

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

In the Matter of)	
)	
ENTRAVISION HOLDINGS, LLC)	Facility ID No. 28280
)	NAL/Acct. No. 202341420044
Application for License to Cover for)	FRN: 0001529627
Class A Television Station)	LMS File No. 0000221640
KTFV-CD, McAllen, Texas)	

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

Adopted: December 6, 2023

Released: December 6, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the above-referenced application (Application) of Entravision Holdings, LLC (Entravision) for license to cover for Class A television station KTFV-CD, McAllen, Texas (KTFV-CD or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that Entravision apparently willfully violated section 74.788² of the Commission's rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745 of the Rules³ and section 301 of the Act,⁴ 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 Entravision is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. KTFV-CD is a Class A television station whose channel 48 facilities were repacked as part of the Incentive Auction and repacking process. KTFV-CD was assigned a construction permit for post-auction channel 32 (Repack CP) and assigned to post-auction transition phase 8, with a phase completion date of March 13, 2020.⁵ Entravision claims that it terminated operating on channel 44 and

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 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the Commission's rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. See 87 FR 58200, Oct. 24, 2022; *In the Matter of Amend. of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, FCC 22-58 (July 13, 2022); 47 CFR § 74.780(bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, 47 CFR § 74.788 was in effect; however, to the extent necessary, we also find that the Licensee violated 47 CFR § 73.3598.

³ 47 CFR § 73.1745.

⁴ See 47 U.S.C. § 301.

⁵ See LMS File No. 0000034457.

began operating on channel 32 on March 13, 2020, but the Station failed to timely submit an application for license to cover and the Repack CP expired.

3. On September 29, 2023, just over three and half years after construction of its post-auction channel 32 facilities were completed and the Repack CP expired, Entravision late-filed the Application and sought reinstatement of the Station's expired Repack CP and grant of the Station's licenses to cover.⁶ According to Entravision, the Station completed its post-auction channel 32 facilities and began operating on March 13, 2020.⁷ Entravision goes on to explain that the Application was late-filed due to an administrative oversight.⁸ Entravision included the declaration of its engineer attesting that the facilities were constructed and operating by March 13, 2020, as well as other supporting documentation demonstrating that KTFV-CD was timely constructed.⁹

4. Entravision requests that Commission waive any time limits that prevent it from addressing its administrative error and filing an application for license to cover.¹⁰ Entravision states that it takes seriously its duties under the Commission's rules and attempted to fulfill its obligations in this case.¹¹ Immediately after discovering that it inadvertently failed to file the license, Entravision notes that it acted swiftly to notify the Commission and file the Application.¹² Entravision argues that "declining to grant the relief requested [] would create a substantial hardship for Entravision and KTFV-CD, which offers crucial Spanish-language programming to communities in McAllen, Texas."¹³ Therefore, Entravision concludes, good cause exists for granting its request for waiver, as failure to do so would significantly burden KTFV-CD viewers as a result of Entravision's oversight.¹⁴

III. DISCUSSION

5. Pursuant to section 503(b)(1)(B) of the Act,¹⁵ 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.¹⁶ 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.¹⁷ The legislative history to section 312(f)(1) of the Act clarifies that this

⁶ We note that because the Repack CP had not yet been canceled in the Commission's Licensing and Management System (LMS), the Station was able to file a license to cover application against the expired permit. Cancellation of a station's forfeited construction permit by Bureau staff in LMS is an administrative function and does not constitute an official Commission action nor require any affirmative 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 Other Important Deadlines are One Week Away*, Public Notice, 36 FCC Rcd 10364 (MB 2021); 47 CFR §74.788(b). As a result, failure by Bureau staff to cancel a forfeited construction permit in LMS does not result in an expired construction permit remaining valid.

⁷ Application, Amended Request for Construction Permit Reinstatement and Waiver of Filing Deadline at 1.

⁸ *Id.* at 1.

⁹ *See id.* at 3-138 (providing invoices, photographs, correspondence and other documents demonstrating the Station was constructed as authorized and began operations on March 13, 2020).

¹⁰ *Id.* at 1 and 2.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 503(b)(1)(B).

¹⁶ *Id.* *See also* 47 CFR § 1.80(a)(1).

¹⁷ 47 U.S.C. § 312(f)(1).

definition of willful applies to both sections 312 and 503(b) of the Act,¹⁸ and the Commission has so interpreted the term in the section 503(b) context.¹⁹ 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.”²⁰

6. *Apparent Violation.* Entravision admits that it failed to timely file a license to cover as required by section 74.788 of the Rules after construction was completed on March 13, 2020,²¹ and continued operating the Station for just over three and a half years before filing the Application. Entravision explains that it completed construction of the Station’s post-auction channel 32 facilities in accordance with the Repack CP and commenced operation of those facilities before its expiration date. Entravision goes on to admit that it overlooked submitting the license to cover due to an administrative oversight. It is well settled that administrative oversight is not an excuse for failure to comply with the Commission’s rules.²² Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.²³ As a result, for more than three and a half years, Entravision also engaged in unauthorized operation of the Station in violation of section 301 of the Act and section 73.145 of the Rules.²⁴ Stations are only permitted to commence operation pursuant to a valid instrument of authorization.²⁵ We therefore find that Entravision has apparently violated the Rules and Act by failing to timely file a license to cover application and subsequently engaging in unauthorized operation and is apparently liable for forfeiture.

7. *Proposed Forfeiture Amount.* 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,

¹⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁹ 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).

²⁰ 47 U.S.C. § 312(f)(2).

²¹ See 47 CFR § 74.788.

²² See, e.g., *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).

²³ See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations).

²⁴ 47 U.S.C. § 301; 47 CFR § 73.1745.

²⁵ *Id.*

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.

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

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, BCT late-filed the Station license application and engaged in unauthorized operation of the Stations for more than three and a half years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will impose the base amount forfeiture of \$13,000. While the Licensee did notify the Commission upon recognizing its error, we believe the base forfeiture amount is reasonable given the lengthy period of time the Station engaged in unauthorized operation and the fact that Entravision, as the licensee of over 100 television and radio stations, should be well versed in the Commission’s rules and filing requirements. We will also grant Entravision’s request for waiver of section 74.788 of the Rules,²⁹ and reinstate the Repack CP.

9. In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for Entravision’s apparent violations, we will act upon the Application upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.³⁰ We will also grant under separate staff action Entravision’s request for special temporary authority to operate the Station while the matter of its late-filed Application is resolved.³¹

IV. ORDERING CLAUSES

10. 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 Entravision Holdings, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) for its apparent willful violation of section 74.788 of the Commission’s rules and apparent willful and repeated violations of section 73.1745 of the Commission’s rules and section 301 of the Communications Act of 1934, as amended.³³

11. **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*, Entravision Holdings, LLC **SHALL PAY** the

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 A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public 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.

³⁰ Also pending before the Commission is an application for renewal of the Station’s license. LMS File No. 0000188058. We will act on the pending license renewal application by separate staff action, following conclusion of this forfeiture proceeding and in accordance with the Commission renewal standard set forth under section 309(k) of the Act. *See* 47 U.S.C. § 309(k).

³¹ LMS File No. 0000221641.

³² 47 U.S.C. § 503(b); 47 CFR § 1.80.

³³ 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301. *See supra* note 2.

³⁴ 47 CFR § 1.80.

full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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 VideoNAL@fcc.gov and 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. 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.

13. 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

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>.

³⁸ See 47 CFR § 1.1914.

Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

14. 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-Advisor, 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 copy must also be emailed to VideoNAL@fcc.gov and 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.

15. 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

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Entravision Holdings, LLC, Mark Boelke, Suite 6000, 2425 Olympic Boulevard, Santa Monica, CA 90404 as well as e-mailed to: mboelke@entravision.com and that a copy be mailed to 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

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); *supra* para. 8.