

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

In re Applications of	)	
	)	Facility I.D. Nos. 6530, 6532, 6537,6541,
<b>Boundary County TV Translator District</b>	)	6536
	)	
For Renewal of License for	)	FRN: 0010200160
FM Translator Stations K217FR (formerly	)	
K220AE), K296BJ, K265AV, K257DH, and	)	NAL/Acct. Nos. MB200741410188,
K272AR,	)	MB200741410243, MB20074141242,
Bonnors Ferry, Idaho	)	MB200741410241,MB200741410244
	)	
	)	File No. BRFT-20060419AEI

**FORFEITURE ORDER**

**Adopted:** January 12, 2010

**Released:** January 13, 2010

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 five hundred dollars (\$2,500) to Boundary County TV Translator District (“Licensee”), licensee of FM Translator Stations K217FR (formerly K220AE), K296BJ, K265AV, K257DH, and K272AR (“Stations”), for willfully violating Section 73.3539 of the Commission's Rules (“Rules”) by failing to timely file license renewal applications for the Stations and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> by engaging in unauthorized operation of the Stations.<sup>2</sup>

**II. BACKGROUND**

2. On February 12, 2007, the Bureau issued five Notices of Apparent Liability for Forfeiture (collectively, the “NALs”) in the cumulative amount of thirty-five dollars (\$35,000) to Licensee for these violations.<sup>3</sup> On March 12, 2007, Licensee filed a response to the NALs, styled as a “Petition for Reconsideration” (“Response”).

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>3</sup> *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Red 2695 (MB 2007) (NAL/Acct. No., MB200741410188); *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Red, 2699 (MB 2007) (NAL/Acct. No. MB200741410241); *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Red 2703 (MB 2007) (NAL/Acct. No. MB20074141242); *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Red 2707 (MB 2007) (NAL/Acct. No., MB200741410243); *Boundary County TV Translator District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Red 2711 (MB 2007) (NAL/Acct. No. MB200741410244).

3. As noted in the NALs, Licensee's renewal applications for the Stations' current license term should have been filed by June 1, 2005, four months prior to the Stations' October 1, 2005, license expiration date, but was not.<sup>4</sup> In fact, Licensee did not file the renewal applications until April 19, 2006, more than six months after the Stations' licenses expired. On February 12, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$35,000 for its failure to timely file the Stations' renewal applications and for unauthorized operation of the Stations.<sup>5</sup> Licensee filed the subject Response.

4. In its Response, Licensee states that its failure to timely file the renewal applications was unintentional, and that this reason warrants a reduction or cancellation of the assessed forfeiture.

### III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission's *Forfeiture Policy Statement*.<sup>8</sup> 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.<sup>9</sup>

6. Licensee asserts that it should be excused from liability because its failure properly to file the renewal applications was inadvertent. In support of this assertion, Licensee includes with its Response a statement from its District Historian, Bud Larsen, who was responsible for filing its FCC applications.<sup>10</sup> In his statement, Mr. Larsen indicates that he thought that had he electronically filed the Stations' renewal applications in a timely fashion, but admits that he mistakenly believed that "pending" status in CDBS meant "pending FCC review."<sup>11</sup> He states that he periodically checked the applications' status in CDBS, and eventually retained an outside consultant, who advised him that the applications were never filed "due to the failure to take one last step in the entry process."<sup>12</sup> As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>13</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule

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<sup>4</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>5</sup> The Commission granted the above-referenced license renewal applications on February 12, 2007.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</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>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> See Response, Exhibit 1.

<sup>11</sup> *Id.*

<sup>12</sup> Response at 1.

<sup>13</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992). See also *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").

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.<sup>14</sup>

8. 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, we will reduce the forfeiture amount against Boundary County TV Translator District to five hundred dollars (\$500) per station based on the Stations' status as providers of secondary FM translator service.<sup>15</sup>

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 willfully<sup>16</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>17</sup> violated Section 301 of the Act<sup>18</sup> and that a forfeiture in the total amount of two thousand five hundred dollars (\$2,500) is warranted.

#### 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,<sup>19</sup> that Boundary County TV Translator District SHALL FORFEIT to the United States the sum of two thousand five hundred dollars (\$2,500) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating 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.<sup>20</sup> 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

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<sup>14</sup> 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).

<sup>15</sup> See, e.g., *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4143 (MB 2009) (reducing *sua sponte* forfeiture amount from \$7,000 to \$500 for translator station's late renewal filing and unauthorized operation); *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).

<sup>16</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>17</sup> 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).

<sup>18</sup> 47 U.S.C. § 301.

<sup>19</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>20</sup> 47 U.S.C. § 504(a).

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>21</sup>

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, to Boundary County TV Translator District, P.O. Box 894, Bonners Ferry, Idaho 83805.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle, Chief  
Audio Division  
Media Bureau

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<sup>21</sup> See 47 C.F.R. § 1.1914.