

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

In re Application of)	
)	
Encino Broadcasting, LLC)	NAL/Acct. No. MB-201241410018
)	FRN: 0017558040
For Renewal of Licenses for)	
)	
Station KELG(AM))	File No. BR-20130808AIG
Manor, Texas)	Facility ID No. 17807
)	
Station KOKE(AM))	File No. BR-20130808AIH
Pflugerville, Texas)	Facility ID No. 54662
)	
Station KTXZ(AM))	File No. BR-20130808AII
West Lake Hills, Texas)	Facility ID No. 59278

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

Adopted: November 18, 2013

Released: November 18, 2013

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (“Bureau”) has before it the applications of Encino Broadcasting, LLC (“Licensee”), for renewal of its licenses for Stations KELG(AM), Manor, Texas; KOKE(AM), Pflugerville, Texas; and KTXZ(AM), West Lake Hills, Texas (collectively, “Stations”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),¹ we find that Licensee apparently willfully violated Section 73.3539 of the Rules,² by failing to file timely license renewal applications for the Stations, and apparently willfully and repeatedly violated Section 301 of the Act,³ by engaging in unauthorized operation of the Stations after its authorizations for the Stations 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 eighteen thousand dollars (\$18,000). We also reinstate the Stations’ call signs.

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

¹ 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.

² See 47 C.F.R. § 73.3539.

³ See 47 U.S.C. § 301.

expiration date of the license sought to be renewed.”⁴ Applications for renewal of the Stations’ licenses should have been filed by April 1, 2013. No such applications were filed. On July 30, 2013, the staff wrote to Licensee, indicating that the Stations’ licenses would expire on August 1, 2013, and that: (1) all authority to operate the Station would terminate as of August 1, 2013; and (2) the Station’s call letters would be deleted from the Commission’s database.⁵ Licensee was advised that any operation of the Stations after August 1, 2013, was unauthorized.⁶ On August 8, 2013, Licensee filed the captioned license renewal applications for the Stations. On August 12, 2013, Licensee filed requests for Special Temporary Authority (“STA”) to continue the Stations’ operations pending consideration of the license renewal applications.⁷ It also filed a Petition for Reconsideration (“Petition”) of the *License Expiration Letter* on August 28, 2013, in which it seeks reinstatement of the Stations’ licenses and call signs.

3. In both the STA Requests and the Petition, Licensee acknowledges that it did not timely file the license renewal applications for the Stations, but indicates that Mr. Jose J. Garcia, Jr., the manager and sole owner of the Stations, has suffered through a succession of serious and debilitating illnesses, is being treated by a number of different physicians, and has been hospitalized or been to hospital emergency rooms on a constant basis since 2008. Accordingly, Licensee indicates, Mr. Garcia has not been able to attend fully to his broadcast duties. Licensee indicates that his health is improving and he hopes to assume additional duties.⁸

III. DISCUSSION

4. *Proposed Forfeiture.* In this case, the Licensee failed to file a timely license renewal application for Stations KELG(AM), KOKE(AM), and KTXZ(AM), as required by Section 73.3539(a) of the Rules. Moreover, it continued operating the Stations for two weeks after the licenses had expired on August 1, 2013, before filing the appropriate renewal applications 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.⁹ Here, the Licensee did not do so.

5. 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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ Section 312(f)(2)

⁴ 47 C.F.R. § 73.3539(a).

⁵ *Letter to Jose J. Garcia* (MB Jul. 30, 2013) (“*License Expiration Letter*”).

⁶ *Id.*

⁷ See File Nos. BLSTA-20130812ACC (KELG(AM)), BLSTA-20130812ACF (KOKE(AM)), BLSTA-20130812ACB (KTXZ(AM)) (collectively, “STA Requests”). The staff granted the STA Requests on October 21, 2013. *Letter to Lee J. Peltzman, Esq.*, Ref. 1800B3 (MB Oct. 21, 2013).

⁸ See STA Requests at Exhibit 38; Petition at 2.

⁹ 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)).

¹⁰ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

¹¹ 47 U.S.C. § 312(f)(1).

¹² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

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.”¹⁴

6. 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.¹⁵ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹⁶ 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, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁷

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.¹⁸ In this case, however, Licensee’s unauthorized operation spanned a period of two weeks after its license had expired before it filed the appropriate renewal applications and STA Requests. 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 a reduced \$3,000 amount for the Station’s two-week period of unauthorized operation.¹⁹ Thus, we propose a forfeiture in the amount of \$6,000 for each Station, for a total amount of \$18,000.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁰ 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.²¹ 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

¹³ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ 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.

¹⁶ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

¹⁷ 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).

¹⁸ 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).

¹⁹ See, e.g., *Gospel Media, Inc.*, Letter, 19 FCC Rcd 15600 (MB 2004) (proposing a \$6,000 forfeiture where licensee failed to timely file license renewal application and operated station without authorization for two weeks).

²⁰ 47 U.S.C. § 309(k).

²¹ 47 U.S.C. § 309(k)(1).

application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²²

9. We find that the Licensee’s apparent violations 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.²³ Further, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant Licensee’s Petition and reinstate the Stations’ call signs, and we will grant the captioned license renewal applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the applications.

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 Encino Broadcasting, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars (\$18,000) 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*, Encino Broadcasting, LLC, 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 12th 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-

²² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²³ For example, we do not find here that the Licensee's operation of the Stations "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).

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 20554.²⁴

16. IT IS FURTHER ORDERED that the August 28, 2013, Petition for Reconsideration filed by Encino Broadcasting, LLC, IS GRANTED.

17. IT IS FURTHER ORDERED that the call signs KELG(AM), KOKE(AM), and KTXZ(AM) ARE REINSTATED.

18. IT IS FURTHER ORDERED that a copies of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Encino Broadcasting, LLC, 9434 Parkfield Drive, Austin, TX 78758, and to its counsel, Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1850 M Street N.W., Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁴ See 47 C.F.R. § 1.1914.