

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

In the Matter of)
Methow Valley Communications District) Facility ID No. 68514
) NAL/Acct. No. MB-202241420011
) FRN: 0015559107
For License to Cover) File No. 0000190563
Television Translator Station)
K44EN-D, Methow, Washington)

FORFEITURE ORDER

Adopted: May 12, 2023

Released: May 12, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of seven hundred and fifty dollars (\$750) to Methow Valley Communications District (Licensee), the licensee of television translator station K44EN-D, Methow, Washington (Station). We find that the Licensee willfully violated section 74.788¹ of the Commission’s rules (Rules) by failing to timely file a license to cover application, and willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (Act),² by engaging in unauthorized operation of the Station after its construction permit had expired.

II. BACKGROUND

2. On June 10, 2022, the Video Division (Division) of the Media Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of six thousand five hundred dollars (\$6,500) to Licensee for these violations.³ The NAL gave the Licensee thirty days to pay the full amount of the proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁴

3. In the NAL, we found that the Licensee had failed to timely file a license to cover as required by section 74.788 of the Rules,⁵ continued Station operations with the permitted facilities after the Station’s construction permit expired on November 26, 2021, and did not seek special temporary

¹ See 47 CFR § 74.788 (2022).

² See 47 U.S.C. § 301.

³ Methow Valley Communications District, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-627 (Vid. Div. June 10, 2022) (NAL).

⁴ Id. at 5, para. 10.

⁵ See 47 CFR § 74.788 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the 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 (2022) (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.

authority (STA) to operate with those facilities after the expiration of the construction permit.⁶ Further, as a result of its late filing, we found that Licensee also apparently engaged in unauthorized operation in violation of section 301 of the Act.⁷ Accordingly, we issued the *NAL*.

4. The Licensee submitted a written response to the *NAL* in which it did not dispute that it had violated the rules, but requested that we reduce or cancel the proposed forfeiture based on the Licensee's claimed inability to pay it.⁸ As part of its response, the Licensee provided copies of its financial statements that were submitted to the Office of the Washington State Auditor for the last three years in order to demonstrate that imposition of the proposed forfeiture would be excessive.⁹ It also provided a sworn statement from its site manager verifying that it is a special taxing district of Okanogan County, Washington, and it operates with an annual budget primarily funded through annual assessments on local taxpayers.¹⁰ According to the Licensee, it serves a rural area with a population of approximately 9,100 persons and its translator provides broadcast signals from Spokane, Washington, which is located about 120 miles to the east.¹¹ Licensee argued that imposition of a forfeiture amount of \$6,500 would not serve the public interest because "the cost of paying the forfeiture for this administrative error would ultimately be borne by the taxpayers."¹²

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,¹³ section 1.80 of the Rules,¹⁴ and the Commission's *Forfeiture Policy Statement*.¹⁵ In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account 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.¹⁶

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most

⁶ As discussed in the *NAL*, the Station was displaced as a result of the television incentive auction and on July 24, 2017, the Station received a letter from T-Mobile USA, Inc. informing the Station that it was prepared to commence wireless broadband operations in November 2017. Consistent with Bureau guidance, the Licensee filed a request for legal STA and application for displacement on September 29, 2017. The Licensee's STA was granted on October 12, 2017, allowing it to begin operating temporarily on its digital displacement channel (channel 36) while its displacement application was pending. The Bureau subsequently granted the displacement application on November 26, 2018. *NAL* at 1-2, paras. 2-3.

⁷ See 47 U.S.C. § 301. See also 47 CFR § 73.1745 (unauthorized operation).

⁸ Response to Notice of Apparent Liability for Forfeiture of Methow Valley Communications District (dated July 7, 2022) (Response) and Amendment (dated March 28, 2023) (Amendment).

⁹ Amendment, Schedule 1 for 2020, 2021 and 2022.

¹⁰ Response at 1. Methow Valley Communications District is operated as a special taxing district under Washington State law. See <https://mvcomm.org/about-us/> (last visited May 8, 2023); https://okanogancounty.org/offices/treasurer/special_assessment_districts/communication_districts.php (last visited May 8, 2023).

¹¹ *Id.*

¹² *Id.*

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 CFR § 1.80.

¹⁵ 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, 15 FCC Rcd 303 (1999).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹⁷ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁸ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁹ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.²⁰

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$6,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,²¹ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.²² Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Station is a community translator serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$750 is appropriate for the violations involved in this case.²³

8. We have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully²⁴

¹⁷ See *NAL* at 6, para.14.

¹⁸ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

²⁰ *Id.*

²¹ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

²² See *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period).

²³ See *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

²⁴ 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. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

and repeatedly²⁵ violated section 74.788 of the Rules and section 301 of the Act.²⁶ However, for the reasons set forth above, we find that reducing the forfeiture to seven hundred and fifty dollars (\$750) is warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,²⁷ that Methow Valley Communications District **SHALL FORFEIT** to the United States the sum of seven hundred and fifty dollars (\$750) for willfully and repeatedly violating section 74.788 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.²⁸

10. 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),²⁹ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:³⁰

- 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).³¹ 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/core/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/core/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.

²⁵ Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of "repeated" to Sections 312 and 503(b) of the Act).

²⁶ 47 CFR § 74.788 and 47 U.S.C. § 301.

²⁷ 47 U.S.C. § 503(b); 47 CFR §§ 0.283, 1.80.

²⁸ 47 CFR § 74.788 (2022) and 47 U.S.C. § 301.

²⁹ Payments made using CORES do not require the submission of an FCC Form 159.

³⁰ 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.

³¹ 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.

11. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Methow Valley Communications District, P.O. Box 1031, Winthrop, Washington as well as e-mailed to tech@mvcomm.org.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau