

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

In the Matter of)	
)	
Robert J. and Katherine M. Bohn)	Facility ID No. 36324
)	NAL/Acct. No. MB-200741410381
Licensee of Station KCNQ(FM))	FRN: 0006123392
Kernville, California)	File No. BRH-20061027ACI

FORFEITURE ORDER

Adopted: February 7, 2011

Released: February 8, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Robert J. and Katherine M. Bohn (collectively, "Licensees"), licensees of Station KCNQ(FM), Kernville, California ("Station"), for willfully violating Section 73.3539 of the Commission's Rules ("Rules") and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act"), by failing to timely file license a renewal application and engaging in unauthorized operation of the Station.¹

II. BACKGROUND

2. On September 25, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture ("*NAL*"), proposing a forfeiture in the amount of seven thousand dollars (\$7,000) to Licensees for these violations.² As noted in the *NAL*, Licensees' renewal application for the Station's license term was due on August 1, 2005, four months prior to the December 1, 2005, expiration date.³ Licensees did not file the application until October 27, 2006, and did not seek Special Temporary Authority ("*STA*") to operate the Station after its license had expired. Licensees explained in the renewal application that their late-filing was caused by administrative error and misunderstanding the Commission's electronic filing system (CDBS). Licensees submitted a response ("*Response*") to the *NAL* on October 22, 2007.

3. In their Response, Licensees assert that the proposed forfeiture should be cancelled because: (1) the proposed forfeiture is excessive compared to proposed forfeiture amounts issued in other decisions; (2) their failure to timely file did not adversely affect the public interest; and (3) their failure to timely file the renewal application was partially due to difficulties with CDBS.

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

² *Robert J. and Katherine M. Bohn*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17291 (MB 2007). The Commission granted the license renewal application on September 25, 2007.

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

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of 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

5. Licensees argue that the \$7,000 proposed forfeiture issued to the Station is excessive and should be reduced to \$500 based on recent Commission precedent.⁸ Licensees assert that although the Commission has issued \$7,000 forfeitures to some licensees, it has also issued forfeitures in the amount of \$500 and \$3,500 to other licensees for reasons that are not clear to them.⁹ Licensees thus suggest that the \$7,000 forfeiture issued against them is arbitrary.

6. We disagree. Commission precedent supports the issuance of a \$7,000 forfeiture.¹⁰ Cases cited by Licensees in support of a lower forfeiture amount are inapposite because they involve: (1) licensees who were providers of secondary FM service and were thus issued \$500 forfeitures,¹¹ or (2)

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 Response at 2.

⁹ Response at 2. For example, Licensees maintain that it is unclear whether, as a general matter, the Commission takes into account a station's class, whether the licensee has filed and obtained an STA, or the time that elapsed between the initial date of violation and the filing of the untimely renewal application. Licensees also suggest that the staff makes assumptions about licensees' finances based solely on their names, and uses licensees' religious affiliations in determining the amount of a proposed forfeiture. Response at 3. On this last point, we emphasize that the Commission does *not* take into account a licensee's religious affiliation, if any, when determining forfeiture amounts.

¹⁰ *See, e.g., Hawkins Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4497 (MB 2007) (issuing a proposed forfeiture of \$7,000 where licensee failed to timely file a license renewal application for the station and engaged in unauthorized operation of the station after its license had expired); *Detroit Lakes Broadcasting Company, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16820 (MB 2007) (same); *WBLB, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7522 (MB 2007) (same).

¹¹ Response at 2, *citing American River Folk Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17639 (MB 2007) (issuing a proposed forfeiture of \$500 where LPFM licensee failed to timely file a license renewal application for the station and engaged in unauthorized operation of the station after its license had expired); *Roswell Interarts Organization*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11931 (MB 2007) (issuing a proposed forfeiture of \$500 where FM translator licensee failed to timely file a license renewal application for the station and engaged in unauthorized operation of the station after its license had expired); *Educational Radio Foundation of East Texas, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11449 (MB 2007) (same). These decisions are consistent with the staff's precedent of issuing licensees a reduced forfeiture based on their station's status as a provider of secondary FM service. *See, e.g., Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288 (MB 2009) (reducing forfeiture amount against FM translator station for late-filed renewal application and unauthorized operation of the station from \$7,000 to \$500). *See also Soul's Harbor Assembly of God Church*, Forfeiture Order, 24 FCC Rcd 8406 (MB 2009) (reducing

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licensees that filed their renewal applications within two days after the expiration of their station licenses and thus received \$3,500 forfeitures.¹² Here, Licensees are not operating a secondary service station, and filed the renewal application over one year after the renewal filing deadline. We thus find that the \$7,000 forfeiture amount was appropriate and consistent with precedent.

7. Licensees also argue that the forfeiture amount should be reduced because their failure to timely file the renewal application had no adverse effect on the public interest.¹³ It is, however, a well established and long-standing principle that the absence of public harm is not considered a mitigating factor in a Rule violation.¹⁴ Moreover, licensees are responsible for the timely submission of required forms, and untimely renewal applications disrupt the orderly processing of renewal applications orchestrated by the staggering of license renewal terms in Section 73.1020 of the Rules.¹⁵

8. Finally, Licensees state that the forfeiture amount should be reduced because they were unfamiliar with the Commission's electronic database, CDBS, and they, as well as other licensees, experienced difficulty in completing the online renewal application.¹⁶ The Commission has specifically ruled that confusion or difficulties with the Commission's electronic filing system are not grounds for reduction or cancellation of a forfeiture.¹⁷ Accordingly, we find this argument to be without merit.

9. We have considered Licensees' response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensees willfully¹⁸ violated Section 73.3539 of the Rules and willfully and repeatedly¹⁹ violated Section 301 of the Act.²⁰ Furthermore, we find that Licensees' arguments do not support cancellation or reduction of the proposed forfeiture amount.

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forfeiture amount against LPFM station for late-filed renewal application and unauthorized operation of the station from \$7,000 to \$500).

¹² See, e.g., *University of Southern Mississippi*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5609 (MB 2007) (proposing a \$3,500 forfeiture where licensee filed renewal application the day after its license had expired); *First IV Media, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2715 (MB 2007) (proposing a \$3,500 forfeiture where licensee filed renewal application two days after its license had expired).

¹³ Response at 3.

¹⁴ See, e.g., *Southern New Mexico Radio Foundation*, Forfeiture Order, 23 FCC Rcd 8239, 8241 (EB 2008) ("it is well established that the absence of public harm is not considered a mitigating factor in a rule violation and does not warrant a downward adjustment of a forfeiture"), citing *Pacific Western Broadcasters*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975).

¹⁵ 47 C.F.R. § 73.1020.

¹⁶ Response at 4.

¹⁷ See *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008).

¹⁸ 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*").

¹⁹ 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).

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

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,²¹ that Robert J. and Katherine M. Bohn SHALL FORFEIT to the United States the sum of seven thousand dollars (\$7,000) 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.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 Licensees will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@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, D.C. 20554.²⁴

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Robert J. and Katherine M Bohn, P.O Box 2008, Kernville, California 93238, and to their counsel, Dennis C. Brown, Esq., 8124 Cooke Court, Suite 201, Manassas, Virginia 20109-7406.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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

²² 47 U.S.C. § 504(a).

²³ See 47 C.F.R. § 1.1914.

²⁴ *Id.*