

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

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| In the Matter of |) | |
| |) | File No. EB-08-SE-985 |
| Journal Broadcast Corporation |) | NAL/Acct. No. 200932100075 |
| |) | FRN # 0002710192 |
| Earth Station call signs E850092 and E980274 |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 6, 2009

Released: August 7, 2009

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 Broadcast”), licensee of earth stations E850092 and E980274, apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for operating its stations without Commission authority, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)¹ and Section 25.102 of the Commission’s Rules (“Rules”), and for failing to file timely renewal applications for its two earth stations in apparent willful and repeated violation of Section 25.121(e) of the Rules.²

II. BACKGROUND

2. On January 1, 2003, Journal Broadcast was granted a license to operate a fixed satellite earth station under call sign E850092. Under the terms of its license, Journal Broadcast’s authorization for its earth station expired on February 6, 2008.³ On July 31, 1998, Journal Broadcast was granted a license to operate a transmit/receive temporary fixed satellite earth station under call sign E980274. Under the terms of that license, Journal Broadcast’s authorization for its earth station expired on July 31, 2008.⁴ Thereafter, on September 22, 2008, Journal Broadcast became aware that it had failed to file a renewal application for each station and that its licenses had expired. On September 24, 2008, Journal Broadcast submitted an application for special temporary authority (“STA”) for each station to operate.⁵ On September 28 and 29, 2008, respectively, the International Bureau granted Journal Broadcast’s STA requests.

3. On October 10, 2008, Journal Broadcast filed an application for permanent authorization

¹ 47 U.S.C. § 301; 47 C.F.R. § 25.121(e).

² 47 C.F.R. § 25.102(a).

³ See File No. SES-MOD-20021014-01766.

⁴ See File No. SES-LIC-19980608-00684.

⁵ See SES-STA-20080924-01233 and SES-STA-20080924-01234.

for earth station E980274,⁶ which was granted on November 26, 2008.⁷ On December 3, 2008, Journal Broadcast filed an application for permanent authorization for earth station E850092,⁸ after a series of STA authorizations during the required frequency coordination process.⁹ The International Bureau granted that license on January 12, 2009.¹⁰

4. Because it appeared that Journal Broadcast operated earth stations E850092 and E980274 without authorization, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On November 24, 2008, the Enforcement Bureau's Spectrum Enforcement Division ("Division") issued Journal Broadcast a letter of inquiry ("LOI") to investigate whether Journal Broadcast operated the earth stations beyond the expiration of its licenses.¹¹

5. In its response to the LOI filed December 24, 2008,¹² Journal Broadcast admitted that it failed to timely renew its two earth station licenses and that it continued to operate stations E850092 and E980274 without Commission authority until at least September 24, 2008, the date of the STA requests, because it was unaware that its licenses had expired.¹³ Journal Broadcast stated that it first became aware that its licenses had expired on September 22, 2008,¹⁴ at which time it took immediate steps to request STAs to operate its stations consistent with the parameters contained in the expired authorizations, pending the submission and grant of new license applications.¹⁵

III. DISCUSSION

6. 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.¹⁶ Section 25.121(c) of the Rules provides that the license term for an earth station is specified in the instrument of authorization.¹⁷ Section 25.121(e) of the Rules requires the licensee of an earth station to file its renewal application "no earlier than 90 days,

⁶ See SES-LIC-INTR2008-02456.

⁷ See SES-LIC-20081010-01317.

⁸ See SES-LIC-INTR2008-02806.

⁹ See SES-STA-20081120-01504 and SES-STA-20081205-01539.

¹⁰ See SES-LIC-20081203-01527.

¹¹ Letter from Kathy S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Douglas G. Kiel, Chief Executive Officer, Journal Broadcast Corporation (November 24, 2008).

¹² Letter from Douglas G. Kiel, Vice President, Journal Broadcast Corporation, to Susan Stickley, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 24, 2008).

¹³ *Id* at 2-3.

¹⁴ *Id* at 1.

¹⁵ *Id* at 1, 4.

¹⁶ 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

¹⁷ 47 C.F.R. § 25.121(c).

and no later than 30 days, before the expiration date of the license.”¹⁸ Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.¹⁹

7. Under the terms of its licenses, Journal Broadcast’s authorization to operate earth stations E850092 and E980274 expired on February 6, 2008 and July 31, 2008, respectively. As a Commission licensee, Journal Broadcast is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules.²⁰ Journal Broadcast admitted that it failed to file its renewal applications during the requisite 30-90 day period prior to the respective expiration dates. Moreover, Journal Broadcast admitted that it continued to operate the stations after the expiration of its licenses, a situation that Journal Broadcast did not seek to remedy until September 24, 2008, when Journal Broadcast filed its requests for STAs. Thus, it appears that Journal Broadcast violated Section 25.121(e) of the Rules by failing to timely file a renewal application for each station, and violated Section 301 of the Act and Section 25.102(a) of the Rules by continuing to operate its stations without Commission authority.

8. Section 503(b) of the Act²¹ and Section 1.80(a) of the Rules²² 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 “repeated” means more than once.²³ Based on the record before us, it appears that Journal Broadcast’s violations of Section 301 of the Act and of Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

9. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) 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.”²⁴ Having considered the statutory factors, as explained below, we propose a total forfeiture of \$32,000.

¹⁸ 47 C.F.R. § 25.121(e).

¹⁹ 47 C.F.R. § 25.161.

²⁰ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437 (2004) (“*Discussion Radio*”). See also *Discovery World Television, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2883, 2884 (Enf. Bur., Spectrum Enf. Div. 2009) (“*Discovery World*”); *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898 (Enf. Bur., Spectrum Enf. Div. 2008) (“*Side By Side*”); *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid) (“*La Carpa*”); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) (“*Lazer*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) (“*Shared Data Networks*”).

²¹ 47 U.S.C. § 503(b).

²² 47 C.F.R. § 1.80(a).

²³ See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

²⁴ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

10. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and \$3,000 for failure to file required forms or information.²⁵ As the Commission has held, a licensee's continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the rules and warrant the assessment of separate forfeitures.²⁶ Accordingly, we herein propose separate forfeiture amounts for Journal Broadcast's separate violations.

11. Consistent with precedent, we propose a forfeiture in the amount of \$3,000 for each of Journal Broadcast's failures to timely file a renewal application within the time period specified in Section 25.121(e) of the Rules, for a total of \$6,000.²⁷ Additionally, we propose a forfeiture in the amount of \$5,000 for each of Journal Broadcast's unauthorized operations of its earth stations E850092 and E980274, after February 6, 2008 and July 31, 2008 respectively, for a total of \$10,000.²⁸ In proposing a forfeiture of \$5,000 per station for the unauthorized operation, 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.²⁹ Thus, we propose an aggregate forfeiture of \$16,000 (\$6,000 for two instances of failure to timely file a renewal application at \$3,000 each, and \$10,000 for two instances of unauthorized operation at \$5,000 each).

12. This \$16,000 forfeiture amount is subject to adjustment, however. In this regard, we consider the size of the violator and ability to pay a forfeiture, as well as its prior violation of the same rule sections before us today.³⁰ To ensure that forfeiture liability is a deterrent, and not simply a cost of doing

²⁵ 47 C.F.R. § 1.80(b).

²⁶ See *Discussion Radio*, 19 FCC Rcd at 7438. See also *Side By Side*, 23 FCC at 901; *La Carpa Corp.*, 22 FCC Rcd at 2746; *Lazer*, 21 FCC Rcd at 8712; *Shared Data Networks*, 20 FCC Rcd at 18187.

²⁷ See e.g., *Lockheed Martin Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2980, 2982 (Enf. Bur., Spectrum Enf. Div. 2009) ("*Lockheed Martin*"); *Discovery World.*, 24 FCC Rcd at 2886; *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div. 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media Bur., Audio Div. 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC 21033, 21035 (Media Bur., Audio Div. 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

²⁸ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits assessment of a forfeiture for a violation that occurred more than one year before the issuance of a NAL, but this section does not bar consideration of prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc., d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000).

²⁹ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture against a broadcaster for operating its broadcast station beyond the expiration of its license); *Side by Side*, 23 FCC Rcd at 900 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license).

³⁰ Journal Broadcast Corporation is a leading television and radio station operator with 35 radio stations and 12 television stations operating in as many states. Its net yearly sales are \$112,900,000. See *Hoover's Company Records – In-depth Records*, May 15, 2009. Journal Broadcast was previously found to be apparently liable for a forfeiture for failure to timely file a renewal application and for operating an earth station without authority. See

business, the Commission has determined that large or highly profitable companies such as Journal Broadcast, could expect the assessment of higher forfeitures for violations, and that prior violations of the same or other regulations would also be a factor contributing to upward adjustment of apparent liability.³¹ Given Journal's size and its ability to pay a forfeiture,³² coupled with its previous violation, we conclude that an upward adjustment of the base forfeiture amount to \$32,000 is appropriate.

13. We do find, however, that a downward adjustment of the proposed forfeiture from \$32,000 to \$25,000 is warranted because Journal Broadcast 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.³³

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁵ Journal Broadcast Corporation **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for the willful and repeated violation of Section 301 of the Act and Section 25.201(a) of the Rules, and for willful violation of Section 25.121(e) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁶ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Journal Broadcast Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be

Journal Broadcast Corp., Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

³¹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-101.

³² See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100. See also *SES Americom*, Notice of Apparent Liability, 24 FCC Rcd 2694, 2697 (Enf. Bur., Spectrum Enf. Div. 2009); *Discovery World*, 24 FCC Rcd at 2886; *Lockheed Martin Corporation*, Notice of Apparent Liability, 24 FCC Rcd at 2984-2985; *Walgreen Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16045, 16048 (Enf. Bur., Spectrum Enf. Div. 2007).

³³ See *Discovery World*, 24 FCC Rcd at 2883; *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004). See also *Side By Side*, 23 FCC Rcd at 901; *Lazer*, 21 FCC Rcd at 871.

³⁴ 47 U.S.C. § 503(b).

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

³⁶ 47 C.F.R. § 1.80.

sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Journal Broadcast Corporation will also send electronic notification on the date said payment is made to Susan Stickley, at Susan.Stickley@fcc.gov, and to Ricardo Durham, at Ricardo.Durham@fcc.gov.

17. 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.

18. 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.

19. **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 Mr. Douglas G. Kiel, Vice President, Journal Broadcast Corporation, 333 West State Street, Milwaukee, Wisconsin 53203, and to its counsel, David H. Pawlik, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau