

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

In the Matter of)
ALFRED L. "PAT" ROBERSON III) Facility I.D. No. 190430
Application for Construction Permit) NAL/Acct. No. MB201241410054
For New FM Station, Elaine, Arkansas) FRN: 0005032370
) File No. BNPH-20120620ABU
)
)
)

FORFEITURE ORDER

Adopted: May 4, 2016

Released: May 4, 2016

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, the Media Bureau (Bureau) issues a monetary forfeiture to Alfred L. "Pat" Roberson III (Roberson) in the amount of three thousand dollars (\$3,000) for willfully violating Sections 73.3573(f)(5)(i) and 73.5005(a) of the Commission's rules (Rules) by failing to timely file his post-auction Form 301 long-form application (Application).1

II. BACKGROUND

2. Roberson timely filed an FCC Form 175 application to participate in FM Auction 93, and was found to be a qualified bidder.2 By an April 17, 2012, Closing Public Notice, the Bureau and the Wireless Telecommunications Bureau announced that Roberson was the winning bidder for an FM construction permit at Elaine, Arkansas.3 The Auction 93 Closing Public Notice also announced that winning bidders were to submit their FCC Form 301 long-form applications by May 29, 2012.4 However, Roberson did not submit his Application until June 20, 2012.5 With his Application, Roberson also submitted a request for waiver of the filing deadline, stating that "an earlier [proposed transmitter] location fell through at the last moment," thus the filing of the Application was delayed while another site was found.6

1 See 47 CFR §§ 73.3573(f)(5)(i), 73.5005(a), which require a winning bidder to file its long-form application within 30 days of the release of the public notice announcing the close of the auction, unless a longer period is specified in that closing public notice.

2 Auction of FM Broadcast Construction Permits; 109 Bidders Qualified to Participate in Auction 93, Public Notice, 27 FCC Rcd 2385, 2398 (MB/WTB 2012).

3 Auction of FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 93, Public Notice, 27 FCC Rcd 4056, 4065 (MB/WTB 2012) (Auction 93 Closing Public Notice).

4 Id. at 4060 para. 21.

5 Alfred L. "Pat" Roberson III, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 12933, 12934 para. 2 (MB 2013) (NAL).

6 Application, Exh. 11, Auction Rule Compliance.

3. The *Auction 93 Closing Public Notice* stated that “[a]n applicant that fails to submit the required long-form application before the specified deadline and fails to establish good cause for any late-filed submission shall be deemed to have defaulted and shall be subject to the payments set forth in Section 1.2104(g) of the Commission’s rules.”⁷ An applicant establishes good cause if minor, inadvertent, post-auction delinquencies neither disrupted the auction process, nor undermined the Commission’s policy of facilitating rapid implementation of service to the public.⁸ In the *NAL*, the Bureau granted Roberson’s request for waiver of the filing deadline.⁹ The Bureau found good cause because: (1) Roberson had previously complied with all Auction 93 filing and payment obligations and was initially found to be a qualified bidder; (2) there was no indication of bad faith; (3) Roberson’s untimely filing of the Application was only a minor violation, and accepting the application would not undermine the Commission’s auction policies; and (4) it would be in the public interest to allow Roberson to retain his FM construction permit and to proceed with the implementation of a new radio service at Elaine, Arkansas.¹⁰ The waiver allowed Roberson’s late Application to be accepted for filing and relieved him from the default payment obligation specified in the Rules.¹¹

4. Despite granting Roberson’s waiver request, the Bureau nonetheless held that Roberson violated Sections 73.3573(f)(5)(i) and 73.5005(a) of the rules, which require winning bidders who have met their down payment obligations to file the appropriate long-form application within thirty (30) days following the closing of bidding and notification of the winners, for each construction permit won.¹² In accordance with the Commission’s *Forfeiture Policy Statement*, Section 503(b)(2)(E) of the Communications Act of 1934 (Act), and Section 1.80(b)(6) of the rules, the Bureau proposed the full statutory base amount of \$3,000 for Roberson’s violations.¹³ The Bureau stated that it would not depart from this amount because Roberson was on notice that he was responsible for timely submitting his Application, but he failed to do so.¹⁴

5. On November 5, 2013, Roberson filed a response to the *NAL* (Response).¹⁵ In the Response, Roberson asserts that the forfeiture should be reduced or canceled because: (1) he believed he had reasonable assurance of a transmitter site, but the site owner backed out on May 29, 2012; (2) during late May 2012 Roberson’s wife required treatment for cancer out of state, so Roberson traveled with her and was “unavailable during the period immediately preceding the filing deadline”; (3) he experienced difficulties with the Commission’s electronic filing system on June 18, 2012, and did not hear back from

⁷ *Auction 93 Closing Public Notice*, 27 FCC Rcd at 4060 para. 22.

⁸ *NAL*, 28 FCC Rcd at 12934-35 para. 5. See also, e.g., *Joseph C. Tesiero*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 7195, 7196-97 para. 5 (MB 2012) (stating the standard for establishing good cause for waiver of filing deadline).

⁹ *NAL*, 28 FCC Rcd at 12935 para. 6.

¹⁰ *Id.* at 12935 para. 5.

¹¹ 47 CFR § 1.2104(g). Ordinarily, a winning bidder that fails to timely file the required FCC 301 long-form application is deemed to have defaulted, its application is dismissed, and it is subject to a default payment.

¹² *NAL*, 28 FCC Rcd at 12935 paras. 7-8. See 47 CFR §§ 73.3573(f)(5)(i), 73.5005(a).

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, 17114 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(6), Section I.

¹⁴ *NAL*, 28 FCC Rcd at 12936 para. 10.

¹⁵ The Response was dated October 22, 2013, but was not received in the Commission Mail Room until November 5.

Commission staff until June 20, when he received assistance in filing the Application; and (4) he was unaware that there was a penalty for late filing of the Application, as he was not represented by counsel.¹⁶

III. DISCUSSION

6. We note, first, that the Response was untimely. In the *NAL*, we stated that “within thirty (30) days of the release date of this *NAL*, [Roberson] SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.”¹⁷ The *NAL* was released September 6, 2013, and the U.S. Mail Return Receipt indicates that Roberson received it on September 10. Even if we were to calculate time from the date of receipt rather than release (as set forth in the *NAL*), the Response would have been due October 10, 2013; it was dated October 22, almost two weeks later, and was not filed with the Commission until November 5, over three weeks later.

7. The Bureau rejects Roberson’s argument that he was unable to file the Application in a timely manner owing to the loss of his original site lessor. The Application was due to be filed on May 29, 2013, which is the day that Roberson states his lessor informed him that the site was no longer available. The Application should have already been filed by the time Roberson learned of the site unavailability. If timely filed, Roberson would then only have had to amend his pending Application to specify a new transmitter site once he had secured one.¹⁸ However, Roberson also states that on May 29 he “noted” an e-mail from his consulting engineer that the Application needed to be filed “ASAP.”¹⁹ Taken together, these statements lead to the conclusion that even though Roberson believed up until May 29 that he had a site available to him, he had not prepared and was not ready to file the Application by the deadline.

8. The Bureau also rejects Roberson’s argument that the proposed forfeiture amount should be reduced because of his unavailability due to his wife’s medical treatment. Roberson presumably knew of his alleged unavailability in May 2012 when he filed the Application, yet he made no mention of it or of his wife’s circumstances when he made his waiver request in the Application. Moreover, it is apparent from the Response that the Application was actually prepared by Roberson’s consultant, and that Roberson’s role was merely to review the completed Application.²⁰ Thus, Roberson’s absence from his home in Arkansas should not have prevented his consultant from preparing the Application for Roberson’s approval on his return. As noted above, however, Roberson made no efforts to have the Application prepared prior to the May 29 deadline.²¹

¹⁶ Response at first through third unnumbered pages.

¹⁷ *NAL*, 28 FCC Rcd at 12936 para. 12 (emphasis in original).

¹⁸ See generally 47 CFR § 73.5005. See also *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, 15986-89 paras. 167-75 (1998) (subsequent history omitted) (relaxing amendment standards to allow for liberal amendment of auction long-form applications to correct application defects). See also *David Oxenford, Esq.*, Letter Decision, 28 FCC Rcd 6269, 6271 (MB 2012), *review denied*, *Christopher Falletti*, 30 FCC Rcd 827 (2015) (auction liberal amendment policy applies to site availability defects).

¹⁹ Response, second unnumbered page.

²⁰ *Id.* at 2-3.

²¹ We likewise reject Roberson’s protestation that he was unaware of late-filing penalties because he was not represented by legal counsel. First, as noted above, it was made clear in the *Auction 93 Closing Public Notice* that “[a]n applicant that fails to submit the required long-form application before the specified deadline and fails to establish good cause for any late-filed submission shall be deemed to have defaulted and shall be subject to the payments set forth in section 1.2104(g) of the Commission’s rules.” *Auction 93 Closing Public Notice*, 27 FCC Rcd at 4060 para. 22. Although the Bureau elected not to default Roberson, he cannot plausibly maintain that he was unaware that failure to file a timely post-auction long-form application carried penalties, including financial

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9. Finally, Roberson contends that he encountered problems with the Bureau's electronic filing system when he tried to file the Application on June 18, 2012, and further that he received no response from Bureau personnel regarding his filing difficulties until he re-contacted the Bureau on June 20. This is immaterial to the issue of the proposed forfeiture. Any problems Roberson encountered in trying to file the Application on June 18 were due to the fact that the filing period had closed, and the electronic filing system was no longer accepting post-auction long-form applications for Auction 93. Thus, the question of whether Roberson was able to file the Application 20 days late or 22 days late is of no moment. It remains undisputed that Roberson did not attempt to file the Application until, at the earliest, three weeks after the filing deadline.

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 Alfred L. "Pat" Roberson III SHALL FORFEIT to the United States the sum of three thousand dollars (\$3,000) for his willful violation of Sections 73.3573(f)(5)(i) and 73.5005(a) of the Commission's rules.

11. Payment of the proposed forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN referenced 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).²² Roberson will also send electronic notification on the date said payment is made to Lisa.Scanlan@fcc.gov and Thomas.Nessinger@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²³

12. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Alfred L. "Pat" Roberson III, 113 Quapaw Trail, Helena, AR 72342.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

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penalties. Second, Roberson made the decision to participate in the auction without advice of counsel. Parties acting *pro se* assume the responsibility of complying with the Rules. See *Eagle Broadcasting Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 595 para. 13 (2008) (applicant's *pro se* status did not exempt it from complying with Commission rules or statutory provisions); *Mandeville Broadcasting Corp.*, Memorandum Opinion and Order, 2 FCC Rcd 2523, 2524 para. 7 (1987) ("[P]*ro se* parties do assume the responsibility of conforming with the Commission's Rules and policies." (citations omitted)).

²² See 47 CFR § 1.1914.

²³ *Id.*