

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

In the Matter of)	
)	FRN: 001097642
Bruce MacAfee)	
Licensee of)	Facility ID No. 24948
)	File No. BRFT-20050926AFR
FM Translator Station K269AV)	NAL/Acct. No. MB200741410222
Tonopah & Goldfield, Nevada)	
)	Facility ID No. 24946
and)	File No. BRFT-20050926AFO
)	NAL/Acct. No. MB200741410216
FM Translator Station K261AY)	
Bridgeport, California)	

FORFEITURE ORDER

Adopted: October 27, 2009

Released: October 28, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Bruce MacAfee (“Licensee”), licensee of FM translator stations K269AV, Tonopah & Goldfield, Nevada, and K261AY, Bridgeport, California (collectively, the “Stations”), for his willful violation of Section 73.3539 of the Commission’s Rules (“Rules”)¹ by failing to timely file a license renewal application for the Stations.

II. BACKGROUND

2. On February 1, 2007, and February 14, 2007, respectively, the Bureau issued Notices of Apparent Liability for Forfeiture (“NAL”) in the amount of one thousand, five hundred dollars (\$1,500) each to Licensee for these violations, for a total of \$3,000.² Licensee filed two identical Requests for Cancellation of Proposed Forfeiture (“Requests”) on March 12, 2007.

3. As noted in the NALs, Licensee’s renewal applications for K269AV’s and K261AY’s current license terms were due on June 1, 2005, and August 1, 2005, four months prior to the October 1, 2005, and December 1, 2005, expiration dates.³ Licensee did not file the applications until September 26, 2005, and provided no explanation for the untimely filing of the renewal applications. On February 1,

¹ 47 C.F.R. § 73.3539.

² *Bruce Macafee*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2065 (MB 2007) (for K269AV) and *Bruce Macafee*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2914 (MB 2007) (for K261AY).

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

2007, and February 14, 2007, the staff advised Licensee of his apparent liability for a forfeiture of \$1,500 for willfully violating Section 73.3539 of the Rules at each Station (for a total of \$3,000), based on the fact that he failed to timely file a renewal application for each Station.

4. In his Request, Licensee states that he (1) inadvertently failed to timely file the renewal applications because he was hospitalized shortly before the application filing deadline, and (2) has a history of compliance with the Rules. Licensee asserts that these reasons warrant cancellation of the forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the “Act”),⁴ Section 1.80 of the Rules,⁵ and the Commission’s *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account 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.⁷

6. Licensee does not dispute that he failed to file timely renewal applications for the Stations, but states that these violations were unintentional. Specifically, Licensee maintains that he hospitalized with a heart condition shortly before the filing deadline and was thus “unable to approve or review” the applications until after the filing deadline had passed.⁸ As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.⁹ In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹⁰ Moreover, while we are sympathetic to any health issues Licensee may have been facing at the time of filing, the Commission has held that “an employee’s illness does not ... warrant[] special consideration” that would allow for deviation from the Rules.¹¹

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ Request at 1.

⁹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

¹⁰ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

¹¹ *Southern Communications Systems, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 25103, 25107 (2000), *recon. denied*, Second Memorandum Opinion and Order, 16 FCC Rcd 18357 (2001) (upholding denial of request for
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7. We also reject Licensee's argument that he deserves a reduction based on his history of compliance with the Rules. Licensee, by his own admission, failed to file properly his applications for FM Translator Stations K269AV and K261AY. Based on these combined offenses, we cannot find that Licensee's history of compliance warrants reduction of the forfeiture amount.¹²

8. We have considered Licensee's Request and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹³ violated Section 73.3539 of the Rules. However, in light of the Commission's recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250 for each Station, for a total of \$500.¹⁴

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁵ that Bruce MacAfee SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully violating Section 73.3539 of the Commission's Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.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/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

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waiver that was based on claim that applicant was unable to wire transfer an auction installment due to the illness of its financial officer).

¹² *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688, 5690 (MB 2009) (denied "history of compliance" reduction when licensee filed several untimely license renewal applications). *See also Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9535 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination).

¹³ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California*, 6 FCC Rcd at 4387-88.

¹⁴ *See, e.g., Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922, 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445, 11445 (MB 2007) (same).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹⁶ 47 U.S.C. § 504(a).

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).¹⁷

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to Bruce MacAfee, Box 757, Bishop, California 93514-0757, and his counsel, Larry Perry, Esq., 11464 Saga Lane, Knoxville, Tennessee 37931-2819.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.