

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

|                                      |   |                              |
|--------------------------------------|---|------------------------------|
| In re Application of                 | ) |                              |
|                                      | ) |                              |
| <b>South Seas Broadcasting, Inc.</b> | ) | Facility I.D. No. 54768      |
|                                      | ) | NAL/Acct. No. MB200741410375 |
| For Renewal of License for           | ) | FRN: 0006947618              |
| Station WVUV(AM)                     | ) | File No. BR-20050928ADD      |
| Leone, American Samoa                | ) |                              |

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

**Adopted: April 15, 2008**

**Released: April 16, 2008**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned application of South Seas Broadcasting, Inc. (“South Seas” or the “Licensee”) for renewal of its license for Station WVUV(AM), Leone, American Samoa (the “Station”); a Petition to Deny (“Petition”) filed by District Council of the Assemblies of God in American Samoa (“District Council”) on June 5, 2006; and an Opposition to the Petition file by the Licensee on July 10, 2006. 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”),<sup>1</sup> by the Chief, Media Bureau, by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully and repeatedly violated Section 73.1350 of the Rules,<sup>3</sup> by engaging in operation of the Station at an unauthorized site; and willfully and repeatedly violated Section 73.1740 of the Rules,<sup>4</sup> by leaving the Station silent without the proper authorization. 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 eighteen thousand dollars (\$18,000) and we grant the captioned WVUV(AM) license renewal application for a term of two years from the release date of this Order.

**II. BACKGROUND**

2. Section 73.1350 of the Rules prohibits operation of a broadcast station at variance from the terms of the Station’s authorization. Section 73.1635 permits a licensee to request special temporarily authorization (“STA”) to operate for a limited time at variance from the terms of the Station’s authorization. Under this Rule, a licensee must request STA ten days *prior* to beginning operation at a variance from the terms of its authorization. Section 73.1740 of the Rules requires a licensee to notify the Commission if the Station discontinues operation due to “causes beyond the control of the licensee.” If the Station is silent for more than 30 days, a licensee must seek an STA to remain silent. Notwithstanding

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

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> 47 C.F.R. § 73.1350.

<sup>4</sup> 47 C.F.R. § 73.1740.

the provisions of Section 73.1635 of the Rules, if a station remains silent for twelve consecutive months, the license expires at the end of the twelve months as a matter of law.<sup>5</sup>

3. The Licensee acquired the Station on March 13, 2000.<sup>6</sup> At that time, the station was off the air due to a fire at the transmitter site that occurred on May 4, 1999. However, neither the previous owner, Radio Samoa, Ltd., nor the Licensee, applied for special temporary authorization (“STA”) to remain silent for more than 30 days, as required by Section 73.1740 of the Rules. The Station returned to the air on April 27, 2000, using a temporary antenna strung between two towers on Mount Alava, near Pago Pago, American Samoa (the “2000 Temporary Facilities”), and was operational for three days. The Licensee did not, as the Rules require, seek prior approval for these temporary operations. On April 30, 2000, the Station once again went off the air due to transmitter problems. On May 1, 2000, the Licensee purportedly filed a request for STA to operate with the 2000 Temporary Facilities.<sup>7</sup> On May 30, 2000, the Licensee apparently requested an STA to remain silent because the transmitter problems of April 30, 2000, were not yet resolved.<sup>8</sup> Subsequently, although it had received no letter from the staff granting the May 2000 STA Request, the Station resumed broadcasting on June 23, 2000, using the 2000 Temporary Facilities.<sup>9</sup>

4. On September 3, 2003, the Commission received a letter from a citizen of Leone indicating that the Station may have been off the air since 1999.<sup>10</sup> On February 4, 2004, the staff sent a letter of inquiry to the Licensee asking it to clarify the Station’s operational status.<sup>11</sup> Receiving no response from the Licensee, the staff sent a second inquiry letter on February 25, 2004.<sup>12</sup> On March 8, 2004, the Licensee responded to the staff’s letter of inquiry and admitted that the Station was silent from May 4, 1999, to April 27, 2000. It also stated that in December of 2003 it had gone off the air again due to lightning striking the Station’s tower and that the Station was still off the air.<sup>13</sup> The Licensee acknowledged that it violated Commission Rules by failing to promptly file an STA when the Station

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<sup>5</sup> 47 C.F.R. § 73.1750.

<sup>6</sup> See File No. BAL-19991228AAT, granted on March 3, 2000, and consummated on March 13, 2000.

<sup>7</sup> Although the Commission’s records do not reflect the receipt of this filing, the Licensee later supplied a date-stamped copy of this request, a letter from Kirk A. Harnack, its then Vice-President and Director of Engineering received at the Commission’s Mellon Bank Lockbox in Pittsburgh, Pennsylvania, with the appropriate filing fee on May 22, 2000 (the “May 2000 STA Request”). See Exhibit B to the Licensee’s January 28, 2005, response to a staff inquiry letter, discussed *infra*. This letter indicated that South Seas attempted to restore operation utilizing WVUV(FM)’s former main facility at Leone, but discovered that the main transmitter had been damaged beyond repair; it also indicated that the station’s tower and ground system had sustained significant damage. Thus, it was required to install a temporary antenna to return the station to the air prior to May 5, 2000.

<sup>8</sup> Although the Commission’s records do not reflect the receipt of this filing, the Licensee later supplied a date-stamped copy of this request, a letter from its President, Larry Fuss, to Commission Secretary Magalie Roman Salas. The letter is dated May 20, 2000, and was received in the Commission’s Mail Room on June 5, 2000. See Exhibit D to the Licensee’s January 28, 2005, response.

<sup>9</sup> See *Letter from Larry Fuss, President, South Seas Broadcasting, Inc. to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Larry Fuss, President, South Seas Broadcasting, Inc.* (dated Jun. 26, 2000). The letter indicates that power had been restored to the station and that it resumed operations on Friday, June 23, 2000. It does not specify the facilities with which the station resumed operation.

<sup>10</sup> See *Letter from Vickie L. Haleck to Office of the Secretary, Federal Communications Commission* (dated Sept. 4, 2003).

<sup>11</sup> *Letter to South Seas Broadcasting, Inc.*, Ref. 1800B3-ALM (MB Feb. 4, 2004).

<sup>12</sup> *Letter to South Seas Broadcasting, Inc.*, Ref. 1800B3-ALM (MB Feb. 25, 2004).

<sup>13</sup> *Letter to Mr. H. Taft Snowdon, Supervisory Attorney, Audio Division, Media Bureau from Larry Fuss, President, South Seas Broadcasting*, (Rec’d Mar. 16, 2004).

went off the air in December of 2003, and in that same letter the Licensee requested STA to remain silent for an additional 30 days.<sup>14</sup> The Station resumed operating on March 13, 2004, at a new location in Pago Pago (the “2004 Temporary Facilities”). The Licensee indicates that on March 19, 2004, it requested STA to operate with the 2004 Temporary Facilities, stating that the 2000 Temporary Facilities were destroyed by Cyclone Heta, which struck American Samoa in January, 2004.<sup>15</sup>

5. On August 25, 2004, the Licensee notified the Commission that the Station was once again off the air as of August 16, 2004.<sup>16</sup> On November 22, 2004, the Licensee requested STA to continue Station operations with the 2004 Temporary Facilities.<sup>17</sup> On November 30, 2004, the staff sent a third inquiry letter to the Licensee requesting additional information regarding (1) the Station’s silence between May 4, 1999, and April 27, 2000; and (2) an STA request for authorization to use the 2000 Temporary Facilities, which the Licensee claimed to have filed on July 8, 2000, but of which the Commission had no record.<sup>18</sup> Specifically, the staff sought evidence that the Station had returned to the air with authorized facilities within twelve months of May 4, 1999.<sup>19</sup> The November 30, 2004, staff letter warned the Licensee that if no response was forthcoming within 30 days, the Station’s license would be cancelled and its call sign deleted. On December 1, 2004, the staff granted the November 2004 STA Request, conditioned on the Licensee’s responding to the November 30, 2004, inquiry letter.<sup>20</sup> The Station returned to the air on December 4, 2004, using the 2004 Temporary Facilities authorized in the December 2004 STA.<sup>21</sup>

6. On January 26, 2005, the staff notified the Licensee that the Station’s broadcast license expired as a matter of law and its call sign deleted because the Licensee had failed to respond to the November 30, 2004, inquiry letter and had not demonstrated that the Station had returned to the air with authorized facilities between May 4, 1999, and May 5, 2000.<sup>22</sup> On January 28, 2005, the Licensee filed a

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<sup>14</sup> *Id.* at 2. The Licensee indicates that it planned to erect a new antenna at its studios in downtown Pago Pago and would file an STA request reflecting the new temporary facilities “once the station has resumed operation.” *Id.*

<sup>15</sup> *Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission from Larry Fuss, President, South Seas Broadcasting*, (dated Mar. 16, 2004), submitted as Exhibit G to Licensee’s February 25, 2005, Petition for Reconsideration. The Licensee does not provide a date-stamped copy of this letter, and the Commission has no record of receiving it. Assuming *arguendo* Licensee’s recitation of the facts, the resumption of operations prior to the filing of the STA request constitutes a violation of Section 73.1740.

<sup>16</sup> *See Letter to Mr. H. Taft Snowdon from Larry Fuss, President, South Seas Broadcasting* (dated August 5, 2004), submitted as Exhibit H to Licensee’s February 25, 2005, Petition for Reconsideration. In this letter, the Licensee requests authority to remain silent “until such time as the transmitter repairs are completed.” The Licensee does not provide a date-stamped copy of this letter, and the Commission has no record of receiving it.

<sup>17</sup> *See* File No. BLSTA-20041124AGY (the “November 2004 STA Request”).

<sup>18</sup> *Letter to Mr. Larry Fuss, President, South Seas Broadcasting, Inc.*, Ref. 1800B3-ALM (MB Nov. 30, 2004). In its March 8, 2004, letter, the Licensee claims it had filed for STA requesting authorization to use the 2000 Temporary Facilities. However, the Licensee did not provide a “stamped in” copy of this request and in later filings chose not to rely on the existence of such a request.

<sup>19</sup> Although the Licensee clearly resumed broadcast operations on April 27, 2000, to avoid automatic expiration of the Station’s license under Section 312(g) of the Act, 47 U.S.C. § 312(g), this letter reminded the Licensee that a broadcast station cannot preserve its license by resuming operation with unauthorized facilities. *See Idaho Broadcasting Consortium*, Letter, 16 FCC Rcd 1721 (MMB 2001).

<sup>20</sup> *Letter to Mr. Larry Fuss, President, South Seas Broadcasting, Inc.*, Ref. 1800B3-CNM (MB Dec. 1, 2004) (“December 2004 STA”)

<sup>21</sup> *Letter to Ms. Marlene Dortch, Secretary, Federal Communications Commission from Larry Fuss, President, South Seas Broadcasting*, (rec’d Dec. 29, 2004),

<sup>22</sup> *Letter to Mr. Larry Fuss, President, South Seas Broadcasting, Inc.*, Ref. 1800B3-ALM (MB Jan. 26, 2005).

response to the November 2004, inquiry letter – dated January 18, 2005 -- stating that the Station was off the air when the Licensee acquired the Station on March 13, 2000, because a fire had damaged the transmitter beyond repair.<sup>23</sup> The Licensee acknowledges it was aware the Station was required to return to the air before May 5, 2000, or the license would be forfeited, thus “took immediate steps” to construct the 2000 Temporary Facilities, and the Station resumed operation on April 27, 2000, before the twelve-month period expired. The Licensee further stated the local land laws of American Samoa made it “extremely difficult” to find a suitable parcel of land on which to construct a new permanent transmission system for the Station, necessitating the construction of the 2004 Temporary Facilities after the 2000 Temporary Facilities were destroyed. The Licensee noted that it is awaiting the grant of a construction permit for a new permanent transmitter site<sup>24</sup> and that it “remains committed to restoring WVUV(AM) to full-power operation as soon as possible.”<sup>25</sup>

7. On February 25, 2005, the Licensee also filed a Petition for Reconsideration (the “Petition”) of the January 26, 2005, staff action and asked for reinstatement of its license. In the Petition, the Licensee stated the Station had been operating since April 27, 2000, using the 2000 Temporary Facilities, for which the Licensee claims it properly filed an STA request on May 1, 2000. The Licensee further stated that while it never received a letter granting its STA request, it kept the Commission informed of the Station’s operational status, including the construction of the 2004 Temporary Facilities, and the cancellation of its license was unwarranted. On May 5, 2006, the staff granted the Licensee’s Petition for Reconsideration, holding that the Licensee had provided conclusive proof, consisting of Commission date-stamped STA requests, that the Station resumed operations on April 27, 2000, with an emergency antenna as authorized by Section 73.1680 of the Rules.<sup>26</sup> Thus, the staff found that the Station had not been silent for twelve consecutive months, reinstated the Station’s license, and admonished the Licensee for its failure to request authorization for emergency facilities within 24 hours of April 27, 2000.<sup>27</sup>

8. By its terms, the December 2004 STA expired on June 1, 2005. Nevertheless, the station continued to operate with the facilities approved in the December 2004 STA until, on February 28, 2006, the Station once again went off the air. On March 10, 2006, the Licensee filed an STA request for permission to remain silent.<sup>28</sup> The staff granted this silent STA request on May 25, 2006.<sup>29</sup> On May 19, 2006, the Licensee filed an STA request to operate the Station with an emergency antenna, and admitted allowing the December 2004 STA to lapse, thus operating the Station from June 1, 2005, until it ceased operations on February 28, 2006, without authorization from the Commission.<sup>30</sup> On May 30, 2006, the staff granted the Licensee’s STA request to operate with an emergency antenna, but specifically noted that the authorization did not cover the time period commencing June 1, 2005.<sup>31</sup>

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<sup>23</sup> Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Larry G. Fuss, President, South Seas Broadcasting, Inc. (rec’d Jan. 28, 2005).

<sup>24</sup> File No. BMJP-20050118AEA. This application is still pending.

<sup>25</sup> Letter to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission from Larry G. Fuss, President, South Seas Broadcasting, Inc. (rec’d Jan. 28, 2005).

<sup>26</sup> 47 C.F.R. § 73.1680. The emergency antenna rule permits licensees to construct temporary emergency antennas after a station’s authorized antenna has been damaged without prior Commission approval. However, licensees must request permission to continue using such temporary emergency antennas within 24 hours of commencing use.

<sup>27</sup> Letter to Mr. Larry Fuss, Ref. 1800B3 (MB May 5, 2006) (the “Staff Reconsideration Letter”).

<sup>28</sup> File No. BLSTA-20060310AHL.

<sup>29</sup> Letter to Larry G. Fuss, Ref. 1800B3-ALM (MB May 25, 2006).

<sup>30</sup> File No. BSTA-20060519ACU.

<sup>31</sup> Letter to Mr. Larry G. Fuss, President, South Seas Broadcasting, Inc., Ref. 1800B3-CNM (MB May 30, 2006).

9. On November 27, 2006, Licensee filed for an extension of the May 25, 2006, silent STA;<sup>32</sup> the staff granted this request on November 28, 2006. On December 22, 2006, the Licensee requested an extension of the May 20, 2006, emergency antenna STA.<sup>33</sup> The staff granted the Licensee's request on February 7, 2007, noting that if the Station did not resume broadcasting by February 28, 2007, the Station's license would expire as a matter of law.<sup>34</sup> The Licensee subsequently notified the Commission that the Station resumed operation with the 2004 Temporary Facilities on February 20, 2007. The Station appears to have remained on the air since that time.<sup>35</sup>

### III. DISCUSSION

10. *Petition to Deny.* In its Petition, District Council states that South Seas' license for Station WVUV(AM) should be revoked, because, *inter alia*, the station has been silent since June 1998. District Council further states that: (1) it is the current lessee of South Seas' former licensed transmitter site, which District Council now uses as the tower site for Station KJAL(AM), Tafuna, American Samoa; (2) despite the fact that South Seas has not had permission to use the site since January 1, 2000, District Council staff have discovered South Seas' personnel trespassing on the site in an attempt to string a long-wire antenna on at least one occasion; and (3) "WVUV(AM) has been operating at greatly reduced power . . . for a period of several years. . . without the Commission's approval or pursuant to Special Temporary Authority."<sup>36</sup>

11. In response, South Seas states that when it attempted to return the Station to the air on April 25, 2000, by installing a temporary long-wire antenna at its licensed facilities, it was "unaware that District Council had entered into a lease agreement to use the site."<sup>37</sup> South Seas states that it moved to the 2000 Temporary Facilities shortly thereafter and removed all equipment from the site now controlled by District Council.<sup>38</sup>

12. As discussed below, we find that while the Station has operated at reduced power or been silent for a significant portion of the license term, it has not been silent since June 1998. For these reasons we will grant the Petition in part, and deny it in part.

13. *Proposed Forfeiture.* We find that the Licensee apparently violated the Commission's Rules on three separate occasions. The record indicates that the Licensee failed to timely request an STA for two periods of silence, from March 13, 2000 (when the Licensee acquired the Station), through April 27, 2000, and from December of 2003 to March 8, 2004. Additionally, the Licensee operated the Station at a variance from the facilities authorized in the Station's license without Commission authorization for a period of nearly eight months, from June 1, 2005, to February 28, 2006.<sup>39</sup>

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<sup>32</sup> File No. BLESTA-20061127ADL.

<sup>33</sup> File No. BLESTA-20061222ADL.

<sup>34</sup> *Letter to Mr. Larry G. Fuss, President, South Seas Broadcasting, Inc.*, Ref. 1800B3-CNM (MB Feb. 7, 2007).

<sup>35</sup> The February 7, 2007, extension of the emergency antenna STA was to expire on August 7, 2007. However, the Licensee timely requested a further extension of the emergency antenna STA on August 3, 2007. See File No. BLESTA-20070806AFV. The staff granted the extension on January 17, 2008. The extension will expire on July 17, 2008.

<sup>36</sup> Petition at 5.

<sup>37</sup> Opposition at 3.

<sup>38</sup> *Id.*

<sup>39</sup> Although the Licensee commenced Station operations on April 27, 2000, without having received Commission authority to do so and did not file for emergency authorization within 24 hours of doing so, the Licensee was admonished for doing so in the *Staff Reconsideration Letter*. Additionally, staff review and approval of the 2000

14. 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 willfully or repeatedly failed 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.<sup>40</sup> 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.<sup>41</sup> 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,<sup>42</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>43</sup> 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.”<sup>44</sup>

15. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$5,000 for unauthorized discontinuance of service and \$4,000 for operation at an unauthorized location.<sup>45</sup> 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.”<sup>46</sup>

16. In this case, the Licensee failed to seek Commission authorization to operate the Station at a site different than that authorized, twice failed to seek Commission authorization to discontinue operations, and failed on several occasions to timely respond to Commission inquiries. Moreover, the Licensee’s erratic operation of the Station during the prior license term is highly problematic. On balance, as discussed further below, we believe that forfeiture and a short-term renewal, rather than designation, is the appropriate sanction in these circumstances. 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 propose a forfeiture for the full \$5,000 amount for each period of unauthorized discontinuance of service, and the full \$4,000 amount for the period of operation at an unauthorized location. Additionally, we propose a forfeiture in the full amount of \$4,000 for failure to respond to Commission communications. Thus, we propose a forfeiture in the total amount of \$18,000.

17. *License Renewal Application.* On September 28, 2005, the Licensee timely filed the above captioned renewal application. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>47</sup> 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

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Temporary Facilities was inhibited by the apparent misplacement of the May 2000 STA Request. We note that although the Licensee claims the May 2000 STA request was properly filed, it was in fact filed four days after the Station resumed operation. As discussed above, 47 C.F.R. § 73.1365 requires a licensee to request STA ten days prior to the licensee’s proposed date of operation from temporary facilities.

<sup>40</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

<sup>41</sup> 47 U.S.C. § 312(f)(1).

<sup>42</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>43</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>44</sup> 47 U.S.C. § 312(f)(2).

<sup>45</sup> 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.

<sup>46</sup> 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).

<sup>47</sup> 47 U.S.C. § 309(k).

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.<sup>48</sup> 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.”<sup>49</sup>

18. In this particular case, it is the listeners in Leone, American Samoa, who were most severely impacted by the silence and low-powered operation of the Station since 2000. A licensee faces a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term.<sup>50</sup> The facts here present a close case. It is clear to us that the Licensee’s conduct has fallen far short of the service commitment which most licensees provide to their communities of license on a daily basis. Although the Licensee has not operated WVUV(AM) for a single day during the prior license term with its licensed facilities, we cannot find, on the record here, that Station WVUV(AM) was silent for most or all of this period. Moreover, we find that the Licensee’s apparent violations of Sections 73.1350 and 73.1740 of the Rules do not, by themselves, constitute “serious violations” warranting designation for evidentiary hearing.

19. However, on the facts before us we cannot find that the violations, when considered together, do not constitute a pattern of abuse. We also cannot find that Station WVUV(AM) served the public interest, convenience, and necessity during the subject license term. The Licensee has alternated between periods of unauthorized operation and unauthorized discontinuance of operations of Station WVUV(AM); as described above, during several periods of time when WVUV(AM) resumed broadcast operation after being off the air with or without Commission authority, it did so prior to or without receiving authorization for the temporary facilities used. Additionally, the Licensee has been unresponsive to staff inquiries regarding the Station’s operations and especially operations at variance to its authorizations. Although we cannot find that the Licensee’s violations of the Rules rises to such a level that designation for evidentiary hearing is warranted,<sup>51</sup> we believe that additional measures are necessary in order to ensure that the Licensee complies with the Act and the Rules in the future. Accordingly, pursuant to Section 309(k) of the Act, we will grant the renewal application for a term of two years from the release date of this Order.<sup>52</sup> This will afford the Commission an opportunity to review

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<sup>48</sup> 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).

<sup>49</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>50</sup> See *Birach Broadcasting Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020-21 (2001). The Station was intermittently silent for approximately twenty-four months since the Licensee acquired the Station on March 13, 2000. The Station was silent from March 13, 2000, to April 27, 2000; April 30, 2000 to June 23, 2000; early December 2003, to March 8, 2004; August 16, 2004, to December 4, 2004; February 28, 2006 to February 20, 2007.

<sup>51</sup> 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).

<sup>52</sup> See *Clear Channel Television, Inc.*, Notice of Apparent Liability, 10 FCC Rcd. 3773 (1995).

the Licensee's ability to comply with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

#### IV. ORDERING CLAUSES

20. 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 South Seas Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for the apparent willful and repeated violations of Sections 73.1350 and 73.1635 of the Commission's Rules.

21. 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*, South Seas 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.

22. 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).

23. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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.

24. 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.

25. 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.<sup>53</sup>

26. IT IS FURTHER ORDERED that, the Petition to Deny filed by District Council is granted to the extent indicated, and denied in all other respects, and that pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application for Station WVUV(AM), Leone, American Samoa (File No. BR-20050928ADD) IS GRANTED for a period of two years from the date of the release of this Order.<sup>54</sup>

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<sup>53</sup> See 47 C.F.R. § 1.1914.

<sup>54</sup> We recognize that WVUV(AM) is currently operating pursuant to STA. Generally, license renewals are not granted to stations not operating with licensed facilities. However, we believe that resolution of the issues raised in connection with the Station's renewal application are necessary before we can evaluate the Licensee's pending application for new permanent facilities for WVUV(AM).

27. IT IS FURTHER ORDERED, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. Larry Fuss, South Seas Broadcasting, Inc., 9408 Grand Gate Street, Las Vegas, Nevada 89143; and by First Class Mail to District Council of the Assemblies of God in American Samoa, c/o Timothy R. Obitts, Esq., 8280 Greensboro Drive, 7<sup>th</sup> Floor, McLean, Virginia 22102 .

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau