

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

In the Matter of	)	
	)	Facility ID No. 33314
<b>Kane County Special Service District #1</b>	)	NAL/Acct. No. MB-200741410440
	)	FRN: 0009042656
Licensee of FM Translator Station K269DQ	)	File No. BRFT-20070720AAU
Orderville, Utah	)	

**FORFEITURE ORDER**

**Adopted: April 5, 2010**

**Released: April 6, 2010**

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 Kane County Special Service District #1 (“Licensee”), licensee of FM translator station K269DQ, Orderville, Utah (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”), by failing to timely file a license renewal application for the Station and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (the “Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On December 3, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of five hundred dollars (\$500) to Licensee for these violations.<sup>2</sup> As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on June 1, 2005, four months prior to the October 1, 2005, expiration date.<sup>3</sup> Licensee did not file the application until July 20, 2007. Licensee did not request special temporary authorization (“STA”) for the Station to continue operating pending consideration of the late-filed renewal application. Licensee explained that the late-filing of the renewal application was simply an oversight on its part.<sup>4</sup> On December 26, 2007, Licensee submitted a letter (“Letter”) requesting reconsideration and waiver of the forfeiture.

**III. DISCUSSION**

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>7</sup> In

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Kane County Special Service District #1*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20926 (MB 2007). The Commission granted the license renewal application on December 3, 2007.

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> See Exhibit 30 of the captioned application.

<sup>5</sup> 47 U.S.C. § 503(b).

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.<sup>8</sup>

4. Licensee does not dispute that it failed to file a timely renewal application for the Station, but states that the amount of the forfeiture would “greatly restrain the ability for this local organization provide this public service.”<sup>9</sup> This is essentially an argument to support a claim of financial hardship.<sup>10</sup> The Commission will not consider reducing or canceling a forfeiture in response to financial hardship 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.<sup>11</sup> Licensee has not provided any such documentation and we therefore will not reduce the forfeiture based on financial hardship.

5. We have considered Licensee's Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>12</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>13</sup> violated Section 301 of the Act<sup>14</sup> and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.<sup>15</sup>

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<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> *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).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> Letter at 1.

<sup>10</sup> *See Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536 (EB 2006) (rejecting licensee's argument that it should not be required to pay the proposed forfeiture because it would divert funds that would otherwise be used to create public interest programming), *rev. granted in part, decision modified by*, 23 FCC Rcd 15959 (Oct. 28, 2008).

<sup>11</sup> *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

<sup>12</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. 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.

<sup>13</sup> Section 312(f)(2) 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)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>14</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>15</sup> A forfeiture amount of five hundred dollars (\$500) is proper, 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, based on the station's status as a provider of secondary FM translator service. *See, e.g., KSOP, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20950, 20952 (MB 2007) (issuing NAL in the amount of \$500 for licensee's failure to timely file a license renewal application and for unauthorized operation of its translator station).

**IV. ORDERING CLAUSES**

6. IT IS FURTHER 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,<sup>16</sup> that Kane County Special Service District #1 SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully violating Section 73.3539 of the Commission's Rules and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

7. 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.<sup>17</sup> 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.<sup>18</sup> 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 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).<sup>19</sup> Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>20</sup>

8. 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 Kane County Special Service District #1, c/o Nyle Willis, P.O. Box 36, Kanab, Utah 84741, and to its representative, Mauri K. Parsons, PO Box 473, Monroe, Utah 84754.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>17</sup> We note that Licensee included with its Letter a check for \$500 dated December 18, 2007, in the event we did not accept Licensee's arguments for reduction or cancellation of the proposed forfeiture. Because the check was never processed for payment, it is presumably void and is thus being returned to Licensee so that it may make a payment in accordance with ¶ 7.

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> See 47 C.F.R. § 1.1914.

<sup>20</sup> *Id.*