

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

In re Application of
SCARBOROUGH RADIO, LLC
For Construction Permit for
New FM Station, Hugo, Colorado
Facility I.D. No. 762662
NAL/Acct. No. MB202141410061
FRN: 0015773476
File No. 0000161479

FORFEITURE ORDER

Adopted: February 7, 2022

Released: February 7, 2022

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, the Media Bureau (Bureau) issues a monetary forfeiture to ScarboroughRadio, LLC (Scarborough) in the amount of one thousand dollars (\$1,000) for willfully violating sections 73.3573(f)(5)(i) and 73.5005(a) of the Commission’s rules by failing to timely file its post-auction Form 2100, Schedule 301 long-form application (Application).<sup>1</sup>

II. BACKGROUND

2. Scarborough timely filed an FCC Form 175 application to participate in Auction 109, and was found to be a qualified bidder.<sup>2</sup> By an August 12, 2021, Public Notice, the Bureau, in conjunction with the Office of Economics and Analytics, announced that Scarborough was the winning bidder in Auction 109 for the FM construction permit at Hugo, Colorado.<sup>3</sup> Winning bidders were required to file a post-auction FCC Form 2100, Schedule 301 long-form application by September 13, 2021. Scarborough failed to submit a post-auction Form 2100, Schedule 301 application by this deadline. It submitted its Form 2100, Schedule 301 application (Application) on September 30, 2021.<sup>4</sup> Scarborough did not request a waiver of sections 73.3573(f)(5)(i) and 73.5005(a) of the rules, or of the Auction 109 Closing Public Notice.<sup>5</sup>

3. The Auction 109 Closing Public Notice cautioned that “[a] winning bidder that fails to submit the required long-form application before the specified deadline, and fails to establish good cause

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 AM and FM Broadcast Construction Permits; 114 Bidders Qualified to Participate in Auction 109, AU Docket No. 21-39, Public Notice, DA 21-780 (OEA/MB July 1, 2021).

3 Auction of AM and FM Broadcast Construction Permits Closes; Winning Bidders Announced for Auction 109, AU Docket No. 21-39, Public Notice, DA 21-983 (OEA/MB Aug. 12, 2021) (Auction 109 Closing Public Notice).

4 File No. 0000161479 (filed Sept. 30, 2021).

5 47 CFR §§ 73.3573(f)(5)(i), 73.5005(a). These sections 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.

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."<sup>6</sup> 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.<sup>7</sup> On December 2, 2021, the Bureau issued to Scarborough a Notice of Apparent Liability proposing a forfeiture of \$3,000 for its failure to submit a timely long-form application.<sup>8</sup> In the *NAL*, the Bureau on its own motion waived the filing deadline.<sup>9</sup> The Bureau found good cause because: (1) Scarborough had previously complied with all Auction 109 filing and payment obligations and was initially found to be a qualified bidder; (2) there was no indication of bad faith; (3) Scarborough'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 Scarborough to retain its FM construction permit and to proceed with the implementation of a new radio service at Hugo, Colorado.<sup>10</sup> The waiver allowed Scarborough's late Application to be accepted for filing and relieved it from the default payment obligation specified in the Rules.<sup>11</sup>

4. Despite granting Scarborough a waiver of the long-form filing deadline, the Bureau nonetheless held that Scarborough 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.<sup>12</sup> 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 Scarborough's violations.<sup>13</sup> The Bureau stated that it would not depart from this amount because Scarborough was on notice that it was responsible for timely submitting its Application, but it failed to do so.<sup>14</sup>

5. On December 7, 2021, Scarborough filed a response to the *NAL* (Response).<sup>15</sup> In the Response Scarborough's principal, Scott Scarborough, asserts that he is a first-time auction participant, and that after working with Bureau staff on preparation of the long-form Application it was his understanding that there was no more to be done, that the filing was complete and that there were no issues regarding late filing.<sup>16</sup>

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<sup>6</sup> *Auction 109 Closing Public Notice* at 8.

<sup>7</sup> See, 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).

<sup>8</sup> *ScarboroughRadio, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1498, at 2 (MB Dec. 2, 2021) (*NAL*).

<sup>9</sup> *Id.* at 3 para. 5.

<sup>10</sup> *Id.* at 2-3 paras. 4-5.

<sup>11</sup> 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.

<sup>12</sup> *NAL* at 3 paras. 6-9. See 47 CFR §§ 73.3573(f)(5)(i), 73.5005(a).

<sup>13</sup> 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.

<sup>14</sup> *NAL* at 3 para. 9.

<sup>15</sup> The Response was emailed to Bureau staff on December 7, 2021. Scarborough stated that it had simultaneously filed the response with the Office of the Secretary by Priority Mail.

<sup>16</sup> Response at 1.

### III. DISCUSSION

6. Bidders were informed, through various means, such as the online bidding tutorial and various public notices, of the need timely to file the post-auction long-form application (FCC Form 2100, Schedule 301).<sup>17</sup> Even though Scarborough submitted an untimely long-form Application, we note that Scarborough's Response was timely filed, as it was received by Bureau staff within 30 days of the *NAL* release date.<sup>18</sup> Additionally, Scarborough timely made its final payment,<sup>19</sup> and as noted above timely made all other auction payments, timely filed its short-form application, and was initially found to be a qualified bidder.<sup>20</sup> These facts, combined with the fact that Mr. Scarborough proactively reached out to Bureau staff to complete the late-filed Application, support Scarborough's assertion that its late Application filing was wholly inadvertent. Finally, we reiterate that this is a minor post-auction delinquency, that accepting Scarborough's Application would not undermine our auction policies, and that the public interest is served by the prompt initiation of new FM service at Hugo, Colorado.<sup>21</sup> Thus, while a forfeiture is appropriate in this case, we find good cause to reduce the amount of the forfeiture to \$1,000.

### IV. ORDERING CLAUSES

7. 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 ScarboroughRadio, LLC, SHALL FORFEIT to the United States the sum of one thousand dollars (\$1,000) for its willful violation of sections 73.3573(f)(5)(i) and 73.5005(a) of the Commission's rules.

8. 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),<sup>22</sup> 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:<sup>23</sup>

- 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](mailto: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).<sup>24</sup> For

<sup>17</sup> See, e.g., *Auction 109 Closing Public Notice* at 7-8, paras. 33-37.

<sup>18</sup> In the *NAL* we stated that "within thirty (30) days of the release date of this *NAL*, ScarboroughRadio, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture." *NAL* at 4 para. 11.

<sup>19</sup> See 47 CFR §§ 1.2109(a), 73.5003. As set forth in the *Auction 109 Closing Public Notice*, final payments were due by 6:00 p.m. Eastern Time on September 13, 2021, or by 6:00 p.m. Eastern Time on September 27, 2021, along with the 5% penalty set forth in 47 CFR § 1.2109(a). *Auction 109 Closing Public Notice* at 3. Scarborough timely made its payment by the September 27, 2021, deadline. There is, however, no parallel rule-based extended filing deadline for Form 2100, Schedule 301.

<sup>20</sup> See *supra* para. 3. Additionally, Scarborough timely paid the filing fee for its long-form Application, which for the first time was a consolidated filing fee of \$3,870 that included an amount to recover costs for processing the short-form application. See *Auction 109 Closing Public Notice* at 7 n.24.

<sup>21</sup> *Id.*

<sup>22</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>23</sup> 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](mailto:ARINQUIRIES@fcc.gov).

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.

9. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to ScarboroughRadio, LLC, c/o Scott Scarborough, 3655 Amelia Island Street, Colorado Springs, CO 80920.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>24</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.