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

In the Matter of	)	
	)	
EICB-TV EAST, LLC	)	Facility ID No. 181975
	)	NAL/Acct. No. 202241420001
For License to Cover	)	FRN: 0015723455
Low Power Television Station K23NB-D	)	File No. 0000181649
Boise, Idaho	)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 18, 2022 **Released: February 22, 2022**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the above-captioned application (Application) of EICB-TV East, LLC (Permittee), for a license to cover low power television (LPTV) station K23NB-D, Boise, Idaho (K23NB-D or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we find that the Permittee apparently willfully violated section 74.788[2] of the Rules by failing to timely file a license to cover application, and willfully and repeatedly violated section 301 of the Act,[3] by engaging in unauthorized operation of the Station after its construction permit had expired. Based upon our review of the facts and circumstances before us, we conclude that the Permittee is apparently liable for a monetary forfeiture in the amount of three thousand five hundred dollars ($3,500).

II. BACKGROUND

2. The Bureau issued Permittee a construction permit[4] for the LPTV station on May 3, 2017, with an expiration date of July 13, 2021.[5] However, Permittee did not file an application for license to cover by July 13, 2021, and the Permit expired on its own terms that day pursuant to section 74.788(b) of the Rules.[6] Permittee filed the Application on January 26, 2022, more than six months after completing construction and after the Permit expired.

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[1] 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 Commission'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.

[2] *See* 47 CFR § 74.788.

[3] *See* 47 U.S.C. § 301.

[4] *See* CDBS File No. BNPDTL-20090825AXP.

[5] *See* 47 CFR § 74.788(a).

[6] 47 CFR § 74.788(b). We note that because the construction permit had not yet been canceled in LMS the Station was able to file a license to cover application against its expired permit. Cancellation of a station's construction permit and deletion of its call sign by Media Bureau (Bureau) staff in the Licensing and Management System (LMS) is an administerial function and does not constitute an official Commission action nor require any affirmative

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3. In the Application, Permittee includes a request that its late-filed Application be accepted. and that it be allowed to continue to serve the public. Permittee states that it completed construction of the digital facilities for the Station in accordance with its construction permit and submitted a license to cover on July 9, 2021.[7] At that point, Permittee represents that it commenced operation of the Station. Permittee alleges that, due to an administrative oversight, it failed to pay the filing fee for the license application and on July 31, 2021 the application was dismissed. Under Section 1.1118(a) of the Rules,[8] an application submitted with a defective fee submission shall be dismissed and may be corrected by resubmitting the application together with the correct fee. Permittee states that it attempted to rectify this error through a new license application filed on November 1, 2021, but that application was dismissed because the construction permit had expired. At the instruction of Video Division staff Permittee filed the Application currently before the Commission on January 26, 2022.

4. Permittee requests waiver of the rules, reinstatement of the Station's construction permit and grant of the Application. Permittee argues that as evidenced by its originally filed license to cover application, the Station was constructed prior to the construction permit expiration date and that Commission has allowed such waivers and late-filed applications for license to cover applications in previous cases.[9] Permittee maintains that it takes seriously its obligations to comply with Commission rules and attempted to do so here. Upon discovering that it had inadvertently failed to timely pay the filing fee, Permittee states that it immediately filed a new application and paid the fee. Finally, Permittee argues that when taking into account the harms to the viewing public and inequities that would result from even a temporary loss of the Station's signal due to an inadvertent and purely administrative failure to submit the filing fee for an application that was otherwise timely filed, it is clear that taking the action requested by the Permittee would be in the public interest.

III. DISCUSSION

5. *Proposed Forfeiture*. The Permittee failed to timely file a license to cover as required by section 74.788 of the Rules,[10] and continued Station operations with the permitted facilities after the Permit expired on July 13, 2021, before filing the Application, and did not seek special temporary authority to operate with those facilities. In its Petition, Permittee stated that it completed construction of the Station in accordance with the construction permit granted by the Commission and commenced operation of those facilities, on July 9, 2021. Permittee states that it overlooked paying the filing fee for the license to cover. While it attempted to file a subsequent license to cover in November 2021, that application was dismissed as the Station no longer had a valid construction permit. At the instruction of Division staff the licensee filed the Application currently pending before the Commission and paid the required application fee. It is well settled that administrative oversight is not an excuse for failure to comply with the Commission's rules.[11] Further, as a result of its late filing, Permittee also engaged in unauthorized operation in violation of section 301 of the Act for more than six months.

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cancellation by the Commission. *See Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Oher Important Deadlines are One Week Away*, Public Notice, DA 21-786 (rel. July 6, 2021); 47 CFR §74.788(b). As a result, failure by Bureau staff to cancel a construction permit in LMS does not result in an expired construction permit remaining valid.

[7] *See* LMS File No. 0000152192.

[8] 47 CFR § 1.1118(a).

[9] *See, e.g., Application of KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, File No. 0000163742 (Nov. 5, 2021) (granting petition to reinstate permit upon conclusion of forfeiture proceeding).

[10] *See* 47 CFR § 74.788.

[11] *Townsquare Media of El Paso, Inc., Notice of Apparent Liability for Forfeiture*, 35 FCC Rcd 6661, 6665, para. 5 and n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight").

6. This *NAL* is issued pursuant to section 503(b)(1)(B) of the 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.[12] 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.[13] 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,[14] and the Commission has so interpreted the term in the section 503(b) context.[15] 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."[16]

7. 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.[17] The guidelines also specify a base forfeiture amount of $10,000 for construction and/or operation without an instrument of authorization for the service.[18] 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."[19]

8. Based on our review of the facts and circumstances, we tentatively find that a $7,000 base forfeiture is appropriate.[20] The Licensee failed to file a timely license to cover for the Station and engaged in unauthorized operation of the Station after the permit expired on July 13, 2021. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to $3,500 because, as an LPTV station, the Station is providing a secondary service.[21] We will also grant the Permittees waiver request and waive section 74.788 of the Rules,[22] reinstate the construction permit, and grant the Application by separate

[12] 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

[13] 47 U.S.C. § 312(f)(1).

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

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

[16] 47 U.S.C. § 312(f)(2).

[17] *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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I.

[18] A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

[19] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(4).

[20] *See, e.g., WKLC, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 26 FCC Rcd 11001 (MB 2011) (proposing $7,000 forfeiture for violation of section 73.3598 of the Rules and section 301 of the Act). *See also Clear Channel*, 26 FCC Rcd at 7157 ("We note that the staff may also issue Notices of Apparent Liability for 'failure to file a required form' as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the 'Act') and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.").

[21] *See, e.g.*, *Pirate Media Group, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 34 FCC Rcd 12280 (MB 2019) (reducing $3,000 base forfeiture to $1,500 for untimely filed renewal application filed by FM translator station).

[22] A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public

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action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant of the Application.

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 Commission's rules,[23] EICB-TV East, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand five hundred dollars ($3,500) for its apparent willful violation of section 74.788 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.[24]

10. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[25] that, within thirty (30) days of the release date of this *NAL,* EICB-TV East, LLC **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 CORES (the Commission's online payment system),[26] 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:[27]

- 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).[28] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-

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interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent. *See e.g., Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para 11 (2011) (upholding as proper the Bureau's practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver). We find that based on the specific facts and circumstances presented here waiver is warranted. Notably, the Permittee in fact submitted a license to cover affirming that construction was completed, but failed to pay the fee. We note that the Permittee requests waiver of 47 CFR § 73.3598, which also is applicable to digital LPTV stations and is waived as necessary.

[23] 47 U.S.C. § 503(b); 47 CFR § 1.80.

[24] 47 CFR § 74.788(b); 47 U.S.C. § 301.

[25] 47 CFR § 1.80.

[26] Payments made using CORES do not require the submission of an FCC Form 159.

[27] 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.

[28] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

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.

12. 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, N.E., Washington, DC 20554.[29] 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.

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.[30] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney, Video 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.[31] A courtesy copy should also be emailed to Shaun.Maher@fcc.gov to assist in processing the response.

- 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.

[29] *See* 47 CFR § 1.1914.

[30] 47 CFR §§ 1.16 and 1.80(g)(3).

[31] 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).

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 section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.[32]

15. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to EICB-TV East, LLC, 406 Copeland Drive, Cedar Hill, TX 75104, as well as e-mailed to randy@crosstalk.org, and to its counsel, Ari Meltzer, Esq., Wiley Rein LLP, 2050 M Street NW, Washington , DC 20036, as well as e-mailed to ameltzer@wiley.law.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[32] *See* 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).