

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

In the Matter of
ESTRELLA TELEVISION LICENSE, LLC
For License to Cover
Low Power Television Station
WGEN-LD, Miami, Florida
Facility ID No. 168060
NAL/Acct. No. 202341420001
FRN: 0001529247
File No. 0000203815

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 3, 2023

Released: March 3, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the above-captioned application (Application) of Estrella Television License, LLC (Estrella), for a license to cover low power television (LPTV) station WGEN-LD, Miami, Florida (WGEN or Station), as amended. In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL), we find that Estrella apparently willfully violated section 74.788 of the Rules by failing to timely file a license to cover application, and willfully and repeatedly violated section 73.1745 of the Rules and section 301 of the Act, 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 Estrella is apparently liable for a monetary forfeiture in the amount of three thousand, five hundred dollars (\$3,500).

II. BACKGROUND

2. WGEN is an LPTV station whose channel 45 facilities were displaced by the Incentive Auction and repacking process when the station's channel was designated as a portion of the new wireless "duplex gap." As a result, WGEN-LD was required to discontinue operations on channel 45 no later than

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 See 47 CFR § 73.1745 and 47 U.S.C. § 301.

July 13, 2020.⁴ On October 3, 2018, a displacement application was granted for the Station permitting it to construct new facilities on channel 8. It was assigned an expiration date of October 3, 2021 (Displacement CP).⁵

3. On November 4, 2022, counsel for Estrella contacted Video Division (Division) staff and reported that, while Estrella completed construction of WTEN, it had failed to do so prior to expiration of its license under section 312(g) and expiration of its construction permit. On November 10, 2022, Estrella filed a request to reinstate the Station's license and Displacement CP, and permission to file an application for license to cover (Reinstatement Requests).⁶ In its Reinstatement Requests Estrella explained that, following grant of its Displacement CP, it diligently sought construction of the Station's displacement facilities, however due to circumstances beyond its control it was unable to complete construction prior to expiration of the Station's license and construction permit. Notably, Estrella highlights numerous delays encountered during the installation of its antenna and equipment issues after commencing program tests. Specifically, in order to operate on its new displacement channel Estrella needed to synchronize the Station's signal with that of commonly-owned station WFWW-LD, which is also an LPTV station on channel 8 licensed to Miami, Florida.⁷ When the Station began program tests on channel 8 in July 2021, Estrella discovered that there was an issue with the synchronization between the Station and WFWW-LD.⁸ As a result, the Station ceased operation and remained silent until February 23, 2022, when the synchronization issues were finally resolved, and the Station was able to resume full power operations.⁹ These delays resulted in construction of the Station not being completed until nearly four months after its construction permit expired and over 17 months after the Station's license expired pursuant to section 312(g). Estrella argued that, due to an administrative oversight it did not file an application to toll the Station's construction permit beyond the October 3, 2021 expiration date, or a request for relief under section 312(g) when the Station was silent for more than one year, as of July 13, 2021.

4. On November 18, 2022, the Division granted Estrella's Reinstatement Requests.¹⁰ The Division found that the Station had been displaced by the Incentive Auction and repacking process and had documented that its efforts to resume operation and complete construction were prevented due to compelling circumstances that prevented the Station from operating without causing impermissible interference to another station.¹¹ Based on these facts, the Division concluded that Estrella's request for reinstatement of license pursuant to section 312(g) satisfied the requirements of section 312(g) of the

⁴ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Report and Order*, GN Docket No. 12-268 et al., 29 FCC Rcd 6567, 6841, para. 672 (2014). Although Estrella states that the Station continued operating on channel 45 until December 17, 2020, unauthorized operation of a station does not prevent the automatic cancellation of a license under section 312(g). See, e.g. *Kingdom of God, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 3654 (2017); *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008), *aff'd sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid termination under Section 312(g)).

⁵ See LMS File No. 000053957.

⁶ See Estrella's Request for Silent STA Nunc Pro Tunc, Waiver of Section 312(g) and Reinstatement of Displacement CP (Request) a copy of which is available at LMS File No. 0000203454.

⁷ Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ See Letter to Estrella Television License, LLC from Barbara A. Kreisman, Chief, Video Division (Nov. 18, 2022)(Division Letter) a copy of which is available at LMS File No. 0000203454 (Reinstatement Letter).

¹¹ *Id.* at 4.

Communications Act and was in the public interest.¹² For similar reasons, the Division also found that Estrella had met the standard for reinstatement and tolling of the Station's Displacement CP.¹³ Finally, the Division, on its motion, also waived the applicable Commission's rules and instructed the Station to file an application for license to cover within ten days.¹⁴ Estrella submitted the above-captioned license to cover on November 18, 2022.

5. In its late-filed Application, Estrella once again represents that it completed construction of the facilities set forth in the Displacement CP and resumed operations on February 23, 2022.¹⁵ Estrella recounts the facts previously recognized by the Division in its letter granting reinstatement of the Station's license and construction permit, and waiving the Commission's rules related to the timely filing of a license to cover.¹⁶ Estrella also reiterates its argument that its failures to make appropriate filings and requests were a result of "administrative oversight."¹⁷ In its filings Estrella also admits that it engaged in unauthorized operation on two occasions, first for a period of approximately five months on channel 45 from July 14, 2020 through December 20, 2020 and second, on channel 8 for a period of approximately nine months, starting February 23 through November 18, 2022.¹⁸

III. DISCUSSION

6. Pursuant to section 503(b)(1)(B) of the Act,¹⁹ 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 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

7. *Apparent Violation.* The facts recited above appear to demonstrate that Estrella willfully

¹² *Id. citing* 47 U.S.C. § 312(g).

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ See Application, Request for Waiver at 1.

¹⁶ *Id.* at 1-2 and Statement from GatesAir (discussing issues related to its transmitter that prevented it from completing construction in July 2021). See *supra* para. 3 and note 10.

¹⁷ Application, Request for Waiver at 1.

¹⁸ *Id.* On November 18, 2022, Estrella filed the instant application for license to cover, as instructed by the Division. Reinstatement Letter at 4. As such we will consider all operations occurring after that date to have been conducted following the filing of the license to cover to have been done pursuant to program test authority and therefore valid operations, subject to the outcome of the current proceeding. See 47 CFR § 74.14.

¹⁹ 47 U.S.C. § 503(b)(1)(B).

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

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).

violated section 74.788 of the Rules by failing to timely file a license to cover application.²⁵ In addition, by operating the Station without a valid authorization from July 14, 2021 through December 2021, and February 23, 2022 through November 18, 2022, it appears Estrella willfully and repeatedly violated section 73.1745 of the Rules²⁶ and section 301 of the Act.²⁷ Estrella claims its apparent violations were the result of “administrative oversight.” It is well settled that administrative oversight is not an excuse for failure to comply with the Commission’s rules.²⁸ We therefore find that Estrella has apparently violated the Rules and Act, and is apparently liable for forfeiture.

8. *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.²⁹ The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.³⁰ 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.”³¹

9. In this case the Estrella failed to file a timely license to cover for the Station when it completed construction of its Displacement CP facilities in February 2022, and not only filed its Application over a year after the Displacement CP had expired and almost nine months after commencing operations, but engaged in unauthorized operation of the Station on two separate occasions for a cumulative period of approximately 14 months. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we reduce the proposed forfeiture from the base amount to \$3,500 because, as an LPTV station, the Station is providing a secondary service.³² We have fined other stations similar amounts for similar violations.³³ We will grant the Application by separate action upon the conclusion of this forfeiture proceeding if the Application is otherwise grantable.

²⁵ See 47 CFR § 74.788 (2022). See *supra* note 2.

²⁶ 47 CFR § 73.1745 (prohibiting unauthorized operation).

²⁷ See 47 U.S.C. § 301 (requiring an authorization to transmit a broadcast signal).

²⁸ *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”).

²⁹ 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.”).

³⁰ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

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

³² 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).

³³ See *id.*

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,³⁴ Estrella Television License, 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 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.³⁵

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³⁶ that, within thirty (30) days of the release date of this *NAL*, Estrella Television License, LLC **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),³⁷ 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:³⁸

- 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).³⁹ 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.

³⁴ 47 U.S.C. § 503(b); 47 CFR § 1.80.

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

³⁶ 47 CFR § 1.80.

³⁷ Payments made using CORES do not require the submission of an FCC Form 159.

³⁸ 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.

³⁹ 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.

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 20554.⁴⁰ 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.⁴¹ 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.⁴² 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.
- 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.

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.⁴³

⁴⁰ See 47 CFR § 1.1914.

⁴¹ 47 CFR §§ 1.16 and 1.80(g)(3).

⁴² 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).

⁴³ See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Estrella Television License LLC, 1845 Empire Avenue, Burbank, California 91504 and to their counsel: Ari Meltzer, Esq., Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036. A courtesy copy will also be sent via electronic mail to bkei@EstrellaMedia.com and ameltzer@wiley.law.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau