

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

In the Matter of)	
)	
Upper Wenatchee Valley TV Association Inc.)	Facility ID Nos. 69501, 69506, 69513, 69503,
)	69502, 69504, 69509
)	NAL/Acct. No. 202341420040
Licensee of Stations K12LV-D, K08JP-D, K10LG-)	FRN: 0008540445
D, Dryden, WA; K13ER-D, K40AE-D, K09ES-D,)	LMS File Nos. 0000209024, 0000209021,
K11EZ-D, Cashmere, WA)	0000209023, 0000209027, 0000209030,
		0000209035, 0000209037

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

Adopted: September 27, 2023

Released: September 27, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Upper Wenatchee Valley TV Association Inc. (Licensee), for renewal of its licenses for TV translators K12LV-D, K08JP-D, K10LG-D, Dryden, WA; K13ER-D, K40AE-D, K09ES-D, K11EZ-D, Cashmere, WA (Stations).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand five hundred dollars (\$10,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Stations' license expiration date of February 1, 2023.⁴ However, the Licensee did not file the Application until February 1, 2023. The Licensee submitted an amendment to the Application stating that

¹ Applications of Upper Wenatchee Valley TV Association Inc. for Renewal of License, LMS File Nos. 0000209024, 0000209021, 0000209023, 0000209027, 0000209030, 0000209035, 0000209037 (filed Feb. 1, 2023).

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020) (Renewal Reminder PN). The filing deadline was Saturday, October 1, 2022, which as a weekend is considered a "holiday" making the filing due on the next business day – Monday, October 3, 2022. See 47 CFR § 1.4.

their contracted technical support expert was incarcerated in May 2021 and the Licensee was unaware of the renewal deadline.⁵

III. DISCUSSION

3. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), 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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ 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.”¹⁰

4. *Apparent Violation.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$10,500. In this case, the Licensee failed to file the Application on or before October 3, 2022, as required by section 73.3539(a) of the Rules.¹¹ The Application was filed on February 1, 2023, over three months late.

5. *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 per station for failure to file a required form or information.¹² 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.”¹³

6. In this case, the Licensee failed to timely file a license renewal application for seven (7) stations, as required by section 73.3539(a) of the Rules.¹⁴ The Licensee explained that the Application was filed late because its contracted technical support expert was incarcerated and as a result it was unaware of the renewal deadline. First, it is well established precedent that licensees are responsible for

⁵ Amendment to Applications Upper Wenatchee Valley TV Association Inc. for Renewal of License, Amendment Exhibit, LMS File Nos. 0000209024, 0000209021, 0000209023, 0000209027, 0000209030, 0000209035, 0000209037 (filed Mar. 17, 2023).

⁶ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ 47 CFR § 73.3539(a).

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80 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); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

¹³ 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

¹⁴ 47 CFR § 73.3539(a).

the actions, or as the case may be inactions, of their agents.¹⁵ Furthermore, whether or not the Licensee's agent was incarcerated and unable to file for or remind the Licensee of its obligations to timely file a renewal application does not excuse the late filing. It is the licensee, not its agent that is required to be familiar with Commission rules and ensure compliance.¹⁶ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁷ we will reduce the forfeiture from the base amount to \$1,500 per station for the Stations' failure to file a timely renewal application because, as TV translators, the Stations are providing a secondary service.¹⁸ Furthermore, as TV translators, some of the Stations are not originating programming, but instead providing important "fill-in" service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application included seven (7) stations, the total proposed forfeiture amount is \$10,500.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.¹⁹ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁰ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."²¹

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules²² does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of

¹⁵ 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); *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 F.C.C.2d 1235, 1242, para. 16 (1984) (holding that "[a] licensee will not be excused for violation because he may have been deceived by an employee since licensees are responsible for acts of their employees").

¹⁶ See 47 CFR 74.769 (requiring TV translator and LPTV stations to be familiar with Commission rules). While the Bureau was not required to do so, prior to the start of the current license renewal cycle for television stations it reminded all television licensees of the requirement to file license renewal applications and provided the dates by which renewal applications were due based on the state where the station is located. See *Renewal Reminder PN*, 35 FCC Rcd 3656.

¹⁷ *Supra* note 12.

¹⁸ See, e.g., *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (each reducing proposed fine for a late-filed renewal application to \$1,500 because the stations "provid[e] a secondary service."). See also *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333-34, paras. 2-6 (2004) ("The low power television service consists of LPTV, TV translator, and television booster stations . . . Stations in the low power television service are authorized with 'secondary' frequency use status.").

¹⁹ 47 U.S.C. § 309(k).

²⁰ 47 U.S.C. § 309(k)(1).

²¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²² 47 CFR § 73.3539(a).

abuse.²³ Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application 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 of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²⁴ and sections 1.80 and 0.283(d) of the Commission's Rules,²⁵ that Upper Wenatchee Valley TV Association Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand five hundred dollars (\$10,500)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.²⁶

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,²⁷ within thirty (30) days of the release date of this *NAL*, Upper Wenatchee Valley TV Association Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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),²⁸ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made by e-mail to VideoRenewals@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:²⁹

- 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).³⁰ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

²³ For example, we do not find here that the Licensee's operation of the Station "was conducted in an exceedingly careless, inept, and negligent manner, and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "[t]he number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 CFR §§ 1.80 and 0.283.

²⁶ 47 CFR § 73.3539(a).

²⁷ 47 CFR § 1.80.

²⁸ Payments made using CORES do not require the submission of an FCC Form 159.

²⁹ 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.

³⁰ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.³¹ 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.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.³² The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A complete copy of any response must also be sent by e-mail to VideoRenewals@fcc.gov to assist in processing the response.**

- 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.
 - 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

³¹ See 47 CFR § 1.1914.

³² 47 CFR §§ 1.16 and 1.80(g)(3).

protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³³

14. 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 act support that result.³⁴

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Upper Wenatchee Valley TV Association Inc. P.O. Box 253 Cashmere, WA 98815. A copy shall also be sent to the Stations' counsel, John C. Trent, Esq., by e-mail to fccman3@shentel.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³³ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

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