

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

In re Application of)	
)	
Diponti Communications, LLC)	Facility ID No. 26347
)	NAL/Acct. No. MB-202141410047
For Renewal of License and)	FRN: 0028981561
Special Temporary Authority for)	Application File Nos. 0000121418
W276DF, Westerly, Rhode Island)	BELSTA-20210326AAB
(formerly W228AU, North Bennington, Vermont))	

**MEMORANDUM OPINION AND ORDER
AND
FORFEITURE ORDER**

Adopted: December 16, 2021

Released: December 16, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Forfeiture Order* (Order), the Media Bureau (Bureau) issues a monetary forfeiture in the amount of five thousand dollars (\$5,000) to Diponti Communications, LLC (Diponti), licensee of FM translator station W276DF, Westerly, Rhode Island (Station). We find that Diponti willfully violated section 73.3539 of the Commission's rules (Rules)¹ and Section 301 of the Communications Act of 1934, as amended (Act)² by, respectively, failing to file a timely license renewal application and operating the Station without authorization after its license expired. Our Order reduces a \$7,000 forfeiture amount proposed in a Notice of Apparent Liability for Forfeiture.³

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires broadcasters to apply for license renewal "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 If a station has not filed a timely license renewal application, it has no authority to continue operating past the expiration date unless it requests and obtains a Special Temporary Authorization (STA).⁵

¹ See 47 CFR § 73.3539.

² See 47 U.S.C. § 301.

³ *Diponti Comm., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1177 (MB Sept. 21, 2021) (NAL).

⁴ 47 CFR § 73.3539(a).

⁵ See *Atlantic City Bd. of Educ.*, Memorandum Opinion and Order, 31 FCC Red 9380, 9385, para. 11 (2016) (*Atlantic City*); see also 47 CFR § 1.62 (authorizing continued operations after expiration only "where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license"). Although the Commission will process late-filed applications for license renewal to provide stations with the opportunity to rectify the situation and to avoid disruption of service to the public, the Commission generally takes appropriate enforcement action, such as assessing monetary forfeitures, in response to the licensee's resulting rule violations. See *Atlantic City*, 31 FCC Red at 9384-85, para. 10.

3. The Station's license expired on November 8, 2017. This date was earlier than the expiration of other Rhode Island radio licenses because the Station's prior licensee, Brian Dodge d/b/a Harvest Broadcasting Association (Harvest), received a one-year, short-term renewal on November 8, 2016 pursuant to an October 27, 2016 Consent Decree with the Bureau.⁶ Harvest and Diponti had filed an application for consent to assign the license from the former to the latter on November 3, 2016, several days after the Consent Decree and several days before the short-term renewal grant. On November 15, 2016, the Bureau granted Harvest's application for a permit to relocate the Station from Vermont to Rhode Island so it could rebroadcast Diponti's station WBLQ(AM), Westerly, Rhode Island, pursuant to AM revitalization policies. The Bureau approved the assignment to Diponti on January 17, 2017, and the parties consummated the transaction on March 8, 2017.⁷ Diponti constructed at the new Rhode Island location, filed a covering application to license the new facilities on November 20, 2019, and the Bureau granted a Covering License on January 9, 2020.⁸ The Covering License continued to bear the underlying station license expiration date of November 8, 2017 and specified that "This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein."⁹ In other words, the Covering License substituted the new Rhode Island facilities for the prior Vermont facilities but did not extend the Station's license term, which had already expired.¹⁰

4. Diponti should have filed a license renewal application by July 1, 2017, the first day of the fourth full calendar month prior to the November 8, 2017 expiration, but did not do so until about three years later on September 11, 2020 (2020 Application).¹¹ It also did not, until September 16, 2020, request STA to continue operating under the terms of the expired license.¹² Diponti acknowledged that the 2020 Application was late but stated that it did not previously realize that its license had expired pursuant to the short-term renewal granted to its predecessor.¹³ The Bureau granted STA on October 2,

⁶ See *Harvest Broad., et al.*, Order, 31 FCC Rcd 11840 (MB 2016) (adopting consent decree and providing for short-term renewal of Station's license upon satisfaction of conditions). The Consent Decree resolved numerous issues concerning Harvest's qualifications. At that time, the Station operated on a different channel and served North Bennington, Vermont under the call sign W228AU. The Consent Decree allowed Harvest to keep (or sell) some of its broadcast interests, including the Station, with a conditional, one-year short-term renewal of license so that the Bureau could reevaluate the Station's performance in light of past problems. Diponti subsequently moved the Station to Rhode Island. Aside from stations like the instant Station that received short-term renewals, broadcast licenses in Rhode Island (and Vermont) expire statewide on April 1, 2022.

⁷ Application File No. BALFT-20161103AAW (granted Jan. 17, 2017, consummated Mar. 8, 2017).

⁸ Application File No. 0000090518 (granted Jan. 9, 2020) (Covering Application/Covering License).

⁹ *Id.*

¹⁰ However, shortly after grant of the Covering License, the Commission's broadcast database began to bear an erroneous, underlying license expiration date of April 1, 2022 for the Station, *i.e.*, the standard Rhode Island date. The erroneous date seems to have first appeared in connection with a February 28, 2020 administrative update naming Diponti's current counsel as contact representative. See Application File No. 0000106769 (rec. Feb. 28, 2020).

¹¹ Application File No. 0000122059 (rec. Sept. 11, 2020).

¹² Application File No. BLSTA-20200916ABT (rec. Sept. 16, 2020).

¹³ See Exhibit.pdf. attached to 2020 Application ("During a routine database check of this licensee, it was realized that prior to such time as the licensee acquired the license for W276DF (formerly W228AU), a short-term renewal of license was granted with respect to this facility. Therefore, this application for renewal of license is filed late. Since acquisition of the station, the licensee has been in full compliance with all Commission rules and regulations. It is respectfully [requested] that this application for renewal of license be granted, to allow the station to resume on the normal renewal cycle for Rhode Island stations.").

2020 for a six-month period.¹⁴ Diponti timely sought extension of the STA in a March 26, 2021 request, which remains pending.¹⁵ In a July 2021 e-mail exchange between Diponti's counsel and the Bureau about the 2020 Application's status, counsel stated that he had filed the 2020 Application out of "an abundance of caution" because he noticed during a routine database check that there was a discrepancy between the license expiration date established in the Consent Decree (November 8, 2017) and the date listed in the Commission's Licensing Management System (LMS) database (April 1, 2022).¹⁶

5. On September 21, 2021, the Bureau released the NAL proposing a forfeiture of seven thousand dollars (\$7,000), of which \$3,000 pertained to failure to file a timely renewal application and \$4,000 to the resulting unauthorized operation.¹⁷ The Bureau arrived at the proposed forfeiture amount after considering several case-specific circumstances¹⁸ but declined to reduce the amount for additional factors suggested by Diponti. In particular, the Bureau rejected Diponti's argument that the discrepancy between expiration dates in the Consent Decree and in the LMS database was a mitigating factor. The Bureau found that an LMS error could not have caused the violations because that database did not come online until April 2019, about 21 months after Diponti missed the renewal filing deadline and about 17 months after Diponti began to operate with an expired license. Further, because the Consent Decree and short-term renewal occurred within days of Diponti's application to acquire the Station, the Bureau stated that Diponti should have been on notice of the short-term renewal as part of its due diligence.¹⁹ The NAL gave Diponti thirty days either to pay the full amount or to seek reduction or cancellation.²⁰ The Bureau stated that it intended to grant the 2020 Application upon completion of the forfeiture proceeding if no other issues arose.²¹ Diponti has since filed an additional license renewal application during the standard renewal cycle for Rhode Island stations.²²

¹⁴ See *Diponti Comm., LLC*, Letter Order, Application File No. BLSTA-20200916ABT (MB Oct. 2, 2020).

¹⁵ See Application File No. BELSTA-20210326AAB (rec. Mar. 26, 2021).

¹⁶ See E-mail from Dan J. Alpert, Esq. to Victoria McCauley, Attorney, FCC (July 8, 2021 12:33 AM) ("[d]uring a routine database check of the licensee, it was realized last year (by me) that the "license expiration date," although showing in LMS as "4/1/2022" [in LMS] did not match with the date of the Order. Despite the date in LMS, the renewal application immediately was filed in an abundance of caution. An STA also was filed (and granted) in an abundance of caution to allow the station validly to continue to operate.").

¹⁷ NAL at para. 9. The Rules establish base forfeiture amounts of \$3,000 for the failure to timely file a required form and \$10,000 for construction and/or operation without an instrument of authorization for the service, each of which can be adjusted upward or downward. 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, 17100, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Table I. The NAL assessed the base forfeiture amount for failure to file a timely license renewal application but reduced the base forfeiture for unauthorized operations.

¹⁸ The Bureau noted the significant lateness of the 2020 Application, the secondary nature of FM translators, and that Diponti's operation with an expired license was less serious than operation by some other violators who never held any license and received forfeitures of \$10,000 or more. NAL at para. 9.

¹⁹ *Id.*

²⁰ *Id.* at para. 13.

²¹ *Id.* at para. 11. Specifically, the Bureau found that the violations were not so serious as to prevent grant under the renewal standards set out in 47 U.S.C. § 309(k).

²² Application File No. 0000176657 (rec. Dec. 2, 2021) (2021 Application). The 2021 Application was necessary because a grant the 2020 Application would, at most, place the Station on the regular statewide filing schedule for Rhode Island broadcasters which were required to apply for license renewal in December 2021.

6. On October 21, 2021, Diponti filed a document styled as a Petition for Reconsideration²³ in which it seeks cancellation or reduction of the proposed forfeiture. The Petition makes the following arguments: (1) Diponti acted in good faith because it was not responsible for Harvest's misconduct that resulted in the short-term renewal; (2) Diponti's broadcasts after the expiration date provided a public service without causing interference to any other station; (3) Diponti has a record of compliance with the Rules; (4) the Bureau incorrectly discounted the LMS database error because, although it is true that LMS did not yet exist at the time of violation, the same erroneous expiration date appears in the Consolidated Database System (CDBS) database which was in use at the relevant time; (5) the violation occurred over a shorter period than the Bureau determined because grant of the Covering License on January 9, 2020 purportedly gave Diponti operating authority from that point forward; and (6) Diponti was unaware that its license had expired because the Commission continued to assess regulatory fees and the Station would have continued to show as "licensed" in FM queries performed in the Commission's databases.²⁴ In support of these arguments, Diponti submits copies of bills for regulatory fees, various database printouts, and a document pertaining to the Covering License.²⁵ Although Diponti acknowledges it could have discovered any discrepancy in expiration dates before acquiring the Station, it argues that a \$7,000 forfeiture fails to take into account its unique circumstances.²⁶

III. DISCUSSION

7. We affirm that a forfeiture is appropriate for Diponti's violations but will adjust the amount based on mitigating circumstances presented in the Petition. The Commission can adjust a forfeiture amount if warranted by "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."²⁷ First, we will adjust the forfeiture in light of Diponti's history of compliance. We agree with Diponti that its lack of prior forfeitures is a mitigating factor and will reduce the proposed forfeiture by \$1,000 (\$500 for each of the regulations violated). As discussed further below, we also accept that there is a possibility, albeit remote, that a database error might have contributed to a portion of unauthorized operation in 2020 and, therefore, we will further reduce the forfeiture amount by another \$1,000. Accordingly, we will reduce the previously proposed forfeiture by a total of \$2,000, *i.e.*, from \$7,000 to \$5,000. We reject Diponti's other arguments for mitigation.²⁸

²³ Diponti, Petition for Reconsideration and Opposition to Notice of Apparent Liability for Forfeiture (Oct. 21, 2021) (Petition).

²⁴ *Id.* at 6-7.

²⁵ *Id.* at Exhs. 1-7.

²⁶ *Id.* at 7.

²⁷ 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(10).

²⁸ For example, it is immaterial that Harvest's misconduct rather than Diponti's own actions caused the short term renewal because an assignee generally "steps into the shoes" of the assignor. *See, generally, Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8450, 8455-56, paras. 27, 37-38 (2019) (merger involving assignment and transfers of substantial television interests did not raise new competitive concerns because assignee was merely stepping into the shoes of the assignor). Had the Bureau intended to apply the short-term renewal to Harvest alone, the Bureau could have adjusted the expiration date upon grant of the assignment to Diponti, but did not do so. Moreover, under long-established policy, interference-free service to the community is the norm and is not considered to be a mitigating factor in forfeiture proceedings. *See Pacific Western Broad., Inc.*, Memorandum Opinion and Order, 50 F.C.C. 2d 819 (1975) ("we do not consider the absence of a showing of actual interference to be a mitigating factor.... Further, the Commission is not persuaded to mitigate or remit the forfeiture because of a station's service to a community. Stations are expected to serve their communities."). The Commission continues to reject requests to disregard unauthorized operations that result in purported public benefits. *See, e.g., Found. for a Beautiful Life*, Memorandum Opinion and Order, FCC 21-12 (rel. Oct. 25, 2021) at para. 24-25, *appeal pending*

8. At the time of the 2017 license renewal and assignment from Harvest to Diponti, CDBS was the only database in use. Upon grant of the short-term renewal on November 8, 2016, CDBS would have reflected the short-term license expiration date of November 8, 2017. A paper copy of the authorization also would have been mailed to Harvest, which it would have been required to provide to Diponti upon consummation, and, pursuant to section 74.1265(a) of the Rules, Diponti would have been required to keep that authorization among required records in a station file.²⁹

9. Diponti filed the 2019 Covering Application for its modified facilities in LMS. The Bureau's January 9, 2020 grant of the Covering License bore the existing short-term renewal date of November 8, 2017, thereby acknowledging that any future operation of the Station would be from the new facilities, but neither extending the license term nor relieving Diponti of the requirement to file a (then-overdue) application for license renewal. The Covering License bearing the November 8, 2017 expiration date remains available for public viewing in LMS.³⁰ However, we acknowledge that sometime after that January 9, 2020 grant, an erroneous date of April 1, 2022 (the standard date for Rhode Island stations) would appear for "facilities searches" performed for the Station in LMS as well as in CDBS.

10. Based on these circumstances, we affirm our conclusion in the NAL that Diponti has not established that the database error caused its failure to apply for license renewal by July 1, 2017 or its continued operations after the November 8, 2017 license expiration. At most, the record reflects that had Diponti used the CDBS or LMS database to perform a facility search sometime after January 9, 2020, the database would have returned an erroneous 2022 expiration date. We are adjusting the forfeiture amount to account for that possibility.³¹ Grant of the Covering License did not, as Diponti claims, change the expiration date of the Station's short-term authorization. Nor did the Commission's bills for regulatory fees indicate, as Diponti contends, that the Station's authorization never expired. The Commission's Office of Managing Director, Financial Operations Group (OMD) automatically assesses regulatory fees to any commercial broadcast station whose license has neither been turned in nor affirmatively cancelled/deleted from the Media Bureau's databases.³²

11. As stated in the NAL, we find that Diponti's violations of section 73.3539 of the Rules and section 301 of the Act do not constitute a "serious violation" warranting designation of the 2020 Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.³³ Further, based on our review of the 2020 Application, we find that

(citing *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, *recon. dismissed*, Barry D. Wood, Letter Order, 24 FCC Rcd 13666 (MB 2009) (alleged public safety benefits do not justify unauthorized broadcasts).

²⁹ 47 CFR § 74.1265(a).

³⁰ To view the Covering License in LMS click the "Authorization" icon from File No. 0000090518. *See* <https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076f916e61ec6b016e70cc244b04b2&id=25076f916e61ec6b016e70cc244b04b2&goBack=N>. Diponti's Petition includes a print-out of a similar document bearing an incorrect 2022 expiration date but provides no link to or explanation of the process by which it generated that document. *See* Petition at Attach. 7. We have confirmed that the Bureau acted on the Covering Application only once and issued only one authorization to Diponti. Accordingly, we reject Diponti's argument that the Covering License bore a 2022 expiration date at the time of grant.

³¹ We note, however, that Diponti does not claim to have performed such a search until its counsel's routine query in 2020, on an unspecified date before September of that year.

³² The fees are based on a download of data from the Media Bureau's databases, but billing and licensing are separate functions of different offices. Thus, billing for and payment of regulatory fees does not mean that a license has been renewed.

³³ For example, we do not find here that Diponti'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

the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the 2020 Application by separate action upon the conclusion of this forfeiture proceeding if there are no other issues that would preclude grant of the 2020 Application at that time. The 2021 Application, grant of which would be required to license the Station beyond the statewide April 1, 2022 date, is currently under separate review.

IV. ORDERING CLAUSES

12. 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, that Diponti Communications, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for its apparent willful violation of section 73.3539 of the FCC's rules and Section 301 of the Communications Act of 1934, as amended.

13. 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),³⁴ 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:³⁵

- 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).³⁶ For 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

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 Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

³⁴ Payments made using CORES do not require the submission of an FCC Form 159.

³⁵ 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.

³⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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.

14. Any requests for full payment over time under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.³⁷ 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 at ARINQUIRIES@fcc.gov.

15. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order and Forfeiture Order* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Diponti Communications, LLC, 58 High St., Westerly, RI, 02891 and its counsel, Dan J. Alpert, Esq., 2120 N. 21 St., Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁷ See 47 CFR § 1.1914.