

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

In re Application of)	
)	
Redrock Broadcasting, Inc.)	Facility ID No. 166049
)	NAL/Acct. No. MB-202141410032
For Renewal of License for)	FRN: 0024415721
KUTQ(FM), La Verkin, Utah)	Application File No. 0000146031

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

Adopted: July 20, 2021

Released: July 20, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Redrock Broadcasting, Inc. (Licensee) for renewal of its license for KUTQ(FM), La Verkin, Utah (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find the Licensee apparently willfully violated section 73.3539 of the Commission’s Rules (Rules)³ by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of three thousand dollars (\$3,000).

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 should have been filed by June 1, 2019, the first day of the fourth full calendar month prior to the Station’s license expiration date of October 30, 2019.⁵

3. The Licensee did not file the Application until September 22, 2020.⁶ In the Application, the Licensee indicates that its failure to timely file was “an oversight.” It also notes that the Station “has

¹ File No. 0000122059.

² 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 FCC’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.

³ *See* 47 CFR § 73.3539.

⁴ 47 CFR § 73.3539(a).

⁵ *See* 47 CFR § 73.3539(a); *Cochise Broad. LLC*, Order, 32 FCC Rcd 3932 (MB 2017) (adopting a consent decree that specified the Bureau would renew the Station’s license for a period of two years upon satisfaction of certain conditions); Broadcast Actions, Public Notice, Report No. 49104, at 5 (MB Nov. 2, 2017).

⁶ The Licensee did not file the Application prior to the October 30, 2019, license expiration date either. However, we did not—as is our standard procedure—notify the Licensee of the license’s impending expiration. *See Atl. City Bd. of Educ.*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9384, n. 30 (2016) (noting that the Bureau “has modified its processing policies to promptly notify stations that have failed to file their renewal applications”). *See*

been fully operational and serving the public interest since [it] was purchased by [the Licensee].” Concurrent with the filing of the Application, the Licensee sought special temporary authority (STA) for the Station to remain operational while the Commission processed the Application. We granted STA on October 2, 2020.⁷ The Licensee timely sought extension of the STA on March 26, 2021.⁸

III. DISCUSSION

4. *Proposed Forfeiture.* This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the section 503(b) context.¹² 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.”¹³

also, e.g., Radio License Expirations, Public Notice, DA 21-533 (MB May. 10, 2021); *Radio License Expirations*, Public Notice, DA 21-295 (MB Mar. 11, 2021); *Radio License Expirations*, Public Notice, DA 21-13 (MB Jan. 6, 2021); *Radio License Expirations*, Public Notice, 35 FCC Rcd 12737 (2020); *Radio License Expirations*, Public Notice, 35 FCC Rcd 9455 (MB 2020) (all reminding licensees that had missed the deadline for filing renewal applications for their station licenses of the upcoming expiration date for those licenses). Nor did we cancel the Station’s license, delete its call sign, or otherwise notify the Licensee of the license’s expiration. *Cf., e.g., Broadcast Actions*, Public Notice, Report No. 49962 (MB April 7, 2021) (cancelling radio station licenses for failure to file renewal applications). Further, the Licensee promptly filed the Application and a request for STA to continue operating the Station as soon as it was made aware of the license’s expiration. Given these unique factors, we do not believe it would be appropriate to pursue enforcement action related to operation of the Station between October 30, 2019, and September 22, 2020. *See Cultural Energy*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-307, at n. 6 (MB Mar 12, 2021) (declining to impose forfeiture for unauthorized operations where, among other things, (1) the Bureau had not—as is its standard procedure—notified the Licensee of the impending expiration of the Station’s license, (2) the Bureau did not cancel the Station’s license, or otherwise notify the Licensee of the license’s expiration, and (3) the Licensee promptly filed the Application and a new request for STA to continue operating the Station as soon as it was made aware of the license’s expiration). *Cf. Ward Broad. Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5592, 5592, para. 2 (MB 2020) (proposing a forfeiture for unauthorized operation of a station where renewal application was not filed prior to expiration of station’s license; Bureau notified licensee that station’s license had expired, that all authority to operate the Station was terminated, and that the Station’s call letters were deleted from the Commission’s database, and thus licensee was “on notice” that any further operation of station was unauthorized).

⁷ See File No. BLSTA-20200922AAA. *See also Redrock Broad., Inc.*, BLSTA-20200922AAA, Letter Order, File No. (MB Oct. 2, 2020).

⁸ See File No. BELSTA-20210326AAB.

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

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹³ 47 U.S.C. § 312(f)(2).

5. 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 timely file a required form.¹⁴ 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)(E) 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."¹⁵

6. In this case, the Licensee failed to timely file a license renewal application for the Station, as required by section 73.3539(a) of the Rules. While the Licensee indicates that the failure to timely file the Application was an "oversight," we note that "'inadvertence,' . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."¹⁶ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose the full \$3,000 base forfeiture amount for the failure to file a timely renewal application.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.¹⁷ 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.¹⁸ 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."¹⁹

8. We find that the Licensee's apparent violation of section 73.3539 of the Rules does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the Application.

¹⁴ 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 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table I.

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

¹⁶ *Southern California*, 6 FCC Rcd at 4387, para. 3.

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 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 Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC's rules, that Redrock Broadcasting, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful violation of section 73.3539 of the FCC's rules.

10. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the FCC's Rules, that, within thirty (30) days of the release date of this *NAL*, Redrock Broadcasting, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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),²¹ 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:²²

- 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).²³ 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.

12. Any request for making full payment over time under an installment plan should be sent to: Revenue and Receivables Operations Group—Financial Operations, Federal Communications

²¹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²² 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.

²³ Instructions for completing the form may be obtained at <https://transition.fcc.gov/Forms/Form159/159.pdf>.

Commission, 45 L Street NE, Washington, DC 20554, or by e-mail, ARINQUIRIES@fcc.gov.²⁴ 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.

13. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's Rules.²⁵ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.²⁶

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

14. 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.²⁷

15. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Redrock Broadcasting, Inc., 1664 S. Dixie Drive, Suite D-104, St. George, UT 84770, and its counsel, Scott Woodworth, Esq., Edinger Associates PLLC, 1725 I Street NW, Suite 300, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁴ See 47 CFR § 1.1914.

²⁵ 47 CFR §§ 1.16 and 1.80(g)(3).

²⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

²⁷ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).