

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

In the Matter of)	
)	
BOUNDARY COUNTY TV TRANSLATOR DISTRICT)	Facility ID Nos. 6531 and 6535
)	NAL/Acct. No. 202341420041
)	FRN: 0010200160
Applications for License to Cover for Television Translator Stations K46HZ-D, Bonners Ferry, Idaho and K50GL-D, Bonners Ferry, Idaho)	LMS File Nos. 0000218655 and 0000218656

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

Adopted: October 13, 2023

Released: October 13, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the applications (Applications) of Boundary County TV Translator District (BCT), for licenses to cover television translator (TV translator) stations K46HZ-D, Bonners Ferry, Idaho (K46HZ-D) and K50GL-D, Bonners Ferry, Idaho (K50GL-D) (collectively, Stations).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that BCT apparently willfully violated section 74.788³ of the Commission's rules (Rules) by failing to timely file license to cover applications, and willfully and repeatedly violated section 73.1745 of the Rules⁴ and section 301 of the Act,⁵ 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 BTC is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. The Stations are TV translator stations whose digital facilities were displaced by the Incentive Auction and repacking process. BCT obtained construction permits for displacement channels

¹ LMS File Nos. 0000218655 and 0000218656, as amended Sept. 18, 2023 (Applications).

² 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.

³ *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.

⁴ 47 CFR § 73.1745.

⁵ *See* 47 U.S.C. § 301.

with an expiration date of November 7, 2021 (Displacement CPs).⁶ The Stations failed to file licenses to cover by the Displacement CPs' expiration dates and the Displacement CPs were automatically forfeited on November 7, 2021.

3. On July 31, 2023, more than twenty months after their Displacement CPs were forfeited and nearly four years after construction was completed, BCT late-filed the Applications and sought reinstatement of the Stations' expired construction permits and grant of the Stations' licenses to cover.⁷ According to BCT, the Stations completed their displacement facilities and began operating them on October 24, 2019.⁸ BCT goes on to explain that the Applications were late-filed due to a misunderstanding with its then consulting engineer that it thought had timely filed the Applications.⁹ BCT states that it operates with an all-volunteer Board of Directors, and, as with all such organizations, turnover leads to failures to keep up with necessary filings with the Commission.¹⁰ BCT notes that Bonners Ferry itself is a small farming and lumbering community that depends on the Stations' over-the-air television that brings them all the major networks from Spokane, Washington.¹¹

4. According to BCT, it has now contracted with a company to manage not only the physical equipment and operation of its translators, but to oversee Commission filings going forward.¹² BCT has also provided documentary evidence that the Stations were constructed at that time and that they have been operating continuously ever since.¹³ BCT concludes, for the above reasons, that it would be in the public interest to grant its request to reinstate its construction permits and grant the Stations' license to cover applications.

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 See LMS File Nos. 0000052108 and 0000052110 (Displacement CPs).

⁷ 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. 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, 36 FCC Rcd 10364 (MB 2021); 47 CFR §74.788(b). 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.

⁸ Applications, Reconsideration Petition at 1.

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3.

¹² *Id.* at 2.

¹³ *Id.*, Part 1 Exhibit BC Translator and Part 2 Exhibit BC Translator.

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.* BCT 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 after the Displacement CPs expired and before filing the Applications over twenty months later. BCT explains that it completed construction of the Stations’ displacement facilities in accordance with their Displacement CPs and commenced operation of those facilities well before their expiration dates. BCT goes on to admit that it overlooked submitting the licenses to cover due to a misunderstanding with its former consulting engineer. According to BCT, it was under the impression that the Applications had been filed. 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, for nearly four years, BCT also engaged in unauthorized operation of the Stations in violation of section 301 of the Act.²³ We therefore find that BCT 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 for the failure to file a required form.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 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

8. In this case, BCT late-filed the Stations license applications and engaged in unauthorized operation of the Stations for more than twenty months. 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 to \$13,000 (\$6,500 for each station) because, as TV translator stations,

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.

²⁵ *Id.* 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).

the Stations are providing a secondary service. While in other cases we have fined other TV translator licensees \$3,500 per station for similar violations, we believe an increased amount is warranted here given the lengthy period of time the Stations engaged in unauthorized operation compared to those other cases.²⁷ Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find that BCT's failure represents disregard, or at best ignorance, of Commission's licensing processes and the Act itself. We will also grant BCT's requests for waiver of section 74.788 of the Rules,²⁸ and reinstate the Displacement CPs.

9. In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for BCT's apparent violations, we will act upon the Applications upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.²⁹

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,³⁰ Boundary County TV Translator District is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of thirteen thousand dollars (\$13,000) 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.³¹

²⁷ 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). Cf. *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of \$6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

²⁸ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent. See, e.g., *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para. 11 (2011) (upholding as proper the Bureau's practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver). We find that based on the specific facts and circumstances presented here waiver is warranted.

²⁹ Also pending before the Commission is an application for renewal of the Stations' licenses. The Stations are TV translators, and, as is permitted, the Licensee filed a joint renewal application for both Stations. See LMS File No. 0000192151. We will act on the pending license renewal application by separate staff action, following conclusion of this forfeiture proceeding and in accordance with the Commission renewal standard set forth under section 309(k) of the Act. See 47 U.S.C. § 309(k).

³⁰ 47 U.S.C. § 503(b); 47 CFR § 1.80.

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

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³² that, within thirty (30) days of the release date of this *NAL*, Boundary County TV Translator District **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),³³ 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 VideoNAL@fcc.gov and Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³⁴

- 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).³⁵ 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.

³² 47 CFR § 1.80.

³³ Payments made using CORES do not require the submission of an FCC Form 159.

³⁴ 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.

³⁵ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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 20554.³⁶ 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.³⁷ 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-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Act. 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.³⁸ A copy must also be emailed to VideoNAL@fcc.gov and 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.

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.³⁹

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Boundary County TV Translator District, P.O. Box 894, Bonners Ferry, ID 83805, as well as e-mailed to: ELAUTOMATION@STARBAND.NET.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
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³⁶ See 47 CFR § 1.1914.

³⁷ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁸ 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).

³⁹ See 47 U.S.C. 503(b)(2)(E); *supra* para. 8.