

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

In the Matter of)	
	)	Facility ID No. 92520
Best Media, Inc.	)	NAL/Acct. No. MB200641410002
	)	FRN: 0007588072
Licensee of Translator Stations	)	File No. BRFT-20051019ABL
)	
K217DJ(FX), Kemah, Texas	)	Facility ID No. 91911
W207B1(FX), University Park, Illinois	)	NAL/Acct. No. MB200641410053
W206B1(FX), Hamtramck, Michigan	)	FRN: 0007588072
K217DP(FX), Barker, Texas	)	File No. BRFT-20051019ABK
)	
	)	Facility ID No. 93456
	)	NAL/Acct. No. MB200641410054
	)	FRN: 0007588072
	)	File No. BRFT-20051019ABN
)	
	)	Facility ID No. 93460
	)	NAL/Acct. No. MB200641410055
	)	FRN: 0007588072
	)	File No. BRFT-20051019ABM

FORFEITURE ORDER

Adopted: April 7, 2009

Released: April 8, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000), to Best Media, Inc. (“Licensee”), licensee of Translator Stations K217DJ(FX), Kemah, Texas, W207B1(FX), University Park, Illinois, W206B1(FX), Hamtramck, Michigan, and K217DP(FX), Barker, Texas (collectively, the “Stations”), for willfully and repeatedly violating Section 73.3539 of the Commission’s Rules (“Rules”)¹ and Section 301 of the Communications Act of 1934, as amended (“Act”), for its failure to timely file the Stations’ license renewal applications and for unauthorized operation of the Stations.²

II. BACKGROUND

2. On February 16, 2006, and June 8, 2006, respectively, the Bureau issued Notices of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) each to Licensee for

¹ 47 C.F.R. § 73.3539.

² 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

these violations, for a total of \$28,000.³ Licensee filed a Consolidated Request for Reduction or Cancellation of Proposed Forfeitures (“Request”) on July 12, 2006.

3. As noted in the NALs, Licensee’s renewal applications for the current license terms for W206B1(FX) and W207B1(FX) should have been filed on June 1, 2004, and August 1, 2004, respectively, four months prior to the October 1, 2004, and December 1, 2004, expiration dates, but were not.⁴ Licensee’s renewal applications for the current license terms for K217DJ(FX) and K217DP(FX) should have been filed on April 1, 2005, four months prior to the August 1, 2005, expiration date, but were not.⁵ Upon learning of the expiration of the Station licenses, Licensee properly tendered the subject renewal applications on October 19, 2005.⁶ On February 16, 2006, the staff advised Licensee of its apparent liability for forfeiture of \$7,000 for its failure to timely file a license renewal application for K217DJ(FX) and for unauthorized operation of that Station. On June 8, 2006, the staff advised Licensee of its apparent liability for forfeiture of \$7,000 each for its failure to timely file the renewal applications for W206B1(FX), W207B1(FX), and K217DP(FX), and for unauthorized operation of those Stations.⁷ In response, Licensee filed the subject Request.⁸

4. In support of its Request, Licensee states that a reduction or cancellation of the forfeitures is warranted because: (1) Licensee committed the same violations at each Station and, upon discovery of its mistakes, took immediate steps to correct them; (2) the forfeitures exceed the amount assessed against other licensees that have committed similar violations of the Rules; and (3) Licensee lacks the financial resources to pay the forfeitures. Licensee asserts these reasons warrant a reduction or cancellation of the assessed forfeitures.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ and the Commission’s *Forfeiture Policy Statement*.¹¹ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances,

³ See *Letter to Scott Cinnamon, Esq. from Peter Doyle*, ref. 1800B3-KV (MB Feb. 16, 2006) (for Translator Station K217DJ(FX)); *Best Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6350 (MB 2006) (for Translator Station W207B1(FX)); *Best Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6354 (MB 2006) (for Translator Station W206B1(FX)); and *Best Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6363 (MB 2006) (for Translator Station K217DP(FX)).

⁴ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁵ *Id.*

⁶ Thus, the W206B1(FX) and W207B1(FX) renewal applications were filed roughly one year after the licenses for those Stations had expired, while the K217DJ(FX) and K217DP(FX) license renewal applications were filed approximately three months after the licenses for those Stations had expired.

⁷ The Commission granted the above-referenced license renewal applications on February 16, 2006 (for K217DJ(FX)) and June 8, 2006 (for W206B1(FX), W207B1(FX), and K217DP(FX)).

⁸ On March 16, 2006, April 11, 2006, May 11, 2006, and June 10, 2006, Licensee filed Requests for Extension and Further Extension of Time to Reply and for Consolidation of Responses to NALs against the Stations. In order to develop a fuller understanding of the record, these extension requests are hereby granted.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ *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).

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.¹²

6. Licensee first asserts that a single fine for the late-filed renewals and temporary unauthorized station operations should apply because it committed the same violations at each Station as a result of its misunderstanding of the renewal process. We reject this argument. Consistent with our *Forfeiture Policy Statement*, we considered the violations at each Station separately and assessed the respective forfeiture amounts accordingly.¹³ Licensee further asserts that it took immediate corrective action upon learning of its deficiencies, and conserved Commission resources by bringing the violations to the Commission's attention. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁴

7. Licensee next asserts that the forfeitures should be reduced because it disclosed its Rule violations voluntarily, claiming that the Commission has previously reduced forfeiture amounts on this basis. However, Licensee was required to file its renewal applications in order to continue Station operations. Therefore, their submission, by their nature, was not "voluntary."¹⁵ Moreover, the expiration of the Stations' licenses was a matter of Commission record; had Licensee not submitted the renewal applications, the Commission would have notified it that the Stations' licenses had expired.¹⁶

8. Finally, Licensee asserts that it lacks the financial resources to pay the assessed forfeitures, stating that it has operated the Stations at "significant losses" over the years.¹⁷ The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee 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 reflect the licensee's current financial status. Here, Licensee has provided us with a one-page document stating its revenue and expenditures for the years 2003, 2004, and 2005.

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See, e.g., *Ricardo Samitier Miami, Florida*, Notice of Apparent Liability, 7 FCC Rcd 6002, 6002 (FOB 1992) (finding the unauthorized operation of two unlicensed broadcast stations to constitute two separate violations).

¹⁴ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹⁵ See *New Inspiration Broadcasting Co., Inc.*, Forfeiture Order, DA 09-609 (MB Mar. 17, 2009) (rejecting licensee's assertion that its disclosure of its public file violations was voluntary, noting that since 2007, the Commission has declined to reduce forfeiture amounts based on a licensee's voluntary disclosure because, although licensees may admit to Section 73.3526 Rule violations, they only do so in the context of a question contained in the license renewal applications compelling such disclosure).

¹⁶ See, e.g., *Mr. Bruce Tria*, Letter, 23 FCC Rcd 7380 (MB 2008) (noting that staff had notified licensee of license expiration).

¹⁷ Request at 3.

We find this information alone is an insufficient basis on which to assess Licensee's inability to pay.¹⁸ Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

9. We have considered Licensee's response to the NALs in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹⁹ and repeatedly²⁰ violated Section 73.3539 of the Rules and Section 301 of the Act.²¹ However, given the Commission's recent decisions assessing forfeitures in the amount of \$500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act,²² we reduce the forfeiture amount *sua sponte* to \$2,000.²³

IV. ORDERING CLAUSES

10. 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,²⁴ that Best Media, Inc., SHALL FORFEIT to the United States the sum of \$2,000 for willfully and repeatedly violating Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

11. 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.²⁵ 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/Act. 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

¹⁸ See *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (EB 2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (EB 2005) (same).

¹⁹ 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 Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

²⁰ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²¹ 47 U.S.C. § 301.

²² See *KSOP, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20950 (MB 2007) (issuing NAL in the amount of \$500 for translator station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

²³ See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing).

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

²⁵ 47 U.S.C. § 504(a).

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).²⁶

12. 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: Best Media, Inc., 15 East North St., Dover, Delaware 19901, and to its attorneys, Scott Cinnamon, Esq. and Pamela C. Cooper, Esq., Law Offices of Scott C. Cinnamon, PLLC, 1090 Vermont Ave., NW, Suite 800 #144, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁶ See 47 C.F.R. § 1.1914.