

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

In the Matter of)	
)	
CHRISTIAN BROADCASTING OF YAKIMA)	Facility ID No. 10947
)	NAL/Acct. No. 202241420015
For License to Cover)	FRN: 0008397077
Low Power Television Station)	File No. 0000194518
K27OO-D, Ellensburg, Washington)	

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

Adopted: July 14, 2022

Released: July 14, 2022

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the above-captioned application (Application) of Christian Broadcasting of Yakima (Permittee), for a license to cover low power television (LPTV) station K27OO-D, Ellensburg, Washington (K27OO-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 74.788² 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 six thousand five hundred dollars (\$6,500).

II. BACKGROUND

2. K27OO-D was an analog LPTV station (formerly K39DM, facility identification number 186444) operating on channel 39. The Station's analog channel 39 facilities were displaced by the Incentive Auction and repacking process. Permittee filed for and the Station was subsequently granted a construction permit for digital displacement channel 27 (Displacement CP).⁴ Because the Station was operating in analog at the time, the Displacement CP was assigned an expiration date of July 13, 2021. Permittee was also granted an STA to begin temporary operations pursuant the Displacement CP.⁵ The

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 LMS File No. 0000028952.

⁵ See LMS File No. 0000027350. LPTV stations on channels 38-51 that were displaced by the Incentive Auction and repacking process and had received notice from 600 MHz band wireless licensees that they had to terminate operations prior to being able to file a displacement application in the 2018 special displacement window were permitted to file a displacement application and request for special temporary authority (STA) and, upon grant of the STA, begin operating temporarily on their displacement channel. See *Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, 32 FCC Rcd 4943, 4946, paras. 5-7 (IATF and MB 2017).

STA had an expiration date of February 9, 2018.⁶ Although Permittee maintains that it completed construction and began operating the Displacement CP facilities on November 23, 2017 pursuant to a valid STA, it neither filed for an extension of that STA or filed an application for license to cover prior to expiration of the Displacement CP. The Displacement CP expired on its own terms on July 13, 2021 pursuant to section 74.788(b) of the Rules.⁷

3. On September 9, 2021, Permittee sought reconsideration of the cancellation of the Displacement CP and the Station's license.⁸ Permittee stated that the Displacement CP facilities had been constructed in November 2017 and that its failure to apply for the license at that time was "a regrettable mistake which we assure will not happen in the future."⁹ In an amendment to the Petition filed May 23, 2022,¹⁰ Permittee provided proof that the Station had been constructed in November 2017 and continued to operate until September 2021 when Permittee discovered that the Displacement CP had been cancelled.¹¹ Permittee maintains that it mistakenly believed that it could not submit a license application for the Displacement CP facilities until the Station was deemed eligible for participation in the Commission's post-Incentive Auction LPTV Reimbursement Program.¹² Permittee states that it had no reason to suspect that it had failed to make the required license filing and that operation pursuant to the STA was insufficient.¹³ The staff treated the Petition as a request for waiver of section 74.788(b) of the rules, granted the waiver, reinstated the Displacement CP, and afforded Permittee an opportunity to file a covering license application for the Displacement CP, which it did on July 6, 2022.¹⁴

4. In its late-filed Application, Permittee once again represents that it completed construction of the facilities set forth in the Displacement CP in November 2017 and began operating pursuant to a valid STA, but that the Permittee inadvertently failed to file a license to cover once it was granted a Displacement CP.¹⁵ Permittee cites to the documentation contained in the May 2022 Amendment as proof that the Displacement CP facilities were constructed and that the Station is currently operating pursuant to those facilities.¹⁶ Accordingly, Permittee filed the Application over four and a half

⁶ STAs are granted for a period of no more than 180 days and may be extended for additional periods not exceeding 180 days. See 47 CFR § 73.1635(a)(4).

⁷ 47 CFR § 74.788(b).

⁸ See Christian Broadcasting of Yakima's Petition for Reconsideration (Sept. 9, 2021) (Petition), a copy of which is available at the K2700-D main station page, LMS Facility ID No. 10947. On July 1, 2022, the Video Division granted the Petition and reinstated the Displacement CP and Station license. Permittee was instructed to submit a license application no later than July 11, 2022. *Id.*

⁹ Petition at 2.

¹⁰ See Amendment to Petition for Reconsideration (May 23, 2022) (Amendment), a copy of which is available at the K2700-D main station page, LMS Facility ID No. 10947.

¹¹ *Id.* at 7 and Exhibit A.

¹² *Id.* at 10.

¹³ *Id.*

¹⁴ LMS File No. 0000194518. See Email to Rafael Fernandez from Shaun Maher, Video Division, Media Bureau (July 1, 2022), a copy of which is available at the K2700-D main station page, LMS Facility ID No. 10947. See also *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para 11 (2011) (*Clear Channel*) (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).

¹⁵ Application at 1. The Permittee does not address why it failed to extend the STA.

¹⁶ *Id.*

years after completing construction and almost a year after the Displacement CP expired. Permittee requests waiver of the rules and grant of the Application.

III. DISCUSSION

5. *Proposed Forfeiture.* The Permittee failed to timely file a license to cover as required by section 74.788 of the Rules,¹⁷ and engaged in unauthorized Station operations for over four years after its STA expired on February 9, 2018. The Station's Displacement CP expired on July 13, 2021. In its Petition, Permittee stated that it completed construction of the Station in accordance with the construction permit granted by the Commission and the facilities it began operating in November 2017 pursuant to a valid STA. Permittee states that it failed to file an application for license due to a misunderstanding about the Commission's rules concerning the LPTV Reimbursement Program. It is well settled precedent that ignorance of a rule or law does not excuse a violation or noncompliance.¹⁸ Participation in the TV Broadcaster Relocation Fund does not alter the Commission's rules requiring the filing of a license to cover. Further, as a result of its late filing and failure to file an extension of its STA, Permittee also engaged in unauthorized operation in violation of section 301 of the Act for over four years.¹⁹

6. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act.²⁰ 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.²¹ 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.²² 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,²³ and the Commission has so interpreted the term in the section 503(b) context.²⁴ 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."²⁵

¹⁷ See 47 CFR § 74.788.

¹⁸ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not 'claim ignorance of the law as a defense'" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal cites omitted).

¹⁹ See 47 U.S.C. § 301.

²⁰ 47 U.S.C. § 503(b)(1)(B).

²¹ *Id.* See also 47 CFR § 1.80(a)(1).

²² 47 U.S.C. § 312(f)(1).

²³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁴ 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).

²⁵ 47 U.S.C. § 312(f)(2).

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.²⁶ The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.²⁷ 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.”²⁸

8. In this case the Permittee failed to file a timely license to cover for the Station when it completed construction of its Displacement CP facilities in November 2017,²⁹ and not only filed its Application nearly one year after its construction permit expired, but engaged in unauthorized operation of the Station for over four years by not filing a timely license to cover application or extending its STA. 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 \$6,500 because, as an LPTV station, the Station is providing a secondary service.³⁰ While in other cases we have only fined other LPTV and TV translator licensees \$3,500 for similar violations,³¹ we believe an increased amount is warranted here given the lengthy period of time (over four years) the station engaged in unauthorized operation compared to those other cases. Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find the Permittee’s failure represents extreme disregard, or at best ignorance, of Commission’s licensing processes and the Act itself. We will grant the Application by separate 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.

²⁶ 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. 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.”).

²⁷ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²⁸ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

²⁹ See *supra* note 5 (discussing STA operations during the pendency of its displacement application).

³⁰ See e.g., *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and four months unauthorized operations) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 21-1386 (rel. Nov. 5, 2021) (proposing \$3,500 forfeiture for late filed application for license to cover and six months unauthorized operations) (paid Nov. 30, 2021); *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of \$6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

³¹ See *id.*

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,³² Christian Broadcasting of Yakima is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) 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.³³

10. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³⁴ that, within thirty (30) days of the release date of this *NAL*, Christian Broadcasting of Yakima **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),³⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³⁶

- 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).³⁷ 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.

³² 47 U.S.C. § 503(b); 47 CFR § 1.80.

³³ 47 CFR § 74.788(b); 47 U.S.C. § 301.

³⁴ 47 CFR § 1.80.

³⁵ Payments made using CORES do not require the submission of an FCC Form 159.

³⁶ 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.

³⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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 20554.³⁸ 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.³⁹ 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.⁴⁰ 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.

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.⁴¹

15. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Christian Broadcasting of Yakima, 2400 West J Street, Suite

³⁸ See 47 CFR § 1.1914.

³⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

⁴⁰ 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).

⁴¹ See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

F, Yakima, WA 98902 as well as e-mailed to rafael25@charter.net, and to their counsel: Davina Sashkin, Esq., Baker & Hostetler LLP, 1050 Connecticut Avenue, NW, Suite 1100, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau