 5, 2006, respectively. On June 7, 2006, Twin Cities filed requests for special temporary authority (“STA”) to continue operating its two earth stations. The International Bureau granted Twin Cities’ STA requests on June 9, 2006.³ On June 29, 2006, Twin Cities filed an application for a new earth station license covering the facilities of both earth stations. The International Bureau granted Twin Cities a new earth station license under call sign E930472 on August 28, 2006.⁴

3. Because it appeared that Twin Cities may have operated the earth stations after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On August 1, 2006, the Enforcement Bureau’s Spectrum

¹ 47 U.S.C. § 301.

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

³ See File No. SES-STA-20060607-00938 and SES-STA-20060607-00939 (granted June 9, 2006). Both STAs were granted without prejudice to any future FCC enforcement action against the company in connection with any unauthorized operation of its radio facilities.

⁴ See File No. SES-LIC-20060705-011110 (granted August 28, 2006). The new license was granted without prejudice to any future FCC enforcement action against the company in connection with any unauthorized operation of its radio facilities.

Enforcement Division issued a letter of inquiry (“LOI”) to Twin Cities.⁵

4. In its September 7, 2006 response to the LOI,⁶ Twin Cities states that it first became aware that its license for earth station E930472 had expired on May 25, 2006, and that its license for earth station E960083 had expired on or around May 30, 2006.⁷ Twin Cities acknowledges that it operated earth station E930472 on numerous occasions between February 4, 2004 and June 5, 2006.⁸ Twin Cities also acknowledges that it operated earth station E960083 twice between April 5, 2006 and June 9, 2006, once on April 25, 2006 and once on May 4, 2006.⁹ Twin Cities states that its unauthorized operation of the two earth stations was inadvertent.¹⁰ In this regard, it states that it believed that outside counsel would remind it of the necessity to file renewal applications and that outside counsel thought that Twin Cities was monitoring the expiration date of the authorizations.¹¹ In addition, Twin Cities maintains that it operated the earth stations within the parameters of its licenses and at no time did the stations cause interference.¹² Twin Cities asserts that once it realized the licenses had expired, it promptly took corrective action and voluntarily disclosed the matter to Commission staff.¹³ Twin Cities further asserts that it has never been sanctioned for any FCC rule violation.¹⁴

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.”¹⁵ Absent a timely filed renewal application, an earth station license automatically terminates.¹⁶

6. As a Commission licensee, Twin Cities was required to maintain its authorization in order to operate its earth station. Twin Cities concedes that it operated earth station E930472 without Commission authority on numerous occasions between the license expiration date of February 4, 2004

⁵ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Twin Cities Public Television, Inc. (August 1, 2006).

⁶ See Letter from Twin Cities Public Television, Inc. to Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau (September 7, 2006) (“LOI Response”).

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 1.

¹⁵ 47 C.F.R. § 25.121(e).

¹⁶ 47 C.F.R. § 25.161(b).

and June 5, 2006. Twin Cities also concedes that it operated earth station E960083 on two occasions between the license expiration date of April 5, 2006 and June 9, 2006. By operating its earth stations without authorization, Twin Cities apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Twin Cities also acted in apparent violation of Section 25.121(e) of the Rules by allowing its licenses to lapse without renewal.

7. Section 503(b) of the Act,¹⁷ and Section 1.80(a) of the Rules,¹⁸ 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, and “repeatedly” means more than once.¹⁹ Based upon the record before us, it appears that Twin Cities 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.”²⁰ Having considered the statutory factors, as explained below, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$11,000 to \$6,600 based upon Twin Cities’ voluntary disclosure of its violations and its history of compliance.

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.²¹ 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.²² Accordingly, we herein propose separate forfeiture amounts for Twin Cities’ separate violations.

10. Consistent with precedent,²³ we propose a forfeiture in the amount of \$3,000 for Twin

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. § 1.80(a).

¹⁹ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) (“*Southern California*”); 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).

²⁰ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17110 (1997), *recon. denied* (1999).

²¹ 47 C.F.R. 1.80(b).

²² See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (assessing a 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) (“*Discussion Radio*”).

²³ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Gilmore Broadcasting Corp.*, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Gilmore*”); *Criswell College*, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *National Weather Networks, Inc.*, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *Shared Data Networks, LLC*, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*SDN*”).

Cities' failure to file the renewal applications for its two earth station (\$1,500 for each failure to file) within the time period specified in Section 25.121(e) of the Rules. Additionally, we propose a forfeiture in the amount of \$8,000 for Twin Cities' unauthorized operation of its two earth stations (\$5,000 for its continued operation of earth station E930492 beyond February 4, 2004, and \$3,000 for its continued operation of earth station E960083 beyond April 5, 2006). In proposing these forfeiture amounts, 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 adjust the \$10,000 base forfeiture amount accordingly.²⁴ We also recognize that Twin Cities' unauthorized operation of earth station E960083 was for a relatively short duration, approximately two months. Thus, we propose an aggregate forfeiture amount of \$11,000 (\$3,000 for failure to file timely renewal applications and \$8,000 for unauthorized operation).

11. Twin Cities asserts that its unauthorized operation of the two earth stations was inadvertent. Such inadvertence does not, however, mitigate its violations.²⁵ As a Commission licensee, Twin Cities is charged with the responsibility of 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.²⁶ Twin Cities further asserts that it operated the earth stations within the parameters of its licenses and at no time did the stations cause interference. It is well established that the absence of public harm is not considered a mitigating factor of a rule violation and does not warrant a downward adjustment of a forfeiture.²⁷ We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$11,000 to \$6,600 is warranted because Twin Cities 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,²⁸ and because Twin Cities has a history of compliance with the Commission's rules.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁰ Twin Cities **IS** hereby **NOTIFIED** of its **APPARENT**

²⁴ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *Gilmore*, 21 FCC Rcd at 6286-87; *Criswell* 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

²⁵ See *Southern California*, 6 FCC Rcd at 4387 ¶ 3 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

²⁶ See *Discussion Radio*, 19 FCC Rcd at 7437.

²⁷ *Pacific Western Broadcasters, Inc.*, 50 FCC 2d 819 ¶ 4 (1975) (rejecting a broadcaster's claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, stating that "[t]he Commission not only is concerned with actual interference, but is concerned with the potential for interference"); *NWN*, 21 FCC Rcd at 3927 (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because its operation of an unauthorized earth station did not cause interference or disrupt other users); *AGM-Nevada, LLC*, 18 FCC Rcd 1476, 1478-79 ¶ 8 (Enf. Bur. 2003) (rejecting a licensee's claim that the forfeiture should be downwardly adjusted because even though it operated booster stations at unauthorized sites with excessive power levels, its operations did not result in interference).

²⁸ See *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004).

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

LIABILITY FOR FORFEITURE in the amount of six thousand, six hundred dollars (\$6,600) 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,³¹ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Twin Cities **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 1-A625, Washington, D.C. 20554.³²

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 counsel for Twin Cities Public Television, Inc., Theodore D. Frank, Esq., Arnold & Porter, LLP, 555 Twelfth Street, NW, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³¹ 47 C.F.R. § 1.80.

³² See 47 C.F.R. § 1.1914.