

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

In the Matter of)	
)	
ROSELAND BROADCASTING, INC.)	Facility ID No. 48834
)	NAL/Acct. No. 202341420046
Low Power Television Station)	FRN: 0028087013
KXCC-LD, Corpus Christi, TX)	

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

Adopted: December 22, 2023

Released: December 22, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it Roseland Broadcasting, Inc. (RBI or Licensee), licensee of low power television (LPTV) station KXCC-LD, Corpus Christi, Texas (KXCC-LD or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that RBI apparently willfully violated section 73.3598(a)² of the Commission's rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745(a) of the Rules³ and section 301 of the Act,⁴ by engaging in unauthorized operation. Based upon our review of the facts and circumstances before us, we conclude that RBI is apparently liable for a monetary forfeiture in the amount of nine thousand five hundred dollars (\$9,500).

II. BACKGROUND

2. KXCC-LD is an LPTV station licensed on channel 16.⁵ On January 4, 2023, the Station was granted a construction permit to make minor modifications to its facilities (Mod CP), and the Mod CP was assigned an expiration date of January 4, 2026.⁶ On February 6, 2023, RBI filed a resumption of operations notice stating that it "resumed regular operations, effective 2/1/2023, pursuant to the parameters of its license."⁷ While it made reference to its resumption of operations, RBI failed to promptly submit an application for license, as required by the rules.⁸ RBI eventually filed the Station's application for license to cover (License Application) on July 25, 2023, almost five months after

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 § 73.3598(a).

³ 47 CFR § 73.1745(a).

⁴ See 47 U.S.C. § 301.

⁵ See LMS File No. 0000075141.

⁶ See LMS File No. 0000203596 (Mod CP).

⁷ See LMS File No. 0000210344 (Resumption Notice). The Station went silent on September 28, 2022, due to the apparent loss of its tower site. See LMS File No. 0000201489 (granted Nov. 3, 2022).

⁸ 47 CFR § 73.3598(a). See also 47 CFR § 73.1620(a) (permitting program tests upon notification to the Commission, provided that within 10 days thereafter, an application for a license is filed with the Commission).

construction was completed.⁹ In that application, RBI acknowledges that the Station began operating pursuant to the Mod CP on February 1, 2023, and that it was late in submitting the application for license.¹⁰ RBI states that it “overlooked filing a license to cover application at that time.”¹¹ RBI requests that the Commission permit its late-filed license to cover *nunc pro tunc* to February 1, 2023, notwithstanding “the approximately 4-month delay . . . in filing this application.”¹² RBI also stated that “[a]fter the license to cover application is granted, (RBI) intends to immediately file an application for Special Temporary Authority (STA) to operate KXCC-LD at reduced power (one-half of authorized ERP) while the station’s transmitter is being repaired.”¹³

3. In a series of amendments to its License Application filed in November 2023 following Video Division staff inquiries, RBI disclosed that the Station began operating with reduced power on June 27, 2023, and that it resumed full-power operation on September 25, 2023.¹⁴ RBI also provided a Declaration of its Chief Financial Officer, Matthew Davidge, recounting the facts previously disclosed in the License Application and confirming that the Station had operated with full-power prior to filing the Station’s License Application from February 1, 2023 to June 27, 2023 and reduced power operations without a STA from June 27, 2023 to September 25, 2023.¹⁵ According to Mr. Davidge, “[a]fter the station commenced broadcasting from the new site, a transmitter repair became necessary. Power was reduced accordingly and an STA was not sought due to the pendency of the license to cover.”¹⁶ He went on to explain that RBI did not immediately seek an STA for reduced power operation because: “[m]y attorney was concerned that the LMS database would associate the requested STA with the former site and create confusion.”¹⁷ According to Mr. Davidge, since the Commission had been alerted through the filing of License Application that the Station intended to reduce power, RBI assumed that “once the license to cover was granted, should it be necessary [it] would have filed the Request for STA.”¹⁸

III. DISCUSSION

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act.¹⁹ 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.²⁰ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or

⁹ See LMS File No. 0000218484 (License Application). We note that because the Displacement CPs had not yet been canceled in the Commission’s Licensing and Management System (LMS), the Stations were able to file license to cover applications against their expired permits. 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. 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.

¹⁰ *Id.* at Notification of Late Filing Exhibit.

¹¹ *Id.*

¹² *Id.* We note that the Mod CP is still valid and does not expire until January 4, 2026. Therefore reinstatement of the Mod CP is not necessary.

¹³ *Id.*

¹⁴ License Application November 6, 2023 Amendment at Timeline.

¹⁵ License Application November 1, 2023 Amendment at Declaration of Matthew Davidge, Chief Financial Officer.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 503(b)(1)(B).

²⁰ *Id.* See also 47 CFR § 1.80(a)(1).

omission of [any] act, irrespective of any intent to violate” the law.²¹ 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,²² and the Commission has so interpreted the term in the section 503(b) context.²³ 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.”²⁴

5. *Apparent Violations.* RBI concedes that it failed to timely file a license to cover as required by section 73.3598(a) of the Rules and a STA as required by section 73.1635(a) of the Rules.²⁵ RBI stated that it failed to timely submit an application for license to cover due to an oversight. RBI also contends that it did not file a STA for the Station’s reduced power operations because it did not think it was necessary since it notified the Commission of its reduced power operation in its License Application and its attorney advised that such a filing could “create confusion.” It is well settled precedent that licensees are responsible for compliance with the Commission’s rules and that administrative oversight does not excuse a violation or non-compliance.²⁶ Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.²⁷ Given that it commenced operations under the parameters of its Mod CP without timely filing an application for license to cover and then modified its operations without filing a STA, it appears RBI also engaged in unauthorized operation for almost eight months in violation of sections 73.1745(a) of the Rules and 301 of the Act.²⁸ Specifically, RBI operated at full-power without a valid license authorization from February 1, 2023 through June 27, 2023 and then it operated at reduced power without a valid STA from June 27, 2023 to September 25, 2023.²⁹ We therefore find that RBI has apparently violated the Rules and the Act and is apparently liable for forfeiture.

6. *Proposed Forfeiture.* 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

²¹ 47 U.S.C. § 312(f)(1).

²² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²³ 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).

²⁴ 47 U.S.C. § 312(f)(2).

²⁵ See 47 CFR §§ 73.3598(a); 73.1635(a).

²⁶ 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).

²⁷ 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).

²⁸ See 47 CFR § 73.1745(a) and 47 U.S.C. § 301.

²⁹ Because the Station had a pending license to cover application on file, we will not consider the Station’s full power operations that resumed on September 25, 2023, as unauthorized for purposes of the proposed forfeiture.

form.³⁰ The guidelines also specify a base forfeiture amount of \$10,000 for each incident of construction and operation without an instrument of authorization for the service.³¹ 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.”³²

7. In this case, RBI failed to timely-file a license to cover and STA to operate at reduced power, and as a result engaged in unauthorized operation of the Station for almost eight months. Although RBI may have attempted to notify the Commission in the Resumption Notice that it resumed operation pursuant to the parameters set forth in the Mod CP or in its License Application that it was planning to file an STA to operate at reduced power, RBI’s statements in both are anything but clear that the Station commenced operations pursuant to the Mod CP in February 2023 or that it was operating at reduced power at the time its License Application was filed. RBI’s statement in its Resumption Notice could just as easily have been read to say that the Station resumed operation under its then licensed parameters and in its License Application that it was planning in the future to operate at reduced power—which is how Division staff read it.

8. Regardless of how one may read RBI’s statement in the Resumption Notice or License Application, RBI does not dispute that it failed to timely file its license to cover application in a timely manner, failed to file a STA to operate at reduced power after its License Application was filed, and operated for nearly eight months without valid authorizations. As a result, we find forfeiture for these violations is warranted and we decline to grant the application *nunc pro tunc* and treat it as having been filed in a timely manner.

9. 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 of \$26,000 to \$9,500. We find this proposed forfeiture amount, which is higher than proposed forfeitures we have issued for violations of a similar nature,³³ is appropriate in light of the Bureau’s recent admonishment against RBI for another instance of unauthorized operation and apparent pattern of rule violations.³⁴ However, we still find it appropriate to reduce the proposed forfeiture from the base forfeiture amount

³⁰ 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.”).

³¹ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

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

³³ See *infra* note 36.

³⁴ See Letter from Barbara A. Kreisman to Roseland Broadcasting, Inc., former licensee of DK07AAJ-D, Bakersfield, CA (Oct. 13, 2023) on file at LMS File No. 0000213425 (admonishing Roseland for unauthorized operation). In the case of DK07AAJ-D, Roseland filed an application for license to cover, but was in fact broadcasting from a different location. Roseland argued that its failure to specify the correct transmitter site location in its application for license to cover, as well as its construction permit and a request for special temporary authority, was inadvertent. Pursuant to 47 CFR § 73.3598(e) the application for license to cover was dismissed, its construction permit was declared forfeited, and Roseland’s request for leave to file a minor modification and new application for license to cover was denied. Roseland did not appeal the Bureau’s decision, which is now final. In addition to the actions taken in that case, we also expressed concern with the apparent lack of oversight with regards to RBI’s regulatory compliance. We again express that concern, especially in light of what appears to be a pattern of rule violations. We will continue to consider increased forfeiture amounts for comparable violations, as we have done here, and more severe sanctions should this pattern of violations continue.

because, as an LPTV station, the Station is providing a secondary service.³⁵ We will grant the Station's pending License Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant.³⁶

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,³⁷ Roseland Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of nine thousand five hundred dollars (\$9,500) for its apparent willful violation of sections 73.3598(a) and 73.1635(a) of the Commission's rules and apparent willful and repeated violation of section 73.1745(a) of the Rules and section 301 of the Communications Act of 1934, as amended.³⁸

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³⁹ that, within thirty (30) days of the release date of this *NAL*, Roseland Broadcasting, Inc. **SHALL PAY** the 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),⁴⁰ 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 by e-mail to Shaun.Maher@fcc.gov and VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:⁴¹

- 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

³⁵ See, e.g., *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042 (2021) (reducing forfeiture for late filed application for license to cover and four months unauthorized operations to \$3,500 because station was an LPTV station and providing a secondary service) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 36 FCC Rcd 15530 (2021) (reducing forfeiture for late filed application for license to cover and six months unauthorized operations to \$3,500 because station was an LPTV and providing a secondary service) (paid Nov. 30, 2021); Cf. *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, 37 FCC Rcd 4111 (2022) (finding that although the station is secondary, a larger forfeiture amount (\$6,500) was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022). The instant proposed forfeiture is comprised of the following amounts: \$3,500 for the Station's unauthorized operation prior to filing its License Application; \$3,500 for the Station's unauthorized operation after filing its License Application, but operating at reduced power without a STA; \$1,750 for RBI's failure to file a timely application for license to cover; and \$1,750 for RBI's failure to file a STA.

³⁶ While the Station is authorized to continue to operate during the pendency of its License Application pursuant to the parameters set forth therein, if the Station must operate at variance from these parameters it must file all required notifications and applications with the Commission. Any questions with regards to making such filings should be directed to Shaun Maher, Attorney-Advisor, Video Division, Media Bureau by e-mail at Shaun.Maher@fcc.gov (legal) or Mark Colombo, Associate Division Chief, Video Division, Media Bureau by e-mail at Mark.Colombo@fcc.gov (LMS/technical).

³⁷ 47 U.S.C. § 503(b); 47 CFR § 1.80.

³⁸ 47 CFR § 73.3598(a); 73.1635(a); 73.1745(a); 47 U.S.C. § 301.

³⁹ 47 CFR § 1.80.

⁴⁰ Payments made using CORES do not require the submission of an FCC Form 159.

⁴¹ 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.

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).⁴² 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 20554.⁴³ 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.

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.⁴⁴ 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

⁴² Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

⁴³ See 47 CFR § 1.1914.

⁴⁴ 47 CFR §§ 1.16 and 1.80(g)(3).

Secretary, Federal Communications Commission.⁴⁵ **A copy must also be e-mailed to Shaun.Maher@fcc.gov and VideoNAL@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.⁴⁶

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Roseland Broadcasting, Inc., 888C 8th Avenue, Suite 733, New York, New York 10019 as well as by e-mail to legal@box733.com, and to RBI's counsel, Aaron P. Shainis, Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036, as well as e-mailed to aaron@s-plaw.com

FEDERAL COMMUNICATIONS COMMISSION

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴⁵ 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).

⁴⁶ See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).