



Federal Communications Commission
Washington, D.C. 20554

DA 09-1802
Released: August 13, 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Tuck Properties, Inc.
4875 Ocean Drive
Corpus Christi, TX 78412

Re: LPTV Station K30IK
Cripple Creek, etc., Colorado
Facility ID No. 14501
File Nos. BLTTL-20050118AKJ
BRTTL-20051130BEG
NAL/Acct. No. 0941420012
FRN: 0011375656

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE against Tuck Properties, Inc. (Tuck), licensee Low Power Television Station K30IK, Cripple Creek, etc., Colorado, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), under authority delegated to the Chief, Media Bureau, by Section 0.283 of the Commission’s Rules, 47 C.F.R. §0.283. As set forth herein, we find and Tuck admits that it engaged in unauthorized construction and operation of K30IK in violation of Section 73.1745 of the Commission’s Rules and made false certifications in violation of Sections 1.17 and 73.1015 of the Commission’s Rules.

By way of background, on June 1, 2004, Tuck sought a minor modification of the station’s facilities (BMPTTL-20040601ADC). On January 18, 2005, Tuck tendered the above-captioned application (BLTTL-20050118AKJ) for a license to cover that construction. That application was granted February 16, 2005.¹

Thereafter, on May 17, 2005, we granted Tuck’s application (BPTTL-20050506ACL) for a minor change of facilities for K30IK. Tuck filed an application (BLTTL-20051229ABH) for a license to cover the construction of those facilities. That application was granted on January 6, 2006.

¹ On May 3, 2005, Tuck sought silent authority for the station (BLTTL-20050118AKJ), which was granted on May 4, 2005. In the meantime, Tuck tendered an application to relocate the station’s facilities to a new tower site (BPTTL-20050223ACE). That application was subsequently dismissed after Tuck filed a superseding application (BPTTL-20050506ACL) for a minor change of facilities, as discussed above, proposing not only a relocation of the transmitter site, but also a change in antenna and power.

On June 20, 2005, Syncom Media, Inc. (Syncom), licensee of KLPT-LP (formerly K55IO), Denver, Colorado, filed a Petition for Reconsideration of the January 6, 2006 grant of Tuck's application for a license to cover construction. Therein, Syncom asserted that K30IK was not constructed as authorized in the 2004 construction permit, and, absent a valid license to cover that construction, its May 17, 2005 modification application constitutes a major change of facilities that cannot be sought outside a major change filing window.² Specifically, it maintained a tower at the site could not adequately support the antenna specified in the subject application, and therefore it was unlikely that the station could have been built in conformance with the underlying authorization. Therefore, Syncom argued, if Tuck's 2004 modification was not properly implemented, its 2005 modification application could not be properly considered as a minor modification of those facilities.³

Thereafter, on February 14, 2006, the grant of Tuck's covering license application (BLTTL-20051229ABH) was rescinded.⁴ K30IK continued to operate under program test authority pursuant to the terms of the construction permit granted on January 6, 2006 until it sought and received authority to go silent.

Tuck subsequently sought to supplement its opposition pleading to update the record in this proceeding with information it learned during an internal investigation of this matter. It proffers the declaration of Norwood B. Orrick, Secretary of Tuck and signatory to the subject applications, who states that when Tuck filed its January 18, 2005 license application to cover the construction of the facilities specified in the 2004 modification application, he believed that all statements contained in that application were true and correct. He states that when Tuck filed the license application to cover the construction of the facilities specified in the 2005 modification application, he continued to believe that all statements contained therein remained true and correct.

In that regard, Orrick relates that he certified the license application to cover the 2004 modification based on representations made to him by the technical staff responsible for implementing the 2004 construction permit. However, upon learning of Syncom's petition, Orrick states that he conducted an internal review of the facts and circumstances surrounding the construction of both stations and the filing of both license applications. As a result of that

² See Sections 73.3572 (a)(2)(ii) and 73.3572(e)(1) of the Commission's Rules, 47 C.F.R. §§ 73.3572(a)(2)(ii) and 73.3572(e)(1).

³ In an opposition pleading, Tuck argues that the filing of a petition for reconsideration of the grant of the 2005 modification is procedurally defective because, among other things, Syncom did not participate earlier in the proceeding by challenging the grants of the 2004 modification and subsequent implementing license applications, the actual basis of Syncom's objections. In a reply pleading, Syncom states that it was unable to file its objection earlier because there is no formal pleading cycle for the underlying application considered as a minor change, and there was very little time between public notice of the application and its subsequent grant to adequately prepare its objection. Under those circumstances, Syncom urges the Commission to consider its pleadings.

⁴ The grant of Tuck's above-captioned renewal application (BRTTL-20051130BEG) was also rescinded pending the resolution of this matter.

investigation, Orrick maintains that he learned that statements contained in the January 2005 license application were not correct. He states that the facilities actually constructed by Tuck in January 2005 were not those authorized in the September 2004 construction permit. Specifically, while the subject construction permit specified a directional Scala CL-1469 antenna, the station was in fact constructed with a smaller antenna. Nevertheless, based upon the representations of the technical staff responsible for the station's construction, which Orrick claims he had no reason to question or doubt, he concedes that he mistakenly certified that the station had been constructed consistent with the terms of its authorization. Thus, while Orrick did not intend to incorrectly certify compliance with the terms of the K30IK construction permit, the license application filed by Tuck did contain materially false statements.

Orrick further states that upon learning of these facts, he directed K30IK to cease broadcasting and Tuck to withdraw the rescinded modification and license applications, and to seek special temporary authority (STA) to remain silent pending the filing of an application to relocate the station to a compliant site.⁵

In addition, Orrick states that Tuck has implemented a compliance program and has taken other actions to assure that such events do not recur and that Tuck exercise the requisite degree of care expected of Commission licensees. First, it suspended the technical staff responsible for relaying the incorrect information to Tuck's management which resulted in the incorrect certification of its license application, and has required that they undergo remedial training with regard to FCC licensing procedures prior to again assuming duties on behalf of Tuck. Second, to assure adequate management responsibility and supervision that was not sufficient in this instance, Tuck has designated a compliance system officer (CSO) who will be among its officers and will be responsible for signing all future applications on its behalf. The CSO will undergo specific legal and technical training and will be responsible for the absolute need to independently ascertain and verify that all representations made on behalf of Tuck are true, complete and accurate. The CSO will also implement and monitor an ongoing training system to ensure proper employee education regarding FCC compliance. Only those Tuck employees that have taken part in its education training and are authorized by the CSO will be permitted to assist in the preparation of FCC filings. Henceforth, if any Tuck employee is found to be involved in any violation of its or the FCC's rules and policies, such individuals will be subject to strict disciplinary action, including termination.

As a final matter, Syncom now seeks to withdraw its reconsideration petition. It reports that it has entered into an agreement with Tuck for mutual assurances of protection of their facilities. Syncom has submitted the declaration of its President that, other than the reciprocal covenants disclosed, neither Syncom nor any of its principals have received any consideration from Tuck for their agreement. In light of these developments, Syncom states it has no further interest in pursuing these matters against Tuck.⁶

⁵ On March 30, 2009, Tuck filed a modification application (File No. BPTTL-20090333AIB).

⁶ The parties have submitted the documentation required by Section 73.3588(a) of the Commission's Rules, and we do not believe that the agreement between the parties is the type of non-financial concessions that would fall within

Discussion. Based on the above admissions, it is apparent that Tuck improperly certified in its above-captioned 2005 license application (implementing the 2004 construction permit) that the station was constructed and operating consistently with all the terms and conditions of its construction permit. In addition, it is apparent that Tuck improperly certified in its above-captioned 2005 renewal application that there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rule and regulations of the Commission during the preceding license term. Section 73.1015 of the Commission's Rules requires, in pertinent part, that "[n]o applicant . . . shall . . . in any application, pleading, or report or any other written statement submitted to the Commission, make any misrepresentation or willful omission bearing on any matter within the jurisdiction of the Commission."⁷

While the false certification of the subject license and renewal applications was willful (as discussed more fully below), Tuck's actions in this regard do not rise to the level of a pattern of misconduct so as to warrant exploration of its conduct in an evidentiary hearing. In this regard, we find that a substantial and material question of fact has not been raised with respect to Tuck's qualifications to remain a Commission licensee. We believe, however, that Tuck should be sanctioned for its false certifications, and that monetary forfeitures should be imposed for the two apparent violations of Section 73.1015 of the Commission's Rules.

Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80(a) of the Commission's Rules each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. Tuck's conduct in this regard was both "willful" and "repeated" within the meaning of Section 503(b)(1)(B) of the Communications Act and Section 1.80(a)(2) of the Commission's Rules. As the Commission has held, an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *See Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992). Further, a continuing violation is "repeated" if it lasts more than one day. *Id.* at 4388.

In *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999), the Commission adopted guidelines for assessing forfeitures. However, these guidelines do not enumerate a base forfeiture amount for a willful material omission. Under these circumstances, the forfeiture amount must be assessed, taking into account the relevant statutory factors in Section 503(b)(2) of the Communications 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." Based on our

the purview of that rule. In addition, review of the matters raised in the pleadings, consistent with our obligation to examine the allegations raised to determine whether the public interest, convenience and necessity will be served by the withdrawal as requested, are adequately addressed herein. *See, e.g., Booth American Co.*, 58 FCC 2d 553, 554 (1976).

⁷ See also Section 1.17(a)(2) of the Commission's Rules, 47 C.F.R. §1.17(a)(2).

assessment of these factors, we conclude that Tuck's apparent violations of Section 73.1015 with respect to both K30IK's constructed facility and the renewal application warrant this Notice of Apparent Violation for Forfeiture in the amount of \$5,000 for each violation, for a total of \$10,000. See *WRKL Rockland Radio, L.L.C.*, 14 FCC Rcd 1042 (MMB 1999). In this case, we believe that this amount is appropriate given the circumstances in which the violations arose, as discussed above.

Based on our review of the facts and circumstances as set forth above, IT IS HEREBY ORDERED, That pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283, and 1.80 of the Commission's Rules, Tuck Properties, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the total amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.1015 of the Commission's Rules.

IT IS FURTHER ORDERED, That the request of Syncom Media, Inc. to withdraw its submissions in this proceeding ARE GRANTED.

IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Tuck Properties, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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).

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: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

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.

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. 20554.⁸

Sincerely,

James J. Brown
Deputy Chief, Video Division
Media Bureau

cc: Lee J. Peltzman, Esquire
Peter Tannenwald, Esquire

⁸ See 47 C.F.R. § 1.1914.