

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

In the Matter of)	
)	Facility ID No. 69859
Butler Broadcasting Company, L.L.C.)	NAL/Acct. No. MB-20051810001
)	FRN: 0003742921
Licensee of FM Translator Station K246BS (formerly K244DS))	File No. BRFT-20040609AAI
Fayetteville, Arkansas)	

FORFEITURE ORDER

Adopted: August 2, 2011

Released: August 3, 2011

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 Butler Broadcasting Company, L.L.C. (“Butler”), former licensee¹ of FM translator station K246BS (formerly K244DS), Fayetteville, Arkansas (“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 (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.²

II. BACKGROUND

2. On February 9, 2005, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of six thousand dollars (\$6,000) to Butler for these violations.³ As noted in the NAL, Butler’s renewal application for the Station’s license term was due on February 1, 2004, four months prior to the June 1, 2004, expiration date.⁴ Butler failed to seek special temporary authority (“STA”) to continue Station operations and did not file the application until June 9, 2004, after the Station’s license had expired. In the application, Butler explained that its late filing was a result of the fact that it “neglected to list K244DS as an authorization to be renewed in the application for renewal of

¹ Butler assigned the Station to Davidson Media Station KREB-FM (“Davidson”) in 2005. See File No. BALFT-20041216AEH (granted February 9, 2005). The assignment was consummated February 10, 2005. Davidson subsequently assigned the Station to the current licensee, Carroll County Broadcasting, in 2010. See File No. BALH-20091203AHZ. Despite these assignments, Butler remains liable for forfeiture for those violations occurring when the Station was under its stewardship. See, e.g., *Oberlin College Student Network, Inc.*, Forfeiture Order, 25 FCC Rcd 8240, 8243 n.3 (2010); *WROV Broadcasters, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 1421, 1422-23 (1991) (statute of limitations does not preclude a forfeiture order against a former licensee when the NAL was issued while it was the licensee).

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

³ See *Letter to David Tillotson, Esq.*, Ref. No. 1800B3-MFW (MB 2007) (issuing forfeitures in the amounts of \$3,000 for the late-filed application and \$3,000 for the unauthorized operation). The Commission granted the license renewal application on February 9, 2005.

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

the license for the primary station,” KREB-FM, Fayetteville, Arkansas. Butler submitted a response to the *NAL* (“Response”) on March 26, 2007.

3. In its Response, Butler states that (1) it did not “fail to file a required form” but rather filed it late; (2) the forfeiture amount is “far out of proportion to the seriousness of the violations;” and (3) its history of compliance with the Rules warrants reduction or cancellation of the forfeiture amount.

III. DISCUSSION

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

5. Butler first argues that a forfeiture based on failure to file a required form is not warranted because it ultimately did file its renewal application, albeit more than four months late. We disagree. Section 73.3539(a)⁹ requires that a renewal application be filed “no later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.” As noted above, the application deadline in this case was February 1, 2004; Butler did not file its renewal application until June 9, 2004, more than four months after the filing deadline and eight days after the license’s expiration date. Because Butler failed to file its application before or on the deadline, its assertion that the proposed forfeiture should not be based on the “failure to file a required form” is without merit.¹⁰

6. Butler next argues that the three thousand dollar (\$3,000) forfeiture assessed for its unlawful operation of the Station is “a draconian penalty for so minor and unintentional an infraction.”¹¹ Again, we disagree. The Commission has repeatedly held that the inadvertence of a Rules violation does not warrant reduction or cancellation of a forfeiture amount.¹² In the renewal context, the Bureau typically proposes forfeitures in the amount of \$4,000 for unauthorized operation.¹³ Here, however, the

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 73.3539(a).

¹⁰ See *Frank J. Neely*, Forfeiture Order, 24 FCC Rcd 7740, 7742 (MB 2009) (rejecting the assertion that a late-filed form is significantly different from failure to file a required form, and should therefore have a smaller correlating forfeiture amount); *Manuel Huerta*, Forfeiture Order, 23 FCC Rcd 14647, 14648 (MB 2008) (same).

¹¹ Response at 2.

¹² See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); see also *Applied Life Ministries*, Forfeiture Order, 26 FCC Rcd 1197, 1198 (MB 2011) (declining to reduce or cancel a \$7,000 forfeiture for late filing and unauthorized operation based on the inadvertence of the violation).

¹³ See *Robert J. and Katherine M. Bohn*, Forfeiture Order, 26 FCC Rcd 1188 (MB 2011) (affirming \$3,000 and \$4,000 forfeiture amounts for late filing and unauthorized operation, respectively); *Hawkins Broadcasting Company*, (continued...)

Bureau reduced the forfeiture amount *sua sponte* to \$3,000 in the *NAL*.¹⁴ Because the Bureau has already considered the nature and circumstances of Butler's unauthorized operation of the Station, we decline to further reduce the forfeiture amount on that basis.

7. We conclude that Butler willfully¹⁵ violated Section 73.3539 of the Rules and willfully and repeatedly¹⁶ violated Section 301 of the Act¹⁷ 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 reduce the forfeiture amount *sua sponte* to \$500.¹⁸

8. Butler also states that its history of compliance with the Rules warrants cancellation or reduction of the forfeiture amount.¹⁹ While Commission records confirm this, we have previously declined requests for reduction based on a translator station's history of compliance where we have already reduced the proposed forfeiture on account of the station's status as a provider of secondary FM service.²⁰ We therefore decline to further reduce the forfeiture amount based on Butler's history of compliance.

IV. ORDERING CLAUSES

9. 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,²¹ that Butler Broadcasting Company, L.L.C., 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.

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Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4497 (MB 2007) (issuing proposed forfeitures of \$3,000 for late filing and \$4,000 for unauthorized operation); *Detroit Lakes Broadcasting Company, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16820 (MB 2007) (same).

¹⁴ See *Letter to David Tillotson, Esq.*, Ref. No. 1800B3-MFW (MB 2007).

¹⁵ 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. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88.

¹⁶ 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).

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

¹⁸ See *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 translator station licensee's failure to timely file a license renewal application and for unauthorized operation of its station); *Big Sky Owners Association, Inc.*, Forfeiture Order, 24 FCC Rcd 12215, 12217 (MB 2009) (same).

¹⁹ Response at 1, 3.

²⁰ See *Lane County School District 4J*, Forfeiture Order, 25 FCC Rcd 7263 (MB 2010); *Wayne Kowalski*, Forfeiture Order, 24 FCC Rcd 13835, 13837-13838 (MB 2009) ("a reduction of the proposed forfeiture based on Licensee's status as an FM Translator exceeds that which would be accorded Licensee for a 'history of compliance.'").

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

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.²² 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).²³ Butler will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Steve.Rowings@fcc.gov. 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, DC 20554.²⁴

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, Butler Broadcasting Company, L.L.C., 1780 W. Holly Street, Fayetteville, AR 72703, and to its counsel, David Tillotson, Esq., 4606 Charleston Terrace, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² 47 U.S.C. § 504(a).

²³ See 47 C.F.R. § 1.1914.

²⁴ *Id.*