

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

In re Application of
NANETTE VALDEZ-SCHWARTZ
For Construction Permit for
New FM Station, Medicine Bow, Wyoming
Facility I.D. No. 762582
NAL/Acct. No. MB202141410058
FRN: 0030865489
File No. 0000160534

FORFEITURE ORDER

Adopted: March 24, 2022

Released: March 24, 2022

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, the Media Bureau (Bureau) issues a monetary forfeiture to Nanette Valdez-Schwartz (Schwartz) 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 her post-auction Form 2100, Schedule 301 long-form application (Application).<sup>1</sup>

II. BACKGROUND

2. Schwartz 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 Schwartz was the winning bidder in Auction 109 for the FM construction permit at Medicine Bow, Wyoming.<sup>3</sup> Winning bidders were required to file a post-auction FCC Form 2100, Schedule 301 long-form application by September 13, 2021. Schwartz failed to submit a post-auction Form 2100, Schedule 301 application by that deadline. She submitted her Form 2100, Schedule 301 application (Application) on September 27, 2021.<sup>4</sup> Schwartz did not request a waiver of sections 73.3573(f)(5)(i) and 73.5005(a) of the rules,<sup>5</sup> or of the Auction 109 Closing Public Notice.

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 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,

<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> File No. 0000160534 (filed Sept. 27, 2021).

<sup>5</sup> 47 CFR §§ 73.3573(f)(5)(i), 73.5005(a).

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 November 18, 2021, the Bureau issued to Schwartz a Notice of Apparent Liability proposing a forfeiture of \$3,000 for her 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) Schwartz 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) Schwartz'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 Schwartz to retain her FM construction permit and to proceed with the implementation of a new radio service at Medicine Bow, Wyoming.<sup>10</sup> The waiver allowed Schwartz's late Application to be accepted for filing and relieved her from the default payment obligation specified in the Rules.<sup>11</sup>

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

5. On December 1, 2021, Schwartz filed a response to the *NAL* (Response).<sup>15</sup> It is apparent from the Response that Schwartz assumed that she was not only allowed to make a late final payment, as provided in section 1.2109(a) of the rules,<sup>16</sup> but that this extended late payment deadline applied to filing Form 2100, Schedule 301 as well, since Schwartz filed the long-form Application the same day as she made her final payment.<sup>17</sup> Having complied with what she understood to be the general instructions in the *Auction 109 Closing Public Notice*, Schwartz states she believed that she was not required to seek a

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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> *Nanette Valdez-Schwartz*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1449, at 2 (MB Nov. 18, 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 mailed to the Office of the Secretary on December 1, 2021.

<sup>16</sup> 47 CFR § 1.2109(a).

<sup>17</sup> See *supra* note 4. See also *NAL* at 2, para. 4.

waiver, and now characterizes her misunderstanding as a “rookie’s mistake.”<sup>18</sup> She also indicates that she consulted with Bureau staff during the auction process.<sup>19</sup>

### 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>20</sup> As noted above, Schwartz made a timely final payment under the extended deadline provided in section 1.2109(a) of the rules,<sup>21</sup> and filed her long-form Application at the same time. It is apparent from the Response, and from Schwartz’s conduct, that she was unaware that submitting the final payment and filing Form 2100, Schedule 301, represent two separate obligations with separate deadlines. Even though Schwartz submitted an untimely long-form Application, however, we note that Schwartz’s Response was timely filed, as it was received by Bureau staff within 30 days of the *NAL* release date.<sup>22</sup> Additionally, as noted above, Schwartz timely made her final payment,<sup>23</sup> and timely made all other auction payments, timely filed her short-form application, and was initially found to be a qualified bidder.<sup>24</sup> These facts, combined with the fact that Ms. Schwartz proactively reached out to Bureau staff during the auction process, as well as her filing the Application on the same day that she paid the balance of her winning auction bid,<sup>25</sup> support Schwartz’s assertion that her late Application filing was wholly inadvertent. Finally, we reiterate that this is a minor post-auction delinquency, that accepting Schwartz’s Application would not undermine our auction policies, and that the public interest is served by the prompt initiation of new FM service at Medicine Bow, Wyoming.<sup>26</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 Nanette Valdez-Schwartz SHALL FORFEIT to the United States the sum of one thousand dollars (\$1,000) for her 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>27</sup> or by wire

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<sup>18</sup> Response at 2-3.

<sup>19</sup> *Id.* at 1.

<sup>20</sup> *See, e.g., Auction 109 Closing Public Notice* at 7-8, paras. 33-37.

<sup>21</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% late fee set forth in 47 CFR § 1.2109(a). *Auction 109 Closing Public Notice* at 3. Schwartz timely made her payment by the September 27, 2021, deadline and paid the 5% late fee. There is, however, no parallel rule-based extended filing deadline for Form 2100, Schedule 301.

<sup>22</sup> In the *NAL* we stated that “within thirty (30) days of the release date of this *NAL*, Nanette Valdez-Schwartz 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>23</sup> *See supra* note 21.

<sup>24</sup> *See supra* para. 3. Additionally, Schwartz timely paid the filing fee for her 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>25</sup> *NAL* at 2, para. 4.

<sup>26</sup> *Id.*

<sup>27</sup> Payments made using CORES do not require the submission of an FCC Form 159.

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>28</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>29</sup> 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 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.

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<sup>28</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).

<sup>29</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

9. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Nanette Valdez-Schwartz, P.O. Box 1872, 408 W. Bridge Ave., Saratoga, WY 82331.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau