

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

In re Application of)	
)	
Brooks Broadcasting Corporation)	Facility I.D. No. 7212
)	NAL/Acct. No. MB-201441410018
For Renewal of License for)	FRN: 0001693555
FM Station KPSO-FM)	File No. BRH-20130124ACX
Falfurrias, Texas)	

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

Adopted: March 11, 2014

Released: March 12, 2014

By the Chief, Audio Division:

I. INTRODUCTION

1. The Media Bureau (“Bureau”) has before it the application of Brooks Broadcasting Corporation (“Licensee”) for renewal of its license for Station KPSO-FM, Falfurrias, Texas (“Station”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),¹ we find that Licensee apparently willfully and repeatedly violated Section 73.1740(a) of the Rules² by failing to operate the Station according to the minimum daily operating requirements for FM stations without requesting special temporary authority (“STA”) pursuant to Section 73.1740(a)(4).³ Based upon our review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. Section 73.1740(a)(1) of the Rules requires that stations adhere to minimum daily operating requirements,⁴ and pursuant to Section 73.1740(a)(4) of the Rules,⁵ if they are unable to do so for more than 30 days, they must request authorization to limit operations. Section III, Item 4 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Licensee indicated “No” in response to this question, and

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. § 73.1740(a).

³ See 47 C.F.R. § 73.1740(a)(4).

⁴ 47 C.F.R. § 73.1740(a)(1) (requiring that commercial FM stations maintain the following minimum hours: “Two-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m. local time and two-thirds of the total hours they are authorized to operate between 6 p.m. and midnight, local time, each day of the week except Sunday.”).

⁵ 47 C.F.R. § 73.1740(a)(4) (“the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC”).

explained that from January 16, 2009 until December 24, 2012, it ceased its daily programming at 7:00 pm Monday through Saturday.⁶ Licensee never sought or received Commission authority for the Station to operate at reduced hours during this period. Licensee explains that it thought this reduction in service “was permissible without prior authorization” and that it only learned that STA was required when it began preparing its renewal application.⁷

III. DISCUSSION

3. *Proposed Forfeiture.* This NAL is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ 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.”¹²

4. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$5,000 for the unauthorized discontinuance of service.¹³ The record indicates that Licensee failed to adhere to minimum operating requirements pursuant to Section 73.1740(a)(1) of the Rules by not operating for at least 4 hours between the hours of 6 p.m. and midnight. This violation occurred daily for a period of nearly four years. Licensee also failed to request permission to do so pursuant to Section 73.1740(a)(4) of the Rules. Licensee explains that it thought this reduction in service “was permissible without prior authorization” and that it only learned that STA was required when it began preparing its renewal application.¹⁴ However, the Commission has held that an inadvertent error, oversight, or failure to become familiar with Commission requirements, are willful violations.¹⁵ Accordingly, we will impose a \$5,000 forfeiture for this violation.¹⁶

⁶ Application, Exhibit 13.

⁷ Application at Exhibit 13. Licensee filed an STA request on December 27, 2012, which remains pending. See File No. BLSTA-20121227AAS. Because Licensee indicates in the renewal application that it has resumed normal operating hours, we will dismiss the STA request as moot.

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

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California*”).

¹² 47 U.S.C. § 312(f)(2).

¹³ 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.

¹⁴ Application at Exhibit 13.

¹⁵ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (asserting that “[t]he fact that a licensee’s violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional. All that is necessary is that the licensee knew it was doing the act in question.”); *Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*,

5. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁷ 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.¹⁸ 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.”¹⁹

6. We find that Licensee's apparent violations of Section 73.1740(a) of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²⁰ Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal 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

7. 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 Brooks Broadcasting Corporation, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five thousand dollars (\$5,000) for the apparent willful violations of Section 73.1740(a) of the Commission's Rules.

8. 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*, Brooks Broadcasting Corporation SHALL PAY the

Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”). *See also Big Sky Owners Association, Inc.*, Forfeiture Order, 24 FCC Rcd 12215, 12216 (MB 2009) (rejecting staff turnover as an acceptable reason for untimely filing a license renewal application); *Whidbey Island Center for the Arts*, Forfeiture Order, 25 FCC Rcd 8204 (MB 2010) (rejecting employee illness and staff turnover as an acceptable reason for untimely filing license renewal application); *Muskegon Training and Educational Center*, Forfeiture Order, 23 FCC Rcd 11241, 11242-43 (MB 2008) (holding lack of familiarity with the Commission's electronic filing procedures insufficient to excuse failure to timely file license renewal applications).

¹⁶ *See, e.g. Bethany College*, 27 FCC Rcd 4369 (MB 2012) (\$5,000 forfeiture proposed for 133 days of unauthorized discontinuation of service).

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ For example, we do not find here that Licensee's operation of the Station “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.*, 32 FCC 2d 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).

full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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.

10. 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.

11. 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.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²¹

13. IT IS FURTHER ORDERED, that the request for Special Temporary Authority filed by Brooks Broadcasting Corporation (File No. BLSTA-20121227AAS) IS DISMISSED as moot.

14. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Brooks Broadcasting Corporation, 304 E. Rice, Falfurrias, TX 78355, and to its counsel, Robert L. Olender, Esq., 11913 Grey Hollow Court, North Bethesda, MD 20852.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ See 47 C.F.R. § 1.1914.