

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

In the Matter of)	Facility ID No. 19742
)	NAL/Acct. No. MB-20104141002
Escalante City)	FRN: 0009113721
)	File Nos.: BRFT-20050408AAE
Licensee of FM Translator Station K237AD)	BRFT-20070301AAG
Escalante, Utah)	
)	

FORFEITURE ORDER

Adopted: April 14, 2011**Released: April 15, 2011**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Escalante City ("Licensee"), former licensee¹ of FM translator Station K237AD, Escalante, Utah ("Station"), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act"),² by engaging in the unauthorized operation of the Station after its authorization had expired. We also admonish Licensee for willfully violating Section 73.3539 of the Commission's Rules ("Rules") by failing to timely file license renewal applications for the Station.³

II. BACKGROUND

2. On March 15, 2010, the Media Bureau adopted a Notice of Apparent Liability for Forfeiture ("*NAL*") proposing a forfeiture in the amount of four thousand (\$4,000) to Licensee for these violations.⁴ On March 30, 2010, Licensee filed a response to the *NAL* ("Response").

3. As noted in the *NAL*, Licensee failed to timely file license renewal applications for the Station during the last two renewal cycles. During the previous license term for Utah stations, an application for renewal of the Station's license should have been filed by June 1, 1997, four months prior to the Station's October 1, 1997, license expiration date,⁵ but was not. The Licensee did not file the application until April 8, 2005, more than seven years after the Station's license had expired, and failed to

¹ Escalante City assigned the license for the Station to Garfield County in April, 2010. See File No. BALFT-20061227ABV, granted April 1, 2010, and consummated on April 15, 2010. Despite this assignment, Escalante City remains liable for forfeiture for those violations occurring when the Station was under its stewardship. See, e.g., *Vista Point Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 140, 140 n.2 (MMB 1999) (finding licensee liable for forfeiture for rule violations that took place when station was under its stewardship).

² See 47 U.S.C. § 301.

³ 47 C.F.R. § 73.3539.

⁴ *Escalante City*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2561 (MB 2010). The Commission granted the above-referenced license renewal application on March 15, 2010.

⁵ See 47 C.F.R. §§ 73.1020, 73.3539(a).

request and obtain Special Temporary Authority (“STA”) to continue Station operation. During the current license renewal cycle for Utah broadcast stations, a supplemental license renewal application should have been filed by June 1, 2005, four months prior to the October 1, 2005, expiration date for Utah stations, but was not.⁶ The Licensee did not file such an application until March 1, 2007,⁷ seventeen months after the Utah station licenses had expired, and again failed to request and obtain STA to continue station operation. On March 15, 2010, the staff granted Licensee’s renewal applications and advised Licensee of its apparent liability for a forfeiture of \$4,000 for its failure to timely file the Station’s renewal applications and for unauthorized operation of the Station. In response, Licensee filed the subject Response.

4. In its Response, Licensee states that cancellation of the proposed forfeiture is warranted because: (1) its failure to timely file the renewal application was inadvertent, and (2) payment of the proposed forfeiture will cause it financial hardship.⁸

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b)(2)(D) of the Act,⁹ Section 1.80(b)(4) 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, 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 does not dispute that it failed to file timely renewal applications for the Station, but states that these violations were unintentional. Specifically, the Licensee notes that its mayor and council members are elected officials serving on a part-time basis and are replaced regularly through elections. The Licensee explains that the city does not have a full-time city manager and its understanding of FCC licensing and renewal procedures is limited. Additionally, the Licensee claims that frequently, the correct city personnel do not receive FCC notices in a timely manner.¹³ Long-standing Commission precedent, however, states that responsibility for complying with terms of station license “rests solely and exclusively with the licensee.”¹⁴ The Commission has held that violations resulting from

⁶ A licensee whose renewal application is in deferred status must file a supplemental renewal application on the date a regular renewal application would otherwise be due. See *Faith Center, Inc.*, Memorandum Opinion and Order, 99 FCC 2d 1164 (1984), citing *Carlisle Broadcasting Associates*, Memorandum Opinion and Order, 59 FCC 2d 885 (1976).

⁷ See BRFT-20070319ABV.

⁸ Response at 1.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ *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).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ Response at 1.

¹⁴ See *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, n.11 (MB 2010) (“Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station’s authorization”), citing *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940 (CIB 1999); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (“[E]mployee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”); *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288 (2009) (holding that a Licensee’s mistaken assumption that it would receive a reminder of the filing date from the Commission did not excuse the failure to file a timely renewal application).

inadvertent error or failure to become familiar with the Commission's requirements are willful violations.¹⁵ Accordingly, we find this argument meritless.

7. Licensee also argues that the proposed forfeiture should be cancelled because the penalty “would put a real strain and hardship on [the Licensee’s] already stressed operating budget in this very slow and difficult economy.”¹⁶ This is essentially an argument to support a claim of financial hardship. The Commission will not consider 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 reflects the licensee's current financial status.¹⁷ Licensee has not provided any such documentation. Therefore, we will not cancel the forfeiture based on financial hardship.

8. Section 503(b)(6) of the Act limits the Commission’s ability to issue forfeitures and precludes the issuance of a forfeiture if the violation charged occurred more than one year prior to the issuance of an NAL or prior to the commencement of the current license term, whichever is earlier.¹⁸ In this case, the renewal was granted and the *NAL* was issued on the same day, March 15, 2010. The renewal grant date is the first day of the current term of license. Hence, the *NAL* was issued during the current license term. Thus, upon grant of the renewal application, the Commission was authorized to issue a forfeiture only for violations occurring within the year prior to the issuance of the *NAL*.¹⁹ Here, it was barred from issuing a forfeiture to Licensee for violations occurring before March 15, 2009. Licensee’s Section 73.3539 violations continued until it filed its renewals on April 5, 2005 and March 1, 2007. Therefore, Licensee’s violations of Section 73.3539 of the Rules are beyond the reach of the statute of limitations. We will cancel that portion of the *NAL* pertaining to the 73.3539 violations and instead admonish Licensee for those violations. However, Licensee’s unauthorized Station operations continued through March 14, 2010, the day before staff granted the renewal application. The unauthorized operations of the Station therefore occurred within the statute of limitations period, and we will uphold the *NAL* insofar as it applies to the unauthorized operation.

9. We have considered the Response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²⁰

¹⁵ See *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”).

¹⁶ Response at 1.

¹⁷ *West Texas A&M University*, Forfeiture Order, 25 FCC Rcd 9086 (MB 2010). See also *Oberlin College Student Network, Inc.*, Forfeiture Order, 25 FCC Rcd 8240 (MB 2010) (rejecting licensee’s financial hardship argument, finding that licensee failed to provide any documentation in support of an inability to pay claim).

¹⁸ 47 U.S.C. § 503(b)(6)(A). The relevant language says no forfeiture shall issue to a person holding a broadcast station license “if the violation charged occurred -- more than 1 year prior to the date of issuance of the required notice or notice of apparent liability; or prior to the date of commencement of the current term of such license, whichever is earlier.” See also *Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688 (MB 2006) (explaining that the earlier date with respect to Section 503(b)(6) is the date that occurred first in time).

¹⁹ See *John Crigler, Esq.*, Letter, DA 11-233 (MB Feb. 8, 2011) (cancelling proposed forfeiture where licensee’s renewal application was granted after violations occurred but prior to the issuance of an NAL and the violations occurred more than one year prior to issuance of the NAL).

²⁰ 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, (continued....)

and repeatedly²¹ violated Section 73.3539 of the Rules, that Licensee willfully and repeatedly violated Section 301 of the Act. We find that the forfeiture proposed for violation of Section 73.3539 of the Rules is inappropriate because it violates the statute of limitations set forth in Section 503(b)(6) of the Act. Otherwise, we find the *Forfeiture Order* reasonable and consistent with previous decisions regarding similar violations.

IV. CONCLUSION

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,²² that Escalante City SHALL FORFEIT to the United States the sum of two thousand dollars (\$2,000) for willfully and repeatedly violating Section 301 of the Act.²³

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.²⁴ 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/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).²⁵ Licensee will also send electronic notification on the date said payment is made to michael.wagner@fcc.gov and jennifer.oberhausen@fcc.gov. Requests for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.²⁶

12. IT IS FURTHER ORDERED that Escalante City is hereby ADMONISHED for its violations of Section 73.3539 of the Commission's Rules.²⁷

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51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, Memorandum Opinion and Order, 6 FCC Rcd at 4387-88.

²¹ 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).

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

²³ 47 U.S.C. § 301.

²⁴ 47 U.S.C. § 504(a).

²⁵ See 47 C.F.R. § 1.1914.

²⁶ *Id.*

²⁷ 47 C.F.R. § 73.3539.

13. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by First Class Mail and Certified Mail - Return Receipt Requested to Escalante City, P.O. Box 189, Escalante, UT 84726, and to its contact representative, Mauri Parsons, P.O. Box 473, Monroe, UT 84754.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau