

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

In re Application of
Katahdin Communications, Inc.
For License to Cover
FM Translator Station W273DJ
Millinocket, Maine
Facility ID No. 200276
NAL/Acct. No. MB-202141410043
FRN: 000014085971
File No. 0000142968

FORFEITURE ORDER

Adopted: December 15, 2021

Released: December 15, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of three thousand five hundred dollars (\$3,500) to Katahdin Communications, Inc. (Permittee), permittee of FM Translator Station W273DJ, Millinocket, Maine (Translator), for willfully violating section 73.3598¹ of the Commission’s rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violating section 301 of the Communications Act of 1934, as amended (Act),² by engaging in unauthorized operation of the Translator after its construction permit had expired.

II. BACKGROUND

2. The Bureau issued Permittee a construction permit for the Translator on January 8, 2018, with an expiration date of January 8, 2021 (Permit).³ However, Permittee did not file a covering license application by January 8, 2021, and the Permit expired on its own terms that day pursuant to section 73.3598(e) of the Rules.⁴ On April 5, 2021, Permittee submitted an application for a covering license (Application),⁵ which the Bureau dismissed on May 17, 2021.⁶ On June 17, 2021, Permittee filed a Petition for Reconsideration (Petition), demonstrating that the Translator was constructed prior to the expiration of the Permit.⁷ The staff treated the Petition as a request for waiver of section 73.3598 of the Rules, granted the waiver, and reinstated the Permit and the Application.⁸

3. On September 2, 2021, the Media Bureau (Bureau) issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL) in which it found that Permittee willfully

¹ See 47 CFR § 73.3598.

² See 47 U.S.C. § 301.

³ File No. BNPFT-20171201ABG (filed Dec. 1, 2017).

⁴ 47 CFR § 73.3598(e) (“Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”).

⁵ Application File No. 0000142968 (filed Apr. 5, 2021) (Application).

⁶ Broadcast Actions, Report No. PN-2-210519-01 (MB May 17, 2021).

⁷ Pleading File No. 0000150325 (filed June 17, 2021).

⁸ Broadcast Actions, Report No. PN-2-210805-01 (MB Aug. 5, 2021).

violated section 73.3598 of the Rules by failing to timely file a license to cover application prior to the Permit's expiration date.⁹ The Bureau also found that Permittee willfully and repeatedly violated section 301 of the Act by engaging in unauthorized operation of the Translator for almost three months, between January 8, 2021, and April 5, 2021.¹⁰ The Bureau found Permittee apparently liable for a base forfeiture of \$7,000, but reduced the base amount to \$3,500 because the Translator provides a secondary service.¹¹

4. On September 19, 2021, Permittee submitted a response to the *NAL* (NAL Response).¹² In the NAL Response, Permittee states that the forfeiture should be reduced or cancelled because: (1) Permittee was unaware that it needed to file a license to cover application; (2) Permittee did not engage in a three-month period of unauthorized operation of the Station; and (3) the Commission did not notify Permittee of its violation prior to issuing the *NAL*.¹³

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,¹⁴ section 1.80 of the Rules,¹⁵ and the Commission's *Forfeiture Policy Statement*.¹⁶ Section 503(b)(2)(E) of the Act requires that the Commission take into account 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 other such matters as justice may require.¹⁷

6. *License to Cover Application.* We have considered Permittee's response in light of these statutory factors. We affirm our finding that Permittee willfully violated section 73.3598 of the Rules by failing to timely file a license to cover application. Permittee states that it was unaware that it needed to file a covering application.¹⁸ Permittee explains that, after the Commission granted its application for minor modification to change the tower location for the Translator, it attempted to contact Commission staff for guidance, in "October [and] November of 2020,"¹⁹ on "how to proceed,"²⁰ but claims that the

⁹ *Katahdin Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1092, 2021 WL 4031502, at *1 (MB Sept. 2, 2021) (NAL).

¹⁰ *Id.*

¹¹ *Id.* at *2.

¹² Email from Jim Talbott, Katahdin Communication, Inc., to Alexander Sanjenis, Audio Division, FCC Media Bureau (Sep. 19, 2021, 4:20 AM EDT) (NAL Response).

¹³ NAL Response.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 CFR § 1.80.

¹⁶ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ NAL Response at 1-2.

¹⁹ *Id.* at 1.

²⁰ NAL Response at 1, 3. Permittee alleges that its attempts to contact the Commission were also in order to "get an extension in regards to building the translator [because] winter is a difficult time to do the tower work and any other filings [it] would have to do." *Id.* at 1. Permittee alleges that the Commission did not respond to its inquiries. Permittee does not specify what means it used to contact the Commission, nor does it identify a specific staff member. Section 73.3598(b) of the Rules permits tolling of the original construction permit in limited circumstances associated with causes not under the control of the permittee. *See* 47 C.F.R. § 73.3598(b). We note that the factor for which Permittee states served as the basis for which it sought an extension—winter weather conditions—did not qualify for tolling of the construction permit under section 73.3598(b). *See* 1998 *Regulatory*

(continued....)

Commission did not respond to its inquiries.²¹ Permittee claims that it ultimately “presumed that there was nothing that [it] had to do in regards to the translator other than getting it constructed before the [Permit] lapsed.”²² Permittee states that it completed construction on January 1, 2021, before the Permit lapsed.²³

7. We reject Permittee’s claim that it was unaware that it needed to file a covering application. Section 73.3598(e) of the Rules makes clear that a license to cover application must be filed prior to the permit’s expiration date.²⁴ The Permit itself also explicitly informed Permittee that a covering license application must be obtained prior to the permit expiration.²⁵ Additionally, section 73.3533(b) of the Rules specifies that the filing of an application for modification of construction permit does not extend the expiration date of the construction permit.²⁶ Permittee’s failure to become familiar with the Commission’s rules or to follow the instructions detailed in the Permit does not excuse or mitigate its violation.²⁷ For these same reasons, we reject Permittee’s argument that its failure to submit its Application resulted from the Commission’s alleged failure to answer its inquiries. “Long-standing Commission precedent . . . states that responsibility for complying with terms of a station’s license rests solely and exclusively with the licensee.”²⁸ Moreover, it is well settled that parties rely on informal staff advice at their own risk,²⁹ and the lack of guidance from the staff does not excuse Permittee from

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Review - Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17538-39 (1999) (finding that factors such as weather may cause construction delays, but given the three-year construction period, such factors are not so insurmountable that they excuse parties' lack of diligence in planning and implementing their authorized facilities.). In any event, Permittee successfully completed construction of the Translator prior to the Permit’s expiration date. Accordingly, the issue is moot.

²¹ *Id.*

²² NAL Response at 2.

²³ *Id.*

²⁴ 47 CFR § 73.3598(e) (“Any construction permit for which construction has not been completed *and for which an application for license has not been filed*, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”) (emphasis added).

²⁵ See File No. BNPFT-20171201ABG (“Pursuant to these rules, this construction permit will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration.”).

²⁶ See 47 CFR § 73.3598(e) (indicating that forfeiture is automatic for any construction permit for which construction has not been completed and for which an application for license has not been filed by the permit’s expiration date).

²⁷ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

²⁸ *Escalante City*, Forfeiture Order, 26 FCC Rcd 5961, 5962 (MB 2011); see also *Southern Broadcasting & Investment Co., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, 13200 (MB 2010) (“Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorization”).

²⁹ *WPHR(FM)*, Ashtabula, Ohio, Memorandum Opinion and Order, 11 FCC Rcd 8513, 8515, para. 10 (1996) (citing *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4708, para. 22 (1991) (“A person relying on informal advice given by Commission staff does so at their own risk”).

complying with the Rules.³⁰ Accordingly, we see no reason to cancel or reduce the proposed forfeiture based upon Permittee's purported lack of knowledge.

8. Similarly, we reject Permittee's argument that the forfeiture should be reduced or cancelled because, it alleges, the Commission failed to notify Permittee that the Permit would be dismissed upon its expiration date. The Commission has been clear that the expiration of a construction permit does not require affirmative action by the Commission, and that permittees should not expect notification from the Commission of the forthcoming expiration of their permits.³¹

9. *Unauthorized Operation.* We also affirm our finding that Permittee violated section 301 of the Act by engaging in unauthorized operation of the Translator. Permittee denies that it engaged in a three-month period of unauthorized operation.³² Permittee explains that it completed construction on January 1, 2021, and tested the transmitter for a short time on January 2, 2021.³³ Permittee explains that, when it discovered that it needed to submit a covering application, it began its Application in "January or February of 2021," but "got sidetracked" and did not complete the Application.³⁴ Permittee states that it put the Translator into "part time operation" on April 1, 2021, in order to air the "opening day of Red Sox baseball."³⁵ Permittee did not submit its Application until April 5, 2021.³⁶ Accordingly, the record reflects, and Permittee admits, that it placed the Translator into operation prior to submitting the Application. Permittee's error in beginning, but not completing and submitting, its Application prior to its unauthorized operation is not a mitigating circumstance warranting reduction or cancellation of the forfeiture.³⁷ Accordingly, we find that Permittee engaged in a period of unauthorized operation of the Translator after the permit had expired, and therefore that the forfeiture amount proposed for Permittee's unauthorized operation is appropriate.

10. We reject Permittee's argument that its unauthorized operation was not willful or repeated. Permittee contends that its actions were not willful or repeated because, when it placed the Translator into operation, it "had begun, and almost completely finished" the Application.³⁸ We find that Permittee's actions were willful because Permittee knew that it did not complete and submit its Application prior to placing the Translator into operation,³⁹ and Permittee's actions were repeated because it placed the Translator into operation for more than one day.⁴⁰

³⁰ See *Christian Radio Translator Association/Salmon, Inc.*, Forfeiture Order, 24 FCC Rcd 11288, 11289 (MB 2009) (holding that a Licensee's mistaken assumption that it would receive a reminder of the filing date from the Commission did not excuse the failure to file a timely renewal application).

³¹ See 47 CFR § 73.3598(e) (indicating that forfeiture is automatic for any construction permit for which construction has not been completed and for which an application for license has not been filed by the permit's expiration date); *WKLC, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 2061, 2065 (MB 2013).

³² NAL Response at 4.

³³ *Id.* at 2.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Application.

³⁷ See *supra* note 27.

³⁸ NAL Response at 4.

³⁹ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

11. *Other Arguments.* We also reject Permittee's contention that its violations should be mitigated because the Commission did not provide notice to Permittee prior to issuing the *NAL*. Permittee contends that, in other cases, the Commission provided notice to "the receiving party at least once."⁴¹ Permittee misstates the law. Under section 503(b)(1)(B) of the Act, any person who is determined to have willfully or repeatedly violated the Act or the Rules shall be liable for a forfeiture penalty.⁴² To impose such a forfeiture penalty, the Commission need only issue a notice, such as the *NAL* issued to Permittee, and the person against whom the notice has been issued is provided an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁴³ Accordingly, pursuant to section 503(b) of the Act, Permittee was not entitled to any warning or citation prior to issuance of the *NAL*.⁴⁴

12. We have considered Permittee's response and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Permittee willfully violated section 73.3598 of the Rules and willfully and repeatedly violated section 301 of the Act.⁴⁵

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,⁴⁶ that Katahdin Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand five hundred dollars (\$3,500) for willfully violating Section 73.3598 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

14. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),⁴⁷ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:⁴⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁴⁹ For

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⁴⁰ Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁴¹ *NAL* Response at 4.

⁴² 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(1).

⁴³ 47 U.S.C. § 503(b)(2); 47 CFR § 1.80(f).

⁴⁴ 47 U.S.C. § 503(b); *see also* 47 U.S.C. § 503(b)(5) (providing that a notice of apparent liability may not be issued against any person, without first issuing a citation, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission).

⁴⁵ 47 CFR § 73.3539; 47 U.S.C. § 301.

⁴⁶ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

⁴⁷ Payments made using CORES do not require the submission of an FCC Form 159.

⁴⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁴⁹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

15. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail, ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED** that copies of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Katahdin Communications, Inc., c/o Jim Talbott, P.O. Box 1240, Lake Road, Millinocket, ME 04462.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau