

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

In re Application of)	
)	
Northeast Gospel Broadcasting, Inc.)	NAL/Acct. No. MB-200841410026
)	FRN: 0004499794
For Renewal of License for)	
FM Translator Stations)	File No. BRFT-20061204AHN
)	
W253AF Bennington, Vermont)	Facility I.D. No. 83187
)	
W242AL Buskirk, New York)	Facility I.D. No. 138757
)	
W288BF Troy, New York and)	Facility I.D. No. 138552
)	
W289AL Troy, New York)	Facility I.D. No. 139045

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: May 8, 2008

Released: May 9, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of the Northeast Gospel Broadcasting, Inc. (the "Licensee"), for renewal of its licenses for FM translator Stations W253AF, Bennington, Vermont, W242AL, Buskirk, New York, W288BF, Troy, New York, and W289AL, Troy, New York (the "Stations"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules,³ by failing to file a timely license renewal application for the Stations, and apparently willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in unauthorized operation of the Stations after their authorizations had expired. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of two thousand dollars (\$2,000), and we grant the captioned renewal applications.

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 U.S.C. § 301.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”⁵ An application for renewal of the W253AF license should have been filed by December 1, 2005, and an application for renewal of the New York Stations’ licenses should have been filed by February 1, 2006. No such applications were filed, and the W253AF license expired on April 1, 2006, while the New York Stations’ licenses expired on June 1, 2006. In fact, the Licensee did not file an application to renew the Stations’ licenses until December 4, 2006.

3. On December 4, 2006, the licensee filed requests for special temporary authorization (“STA”) to continue the Stations’ operations pending consideration of the untimely renewal application.⁶ The staff granted the STA Requests on December 5, 2006, and they expired on June 5, 2007.⁷ The Licensee failed to request extension of the STAs or seek additional authority to operate the Stations. In the STA Requests, the Licensee stated that it inadvertently left out the call signs of its four affiliated FM translators in the initial filing of the license renewal application for primary station WNGN(FM), Argyle, New York.⁸

III. DISCUSSION

4. *Proposed Forfeiture.* In this case, the Licensee has failed to file a timely license renewal application for the Stations, as required by Section 73.3539(a) of the Rules. Moreover, it continued operating the Stations for more than six months after their licenses had expired on April 1 and June 1, 2006, before filing the appropriate renewal application and request for STA to so operate, in violation of Section 301 of the Act. It also continued station operations for nearly one year after the expiration of the initial STAs without obtaining additional authority to do so, also in violation of Section 301 of the Act. Notwithstanding the Licensee’s explanation that its failure to file a timely renewal application for the Stations was inadvertent, licensees are obligated to comply fully with the Rules, including timely filing the station’s renewal application and maintaining in effect their stations’ authorizations.⁹ Here, the Licensee did not do so.

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have failed willfully or repeatedly to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section

⁵ 47 C.F.R. § 73.3539(a).

⁶ See File No. BLSTA-20061204AHX (for W242AL), BLSTA-20061204AHV (for W288BF), BLSTA-20061204AHU (for W289AL), and BLSTA-20061204AHW (for W235AF) (the “STA Requests”).

⁷ *Letters to Lee G. Petro, Esquire*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Dec. 5, 2006).

⁸ Licensees are permitted to seek renewal of the translator station on the same form as that for the primary station being rebroadcast. See, e.g., FCC Form 303-S, Instructions, Page 1, Paragraph A. The license renewal application for Station WNGN(FM), BRH-20060201BIA, was granted routinely on May 26, 2006.

⁹ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license “rests solely and exclusively with the licensee”) (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

¹⁰ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

¹¹ 47 U.S.C. § 312(f)(1).

¹² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

503(b) context.¹³ Section 312(f)(2) of the Act provides that “[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.”¹⁴

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.¹⁵ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁶ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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.”¹⁷

7. In this case, the Licensee failed to file a timely renewal application and continued Station operations for more than six months after the Stations’ licenses had expired on April 1 and June 1, 2006, before filing the appropriate renewal application and a request for STA to so operate. It also continued operating the Stations for nearly one year after the expiration of the initial STAs without obtaining additional authority to do so. Nevertheless, because it had previously been licensed to operate these FM translator stations, the latter transgressions are not comparable to “pirate” wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to two hundred fifty dollars (\$250) each for late-filing and unauthorized operation for each station. Thus, we propose a forfeiture in the total amount of two thousand dollars (\$2,000).

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁸ That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²⁰

9. We find that the Licensee’s violations of Section 73.3539 of the Rules and Section 301 of the Act at the Stations do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern

¹³ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁶ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁷ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁸ 47 U.S.C. § 309(k).

¹⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

of abuse.²¹ Further, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant the license renewal application below.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that the Northeast Gospel Broadcasting Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) for its apparent willful and repeated violation of Section 73.3539 of the Commission's Rules and apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, the Northeast Gospel Broadcasting Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent'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.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²²

16. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of the Northeast Gospel Broadcasting Inc. for FM

²¹ For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the Licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²² *See* 47 C.F.R. § 1.1914.

translator Stations W242AL, Buskirk, New York, W288BF, Troy, New York, W289AL, Troy, New York, and W253AF, Bennington, Vermont (File No. BRFT-20061204AHN), IS GRANTED.

17. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Northeast Gospel Broadcasting Inc., 65 King Road, Buskirk, New York 12028, and to its counsel, Lee G. Petro, Esquire, Fletcher, Heald, & Hildreth, PLC, 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau