

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

In the Matter of)	
)	
Licenses to Cover for Television Translator)	Facility ID Nos. 23233, 23235 and 23237
Stations K11HE, Jordan, etc., Montana; K09HI,)	NAL/Acct. No. 202341420035
Jordan, etc., Montana; and K13HK, Sand Springs,)	FRN: 0009220328
Montana)	LMS File Nos. 0000170160, 0000170161 and
)	0000173691

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

Adopted: September 5, 2023

Released: September 5, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the above-captioned applications (Applications) of Garfield TV Club (GTC), for licenses to cover television translator (TV translator) stations K11HE, Jordan, etc., Montana (K11HE); K09HI, Jordan, etc., Montana (K09HI); and K13HK, Sand Springs, Montana (K13HK) (collectively, Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that GTC apparently willfully violated section 74.788² of the Rules by failing to timely file license to cover applications, and willfully and repeatedly violated section 301 of the Act,³ by engaging in unauthorized operation of the Stations after their construction permits had expired. Based upon our review of the facts and circumstances before us, we conclude that GTC is apparently liable for a monetary forfeiture in the amount of one hundred eleven dollars (\$111).

II. BACKGROUND

2. The Stations were required to transition to digital operations not later than July 13, 2021,⁴ and each obtained a digital conversion (“flash cut”) construction permit (Digital CPs) to convert to digital operations on its former analog channel.⁵ The Stations failed to file licenses to cover by the Digital CPs’

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 U.S.C. § 301.

⁴ See 47 CFR § 74.731(m).

⁵ CDBS File Nos. BDFCDTV-20110922ACZ, BDFCDTV-20110922ACM and BDFCDTV-20110926ADY.

expiration dates and the Digital CPs automatically forfeited and the Stations' licenses automatically cancelled at 12:00 A.M. (local time) on July 14, 2021.⁶

3. On November 22, 2021, more than four months after their Digital CPs were forfeited and their licenses cancelled, GTC late-filed the Applications and sought reinstatement of the Stations' expired construction permits and licenses.⁷ GTC included an explanation for why the Applications were late-filed stating that, due to a misunderstanding with its consulting engineer, it thought that the Applications had been timely-filed.⁸ According to GTC, K09HI and K11HE completed their digital conversion on June 20, 2018 and K13HK converted to digital operations on June 10, 2019.⁹

4. GTC is a "Special Purpose District" formed under Montana state law and its revenue is collected through a special tax assessment on local residents.¹⁰ GTC argues that the Stations serve small towns in rural Montana that depend on the Stations for free, over-the-air news, weather, and emergency information.¹¹ GTC notes that these are farming and ranching communities that are especially dependent on weather and emergency warnings and the Stations are their only over-the-air television source.¹² GTC also includes financial documents filed with the State of Montana showing that its average gross revenue for fiscal years 2019, 2020, 2021, and 2022 was \$10,825.¹³

III. DISCUSSION

5. Pursuant to section 503(b)(1)(B) of the Act,¹⁴ 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so

⁶ GTC was notified by letter of the forfeiture of its construction permits, deletion of its call signs, and cancellation of its licenses. Letter to Garfield TV Club from Barbara A. Kreisman, Chief, Video Division (Aug. 9, 2021) (Cancellation Letter), copies of which are available on LMS at Fac. ID Nos. 23233, 23235 and 23237. Such action was ministerial and did 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, DA 21-786 (rel. July 6, 2021).

⁷ The Division treated the attachments to the Applications as a Petition for Reinstatement of the Digital CPs. On July 5, 2023, the Division granted the request and reinstated the Displacement CPs and Stations' licenses. A copy of the reinstatement notification can be found on the Stations' LMS facility pages.

⁸ *See* LMS File Nos. 0000170160, 0000170161 and 0000173691 (collectively, Applications), Pleading at 1. The Applications contain identical attachments.

⁹ Applications, Cover Letter at 1.

¹⁰ *Id.*

¹¹ Applications, Pleading at 1.

¹² *Id.*

¹³ Applications, FY 2019, 2020, 2021, and 2022 Financials.

¹⁴ 47 U.S.C. § 503(b)(1)(B).

¹⁵ *Id.* *See also* 47 CFR § 1.80(a)(1).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

interpreted the term in the section 503(b) context.¹⁸ 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.”¹⁹

6. *Apparent Violation.* GTC admits that it failed to timely file licenses to cover as required by section 74.788 of the Rules,²⁰ and continued operating the Stations with the permitted facilities after the Digital CPs expired on July 14, 2021, before filing the Applications over four months later. GTC explains that it completed construction of the Stations’ digital facilities in accordance with their Digital CPs and commenced operation of those facilities well before their expiration dates. GTC goes on to admit that it overlooked submitting the licenses to cover due to a misunderstanding with its consulting engineer. According to GTC, it was under the impression that the Applications had been filed. At the time the construction permits expired, GTC had ceased operating the stations in analog and been operating K09HI and K11HE in digital format for just over three years and K13HK for just over two. It is well settled that administrative oversight is not an excuse for failure to comply with the Commission’s rules.²¹ Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.²² As a result of its late filings, GTC also engaged for several years in unauthorized operation of the Stations in violation of section 301 of the Act.²³ We therefore find that GTC has apparently violated the Rules and Act 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 per violation for the failure to file a required form.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 per violation for construction and operation without an instrument of authorization for the service.²⁵ 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.”²⁶

¹⁸ 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).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ See 47 CFR § 74.788.

²¹ 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).

²² 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).

²³ See 47 U.S.C. § 301.

²⁴ 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.”).

²⁵ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

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

8. When considering a licensee's ability to pay a forfeiture, the Commission will look at things such as: (1) federal tax returns for the most 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.²⁷ Any claim relating to ability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁸ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission has recognized that, in some cases, other financial indicators, such as net losses, may also be relevant.²⁹ 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.³⁰ In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally averages about five percent of the violator's gross annual income and has not exceeded eight percent thereof, although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.³¹

9. In this case, GTC failed to file timely licenses to cover for the Stations when it completed construction of its Digital CPs, and not only filed its Applications more than four months after the Digital CPs expired, but engaged in unauthorized operation of the Stations for several years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, including GTC's financial ability to pay based on documentation provided, GTC's history of compliance, and the unique facts and circumstances presented, notably that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find a proposed forfeiture in the amount of \$111 is appropriate.³² This represents a proposed fine of approximately \$37 per station.

10. *Other Pending Matters.* In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for GTC's apparent violations, we will act upon the Application and all other pending applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.

IV. ORDERING CLAUSES

11. 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,³³ Garfield TV Club is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of one hundred eleven dollars (\$111) for its apparent willful violation of section 74.788 of the Commission's rules and apparent

²⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (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).

²⁸ *Id.*

²⁹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

³⁰ *Id.*

³¹ 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).

³² See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service). In the case of *Methow Valley Communications District*, the proposed forfeiture was initially reduced based on the Station's secondary status. *Methow Valley Communications District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 6716, 6718, para. 7 (Vid. Div 2022).

³³ 47 U.S.C. § 503(b); 47 CFR § 1.80.

willful and repeated violations of section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.³⁴

12. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³⁵ that, within thirty (30) days of the release date of this *NAL*, Garfield TV Club **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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),³⁶ 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 Robin.Fagan@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³⁷

- 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).³⁸ 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

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

³⁵ 47 CFR § 1.80.

³⁶ Payments made using CORES do not require the submission of an FCC Form 159.

³⁷ 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.

³⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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.

14. 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 20554.³⁹ 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.

15. 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.⁴⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Robin Fagan, 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.⁴¹ 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.

16. 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.⁴²

17. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Garfield TV Club, George Fitzgerald, P.O. BOX 465, Jordan, MT 59337 as well as e-mailed to: charlie@montana.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁹ See 47 CFR § 1.1914.

⁴⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

⁴¹ 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).

⁴² See 47 U.S.C. 503(b)(2)(E); *supra* para. 8. We have already considered the Licensee's ability to pay as part of our proposed forfeiture and absent additional information are unlikely to consider further reduction on that basis.