

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

In re Application of	)	
	)	
<b>J. Thomas Development of NM, Inc.</b>	)	Facility I.D. No. 29518
	)	NAL/Acct. No. MB-201241410042
For Renewal of License for	)	FRN: 0003743465
Station KRZE(AM)	)	File No. BR-20101116AKK
Farmington, New Mexico	)	

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: September 4, 2012**

**Released: September 4, 2012**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (“Bureau”) has before it the application of J. Thomas Development of NM, Inc. (“Licensee”), for renewal of its license for Station KRZE(AM), Farmington, New Mexico (“Station”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),<sup>1</sup> we find that Licensee apparently willfully violated Section 73.3539 of the Rules,<sup>2</sup> by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act,<sup>3</sup> by engaging in unauthorized operation of the Station after its authorization had expired. Based upon our review of the facts and circumstances before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000).

**II. BACKGROUND**

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”<sup>4</sup> An application for renewal of the Station’s license should have been filed by June 1, 2005. No such application was filed, and the Station’s license expired on October 1, 2005. Accordingly, on October 18, 2010, the staff wrote to Licensee, indicating that the Station’s license had expired and that: (1) all authority to operate the Station was terminated; and (2) the Station’s call letters had been deleted from the Commission’s data base. Licensee was advised that any operation of the station was then unauthorized and must cease immediately.<sup>5</sup> Upon receipt of the *License Expiration Letter*, on November 5, 2010, the Licensee tendered a request for Special Temporary

<sup>1</sup> This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

<sup>2</sup> See 47 C.F.R. § 73.3539.

<sup>3</sup> See 47 U.S.C. § 301.

<sup>4</sup> 47 C.F.R. § 73.3539(a).

<sup>5</sup> *Letter to J. Thomas Development of NM, Inc.*, Ref. 1800B3-KAW (MB Oct. 18, 2010) (“*License Expiration Letter*”).

Authority to continue station operations pending consideration of the license renewal application.<sup>6</sup> It also filed a Petition for Reconsideration of the *License Expiration Letter* and the captioned license renewal application for the Station on November 16, 2010.<sup>7</sup> In both the renewal application and the STA Request, the Licensee stated that its failure to file a timely renewal application for the Station was inadvertent.

### III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee has failed to file a timely license renewal application for Station KRZE(AM), as required by Section 73.3539(a) of the Rules. Moreover, it continued operating the Station for more than five years after the license had expired on October 1, 2005, before filing the appropriate renewal application and seeking STA to so operate, in violation of Section 301 of the Act. Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization.<sup>8</sup> Here, the Licensee did not do so.

4. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>9</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.<sup>10</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>11</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>12</sup> Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."<sup>13</sup>

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>14</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.<sup>15</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator,

<sup>6</sup> See File No. BLSTA-20101105AII ("STA Request"). The staff granted the STA Request on November 17, 2010, and it was to expire on May 17, 2011. *Letter to Mr. Peter Gutmann, Esq.*, Ref. 1800B3 (MB Nov. 17, 2010). However, on May 12, 2011, Licensee filed a timely request for extension of the STA, which remains pending. See File No. BELSTA-20110512ABG.

<sup>7</sup> See File No. BR-20101116AKK.

<sup>8</sup> See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

<sup>9</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

<sup>10</sup> 47 U.S.C. § 312(f)(1).

<sup>11</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>12</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>13</sup> 47 U.S.C. § 312(f)(2).

<sup>14</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>15</sup> A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>16</sup>

7. Typically, we have assessed forfeitures in the amount of \$7,000 against licensees of full-service stations for violations of Section 73.3539 of the Rules and Section 301 of the Act.<sup>17</sup> In this case, however, Licensee’s unauthorized operation spanned a period of more than five years after its license had expired on October 1, 2005, before filing the appropriate renewal application STA request. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount, for the failure to timely file the Renewal Application for the Station, and for the full \$10,000 amount for the Station’s extended period of unauthorized operation. Thus, we propose a forfeiture in the total amount of \$13,000.<sup>18</sup>

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>19</sup> That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>20</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>21</sup>

9. We find that the Licensee’s apparent violation of Section 73.3539 of the Rules and Section 301 of the Act do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.<sup>22</sup> Further, we find that Station KRZE(AM) served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant Licensee’s Petition for Reconsideration and reinstate the Station’s call sign, and we will grant the captioned license renewal

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<sup>16</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>17</sup> *See, e.g., Media Associates, Inc.*, Forfeiture Order, 26 FCC Rcd 3703 (MB 2011) (\$7,000 forfeiture issued for unauthorized operation of more than one year after the station’s license had expired); *Schweitzer Media, Inc.*, Forfeiture Order, 26 FCC Rcd 3707 (MB 2011) (\$7,000 forfeiture issued for unauthorized operation of more than one year after the station’s license had expired).

<sup>18</sup> *See Salmon River Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14490, 14492 (MB 2011) (\$13,000 forfeiture proposed for late-filing and unauthorized operation for more than five years after station’s license expired); *R&M Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10336 (MB 2011) (\$13,000 forfeiture proposed for late-filing and unauthorized operation for more than six years after a 2004 license renewal application was dismissed pursuant to the “red light” program).

<sup>19</sup> 47 U.S.C. § 309(k).

<sup>20</sup> 47 U.S.C. § 309(k)(1).

<sup>21</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>22</sup> For example, we do not find here that the Licensee’s Station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant of the application.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that J. Thomas Development of NM, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful violation of Section 73.3539 of the Commission's Rules and its apparent willful and repeated violation of Section 301 of the Communications Act.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, J. Thomas Development of NM, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Alexander.Sanjenis@fcc.gov.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>23</sup>

16. IT IS FURTHER ORDERED that the November 16, 2010, Petition for Reconsideration filed by J. Thomas Development of NM, Inc., IS GRANTED.

17. IT IS FURTHER ORDERED that the call sign KRZE(AM) IS REINSTATED.

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<sup>23</sup> See 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED that a copies of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to J. Thomas Development of NM, Inc., 104 E. Main Street, Farmington, NM 87401, and to its counsel, Peter Gutmann, Esq., Womble, Carlyle, Sandridge & Rice, PLLC, 1401 I Street, NW, 7<sup>th</sup> Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau