

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

In re Applications of)	
)	
Pinebrook Corporation)	Facility ID No. 8549
)	NAL/Acct. No. MB-201641410020
For Renewal of License for)	FRN: 0005031109
Station WINW(AM))	File Nos. BR-20110722ACJ
Canton, Ohio)	BR-20120601AIP

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

Adopted: November 4, 2016

Released: November 4, 2016

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the captioned applications of Pinebrook Corporation (Licensee), for renewal of its license for Station WINW(AM), Canton, Ohio (Station). 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 a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act,³ by engaging in unauthorized operation of the Station. 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.”⁴ An application for renewal of the Station’s license for the preceding license term should have been filed by June 1, 2004. No such application was properly filed, and the Station’s license expired on October 1, 2004.⁵

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 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the Rules. *See* 47 CFR § 0.283.

² *See* 47 CFR § 73.3539.

³ *See* 47 U.S.C. § 301.

⁴ 47 CFR § 73.3539(a).

⁵ Licensee had previously filed an untimely license renewal application for the Station on July 30, 2004, *see* File No. BR-20040730AOM) (the 2004 Application). That application was dismissed on January 12, 2005, due to a “red light” issue, *see Broadcast Actions*, Public Notice, Report No. 45903 (Jan. 18, 2005). Licensee did not seek reconsideration of the red light dismissal, and it did not file another renewal application for the Station until July 22,

3. Subsequently, an inquiry to the staff in January of 2011 indicated that the Station was off the air. On January 12, 2011, the staff wrote to the Licensee, requesting written clarification of the operating status of the Station, which required a reply within thirty days,⁶ indicating that the failure to respond within the specified time “will result in adverse actions jeopardizing both the station’s license and call letters.” The Licensee responded on March 25, 2011,⁷ indicating that, as of the date of the *Operating Status Inquiry Letter*, the Station was operating and Licensee “[did] not know why anyone would suggest . . . that the station was silent prior to that time.”⁸ The licensee indicated that it did in fact suspend operations on February 23, 2011, following theft of the copper feed lines for the Station and damage to the Station’s transmitter occurring during the theft.

4. On May 6, 2011, the Licensee filed a request for Special Temporary Authority (“STA”) to resume Station operations, noting that it was unaware that its application for license renewal had been dismissed. It also stated that the repair to its transmitter was “virtually complete,” and it sought STA to recommence service to the public, indicating that it would file a license renewal application for the Station “once it can.”⁹ After a license renewal application was properly filed on July 22, 2011, the staff granted the STA Request on September 15, 2011, and it was to expire on March 15, 2012.¹⁰ On February 23, 2012, however, Licensee filed a request for STA to operate with reduced facilities, noting that the damage to the transmission facilities was far worse than initially believed and would cost more than the value of the Station to repair. Additionally, Licensee stated that the landlord of its transmitter site had declined to renew the Station’s lease. Licensee indicated that it had found a location near the center of Canton from which it could operate the station with an emergency “long wire” antenna.¹¹ The staff granted that STA request the following day, on February 24, 2012.¹² Licensee has operated the Station pursuant to those STA facilities since that time.¹³

2011. However, Licensee filed a timely supplemental license renewal application for the Station for the license term that was to expire on October 1, 2012. That application, captioned above, also remains pending.

⁶ *Letter to Patrick Barb, President, Pinebrook, Inc.*, Ref. 1800B3-DW (MB Jan. 12, 2011) (*Operating Status Inquiry Letter*).

⁷ Licensee indicated in its Response that, although the inquiry letter is dated January 12, 2011, it was not received at the Station until after February 23, 2011. It includes photocopies of the envelope containing the January 12 *Operating Status Inquiry Letter*, with a Post Office indication that it had been returned to the Commission on February 23, 2011. It also includes a copy of the envelope in which the *Operating Status Inquiry Letter* was resent by First Class Mail on February 23, 2011. It states that it is responding within 30 days of its actual receipt of the letter. In light of these submissions, and the subsequent filing of the license renewal applications, we will reinstate the station’s license and call sign.

⁸ *Letter to Marlene H. Dortch, Secretary, FCC* (rec’d Mar. 25, 2011) at 2.

⁹ See File No. BLSTA-20110506ABB (STA Request).

¹⁰ *Letter to Patrick Barb, President, Pinebrook, Inc.*, (MB Sept. 15, 2011).

¹¹ See File No. BSTA-20120223ABG.

¹² *Letter to Patrick Barb, President, Pinebrook, Inc.* (MB Feb. 24, 2012).

¹³ The February 24, 2012, STA expired on August 24, 2012. The Licensee subsequently filed for an “extension” of the STA on February 28, 2013, see File No. BESTA-20130228AQI. The staff indicated that, because the previous STA had expired, the February 28, 2013 STA Request could not extend the prior STA grant and would be treated as a request for a new STA; however, the staff found that the February 28, 2013 STA request met its standards for issuing STAs and granted it on March 26, 2013. *Letter to Patrick Barb, President, Pinebrook, Inc.* (MB Mar. 26, 2013). On September 26, 2013, the Licensee filed for another extension of the STA, indicating that, although its landlord had refused to extend its lease for the licensed transmitter site, it believed it had located a new permanent site; however, the owner indicated its intent to construct additional towers, which could create interference issues for the station and the Licensee continued to search for an additional permanent site for the Station. BLSTA-20130926BAG, Exhibit 34. The staff granted that STA on October 31, 2013, and it was to expire on March 31,

III. DISCUSSION

6. *Proposed Forfeiture.* In this case, the Licensee failed to file a timely license renewal application for the Station, as required by Section 73.3539(a) of the Rules. Moreover, Licensee continued operating the Station for more than six years after the 2004 Application was dismissed on January 12, 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 and the Act, including filing timely renewal applications and maintaining in effect the station's authorization.¹⁴ Here, the Licensee did not do so.

7. 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so interpreted the term in the Section 503(b) context.¹⁸ 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."¹⁹

8. 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.²⁰ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of

2014. *Letter to Anne Goodwin Crump, Esq.*, (MB Oct. 31, 2013). On March 31, 2014, the Licensee timely sought a further extension of the STA, stating that the previous negotiations had fallen through, as the owner had sold the land to another buyer, and unusually harsh winter weather in the area had precluded construction of new facilities. BLSTA-20140331AUS, Exhibit 34. The staff granted the STA extension on April 25, 2014, through October 25, 2014. *Letter to Anne Goodwin Crump, Esq.*, (MB Apr. 25, 2014). On October 24, 2014 the Licensee sought another STA extension, stating that it had identified a prospective new site has now been located and that it had entered into lease negotiations and had conducted a preliminary engineering study of the site's suitability. BLSTA-20141024ADF, Exhibit 34. The staff granted the STA extension on November 24, 2014, through May 24, 2015. *Letter to Anne Goodwin Crump, Esq.*, (MB Nov. 24, 2014). Finally, on May 22, 2015, the Licensee filed for a further extension of the STA, indicating it had entered into a lease agreement for a new permanent site and anticipated filing a an modification application specifying new permanent facilities at that site within the next four to six weeks. BLSTA-20150522AFZ, Exhibit 34. The staff granted the STA Extension on June 15, 2015, and it is due to expire on December 15, 2015. *Letter to Anne Goodwin Crump, Esq.*, (MB Jun. 15, 2015). Licensee has not yet filed the anticipated modification application.

¹⁴ See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2, para. 7 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broad. Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

¹⁵ 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁸ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ 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, App. A (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.

authorization for the service.²¹ 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.”²²

9. Typically, we have assessed forfeitures in the total 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.²³ In this case, however, Licensee’s unauthorized operation spanned a period of more than six years after the staff dismissed the 2004 Application and again between August 24, 2012 and March 26, 2013, when the Licensee apparently continued operating the station pursuant to an expired STA. 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 periods of unauthorized operation. Thus, we propose a forfeiture in the total amount of \$13,000.²⁴

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁵ 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.²⁶ 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.”²⁷

11. 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.²⁸ Further, we find that the Station served the public interest, convenience, and necessity during

²¹ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²² 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(4).

²³ 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).

²⁴ See *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 unauthorized operation for more than six years after a 2004 license renewal application was dismissed pursuant to the “red light” program).

²⁵ 47 U.S.C. § 309(k).

²⁶ 47 U.S.C. § 309(k)(1).

²⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁸ 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, para. 6 (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, para 11. See also *Center for Study and Application of Black Economic Development*, Hearing

the subject license terms. We will therefore reinstate the Station's call sign, 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 violation that would preclude grant of the applications.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, and Section 1.80 of the Commission's Rules, that Pinebrook Corporation 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.

13. 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*, Pinebrook Corporation, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the proposed forfeiture must be made by a 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 (callsign/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 at Penelope.Dade@fcc.gov and Karen Workeman at Karen.Workeman@fcc.gov. Below are additional instructions the Licensee should follow based upon the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. 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.

16. 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.

17. 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 20554.²⁹

18. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Mr. Patrick Barb, Pinebrook Corporation, P.O. Box 616, Cuyahoga Falls, OH 44222, and to counsel, Anne Goodwin Crump, Esq. Fletcher Heald & Hildreth, P.L.C., 1300 N. 17th Street, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁹ See 47 CFR. § 1.1914.