

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

In re Application of)	
)	
LLF Holdings, LLC)	Facility ID No. 148100
)	NAL/Acct. No. MB-202141410015
For Renewal of License for)	FRN: 0028146306
FM Translator Station W275CC)	File No. 0000108149
Macon, Georgia)	

FORFEITURE ORDER

Adopted: May 13, 2021**Released: May 13, 2021**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of one thousand, five hundred dollars (\$1,500) to LLF Holdings, LLC (Licensee), licensee of FM Translator Station W275CC, Macon, Georgia (Station), for willfully violating section 73.3539 of the Commission's rules (Rules) by failing to timely file a license renewal application for the Station.¹

II. BACKGROUND

1. 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."² An application for renewal of the Station's license should have been filed by December 2, 2019, the first business day of the fourth full calendar month prior to the Station's license expiration date of April 1, 2020.³ The application was not filed until March 17, 2020. The Licensee provided no explanation for its untimely filing of the application.

2. Accordingly, on February 26, 2021, we released the *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, which proposed a forfeiture of one thousand five hundred dollars (\$1,500).⁴ As noted in the *NAL*, the Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form, and the Bureau reduced this proposed forfeiture to \$1,500 because the Station provides a

¹ See 47 CFR § 73.3539.

² *Id.* § 73.3539(a).

³ See 47 CFR §§ 73.1020, 73.3539(a). Because December 1, 2019, was a Sunday—a holiday as defined by the Rules—the filing deadline was December 2, 2019, the first business day after December 1, 2019. See 47 CFR §§ 1.4(e), (j).

⁴ *LLF Holdings, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-231 (MB Feb. 26, 2021).

secondary service.⁵ The *NAL* gave the Licensee thirty days to pay the full amount of the proposed forfeiture, or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁶

3. On March 29, 2021, the Licensee submitted a written response styled as a response to the *NAL*, or in the alternative, a petition for declaratory ruling, or petition for reconsideration (Response).⁷ Licensee does not dispute that it violated section 73.3539 of the Rules but argues that 1) the Bureau erred in not granting its renewal application at the time it issued the *NAL*, and 2) the proposed forfeiture should be cancelled. Specifically, Licensee argues that section 504(c) of the Communications Act of 1934, as amended (Act), bars the Commission from making the payment of a civil forfeiture a condition precedent to the grant of an application because where a licensee has not paid,⁸ civil forfeitures are only recoverable in de novo proceedings brought in federal district court.⁹

4. Licensee also contends that the Rules and *Forfeiture Policy Statement* do not include a forfeiture provision for late-filed renewal applications and moreover, that it was not put on notice of the potential forfeiture,¹⁰ in violation of the Administrative Procedure Act.¹¹ Finally, the Licensee argues that the Commission has treated similarly situated parties differently¹² because it granted late-filed renewal applications for other translator stations in Georgia and Alabama without imposition of a monetary

⁵ *NAL* at 2, paras. 5-6 (citing *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I). The Commission recently renumbered section 1.80(b)(9) as section 1.80(b)(10) to reflect implantation of provisions of the PIRATE Act. See *Amendment of Section 1.80 of the Rules Implementing Section 2 of the Preventing Illegal Radio Abuse Through Enforcement Act*, Order, 35 FCC Rcd 14591 (OMD/EB 2020).

⁶ *Id.* at 3, para. 10.

⁷ Response to Notice of Apparent Liability for Forfeiture of LLF Holdings, LLC, (dated Mar. 29, 2021). Licensee explained that the Commission's filing system, LMS, would not allow it to file a petition for reconsideration, and accordingly it was electronically submitting it as a petition for declaratory ruling. Email from Denis J. Kelly, Law Office of Dennis J. Kelly, to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (Mar. 29, 2021, 1:52 AM EDT). However, petitions for reconsideration do not lie against interlocutory actions, such as the *NAL*. See 47 CFR § 1.106(a)(1). See also *South Seas Broad., Inc.*, Forfeiture Order, 27 FCC Rcd 4151, 4152 n.7 (MB 2012) ("Because the *NAL* merely proposed rather than imposed a forfeiture, the Media Bureau's (Bureau) action was interlocutory in nature."), *recon. denied*, Memorandum Opinion and Order, 27 FCC Rcd 15049 (MB 2012). Accordingly, we will treat the pleading as a "written statement seeking reduction or cancellation of the proposed forfeiture" specifically authorized in the *NAL*. See *NAL* at para. 10.

⁸ Response at 2 (citing *AM Broadcast Station KTNC and C.R. Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 19114, para. 2, n.5 (2000) (*KTNC*) (citing *Associated Broadcasters, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3324 (1997); *Pikes Peak Broadcasting Company*, Memorandum Opinion and Order, 14 FCC Rcd 19011 (1999), *Tri-Valley Broadcasters*, Memorandum Opinion and Order, 14 FCC Rcd 19307 (1999))).

⁹ Response at 2 (citing *Pleasant Broadcasting v. FCC*, 564 F.2d 496, 498 (D.C. Cir 1977) (*Pleasant Broadcasting*)).

¹⁰ Response at 3-4 (citing *Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15; 47 CFR § 1.80(b)).

¹¹ Response at 3-6 (citing 5 U.S.C. 553(c)-(d); *First American Bank of Virginia v. Dole*, 763 F.2d 644, n.6 (4th Cir. 1984)).

¹² Response at 4 (citing *City of Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985); *Melody Music, Inc. v. FCC*, 345 F.2d 720 (D.C. Cir. 1965)).

forfeiture,¹³ granted a late-filed renewal application prior to the licensee's payment of a forfeiture,¹⁴ and declined to impose a forfeiture for late-filed ownership reports in a renewal application.¹⁵

III. DISCUSSION

5. We affirm our finding that the Licensee willfully violated section 73.3539 of the Rules, and we reject Licensee's arguments to cancel or reduce the forfeiture. Licensee misinterprets section 504(c) of the Act, which forbids the Commission from using a Notice of Apparent Liability to the prejudice of the party against whom it was issued "in any *other* proceeding before the Commission[.]"¹⁶ In this case, both the *NAL* and this Forfeiture Order are issued as part of the ongoing renewal proceeding. Further, *KTNC*, and the cases cited in that decision are distinguishable because they addressed the issue of whether a licensee that had voluntarily paid a forfeiture order could then seek a refund of its payment of that forfeiture.¹⁷ Licensee's reliance on *Pleasant Broadcasting* is also misplaced. That decision merely cites the statutory provision of section 504(a) of the Act, which provides that the Commission cannot initiate a civil suit on its own to recover an unpaid forfeiture but must instead refer the matter to a United States attorney. Licensee cites to no caselaw that precludes the Bureau from withholding action on an application, pending payment of a forfeiture issued in the *same proceeding* involving that application. Therefore, withholding grant of the renewal application until the proposed forfeiture is paid or cancelled is consistent with the statute and caselaw.¹⁸

6. We reject Licensee's argument that there are no provisions for, or notice of, forfeitures for late-filed renewal applications. Section 503(b)(1)(B) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule"¹⁹ In cases in which the Commission has not established a base forfeiture amount for an apparent violation, it has looked to the base forfeitures established or issued in analogous cases for guidance,²⁰ and the Commission retains the discretion to issue forfeitures on a case-by-case basis pursuant to section 503,²¹ irrespective of whether it has established a corresponding base forfeiture amount.²² Moreover, the *Forfeiture Policy Statement* clarified that "any omission of a specific rule violation . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee's obligation, to know and comply with all

¹³ Response at 4 and Exh. A.

¹⁴ Response at 3 (citing *Crawford County Community Radio, Inc.*, Memorandum Opinion and Order, 25 FC Rcd 16329 (MB 2010).

¹⁵ Response at 6 (citing *Colorado West Broadcasting, Inc.*, Letter, 14 FCC Rcd 18354 (MMB 1999) (*Colorado West*)).

¹⁶ See 47 U.S.C. § 504(c) (emphasis added).

¹⁷ *KTNC*, 15 FCC Rcd at 19114-15.

¹⁸ See *Toccoa Falls Coll.*, Forfeiture Order, 27 FCC Rcd. 8365, 8368, para. 12 (MB 2012). Licensee's reliance on *Crawford* is misplaced because it predates the Bureau's policy of withholding grant of renewal applications until the resolution of forfeiture proceedings. See, e.g., *The Padner Group, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 576, 578, para. 9 (MB 2012). The Bureau has consistently applied this policy to applicants that have violated section 73.3539 through the renewal cycles beginning in 2011 and 2019.

¹⁹ 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(2). See also *NAL* at 2, paras. 4-6.

²⁰ See, e.g., *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3304, para. 19 (2000).

²¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

²² See, e.g., *Cumulus Radio LLC et al.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7289, 7294-95, para. 14 (2019) (noting that the *Forfeiture Policy Statement* and section 1.80 of the Rules do not specify a base forfeiture for failing to comply with a Commission order, and proposing a \$25,000 penalty for failure to comply with terms of a consent decree).

of the Commission's rules.”²³ Because the Act and the *Forfeiture Policy Statement* plainly allow the issuance of the forfeiture proposed in the *NAL*, the Commission was not required to engage in a notice and comment rulemaking proceeding as Licensee argues. Moreover, the Commission has long-held that the failure to file a timely renewal application is grounds for the issuance for a monetary forfeiture.²⁴ As a further reminder to licensees, the Bureau released a Public Notice on March 15, 2019, clearly warning all radio broadcast licensees of their obligations during the upcoming renewal cycle, including where to find application filing deadlines and notification that failure to timely file a renewal application can result in forfeitures.²⁵

7. Licensee also references applications of other stations that were late-filed and subsequently granted, and an application where the Bureau declined to impose a forfeiture for late-filed ownership reports in a renewal application. However, these examples are inapposite. Since 2011, it has been the Bureau's processing policy to afford licensees a 30-day grace period in which to file renewal applications following the filing deadline, without imposing a monetary forfeiture. The Georgia and Alabama stations listed in Exhibit A of the Response were all filed within 30 days of the filing deadline.²⁶ Licensee did not file its renewal application until March 17, 2020, well over three months past the December 2, 2019 filing deadline and outside the 30-day grace period. Licensee's reliance on *Colorado West* is also misplaced because that decision involves an ownership report, not a renewal application, and predates *Discussion Radio*, where the Commission established the Bureau's authority to impose monetary forfeitures for untimely filing of license renewal applications.

8. Licensee is simply incorrect that it “was arbitrarily and capriciously picked out for a \$1,500 civil forfeiture.”²⁷ Rather, during the current renewal cycle, the Bureau has consistently applied the provisions of the Act, the Rules, and its processing policy and in fact proposed \$1,500 civil forfeitures to eight other similarly situated FM translator licensees for violations of section 73.3539.²⁸ We thus find no basis to reduce or cancel the proposed forfeiture and affirm the *NAL*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, 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, LLF Holdings, LLC,

²³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22.

²⁴ *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438, para. 15 (2004) (*Discussion Radio*).

²⁵ See *Media Bureau Reminds Broadcast Licensees Of Upcoming Radio Station License Renewal Cycle*, Public Notice, 34 FCC Rcd 1344 (MB 2019) (“The base forfeiture amount for a late-filed AM or FM station (including NCE station) license renewal application is \$3,000.”).

²⁶ Response Exhibit A.

²⁷ Response at 6, para. 15.

²⁸ See *Pirate Media Group, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 19-1284 (MB 2019) (\$1,500 forfeiture proposed for translator renewal application that was 90 days late); *CTC Media Group*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 19-1285 (MB 2019) (\$1,500 forfeiture proposed for translator renewal application that was 88 days late); *Letcher County Broadcasting*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-116 (MB 2021) (\$1,500 forfeiture proposed for translator renewal application that was 106 days late); *FCR Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-119 (MB 2021) (\$1,500 forfeiture proposed for translator renewal application that was 40 days late); *Gerard Media LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-133 (MB 2021) (\$1,500 forfeiture proposed for translator renewal application that was 113 days late); *John Burdette*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-225 (MB 2021) (\$1,500 forfeiture proposed for translator renewal application that was 118 days late); *Family Worship Center*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-294 (MB 2021) (\$1,500 forfeiture proposed for translator renewal application that was 105 days late).

IS LIABLE FOR A MONETARY FORFEITURE in the amount of \$1,500 for its willful violation of section 73.3539 of the Commission's rules.

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),²⁹ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³⁰

- 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 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).³¹ 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 Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. 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 "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and 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.

11. 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.

²⁹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁰ 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.

³¹ Instructions for completing the form may be obtained at <https://transition.fcc.gov/Forms/Form159/159.pdf>.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Joshua Hale, LLF Holdings, LLC, 3646 Vineville Avenue, Macon, GA 32104, and to its counsel, Dennis J. Kelly, P.O. Box 41177, Washington, DC 20018-0577.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau