

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

In the Matter of)
ROSELAND BROADCASTING, INC.) Facility ID No. 48834
Low Power Television Station) NAL/Acct. No. 202341420046
KXCC-LD, Corpus Christi, TX) FRN: 0028087013

FORFEITURE ORDER

Adopted: April 4, 2024

Released: April 4, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of nine thousand five hundred dollars (\$9,500) to Roseland Broadcasting, Inc. (RBI or Licensee), licensee of low power television (LPTV) station KXCC-LD, Corpus Christi, Texas (KXCC-LD or Station). We find that RBI willfully violated sections 73.3598(a) and 73.1635(a) of the Commission’s rules (Rules) by failing to timely file a license to cover application and request for special temporary authority,1 and willfully and repeatedly violated section 73.1745(a) of the Rules2 and section 301 of the Communications Act of 1934 (Act)3 by engaging in unauthorized operation.

II. BACKGROUND

1. On December 22, 2023, the Media Bureau (Bureau) issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL) in the amount of nine thousand five hundred dollars (\$9,500) to RBI.4 In the NAL, we found that RBI commenced operations under the parameters of its modified construction permit without timely filing an application for license to cover and then modified its operations without filing a request for special temporary authority (STA) and therefore it engaged in unauthorized operation for almost eight months in violation of section 73.1745(a) of the Rules and section 301 of the Act.5 Specifically, RBI operated at full-power without a valid license authorization from February 1, 2023 through June 27, 2023 and then it operated at reduced power without a valid STA from June 27, 2023 to September 25, 2023.6 Therefore we found that RBI apparently violated the Rules and the Act and is apparently liable for forfeiture.7

1 47 CFR §§ 73.3598(a) and 73.1635(a).

2 47 CFR § 73.1745(a).

3 See 47 U.S.C. § 301.

4 Roseland Broadcasting, Inc., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-1203 (MB Dec. 22, 2023) (NAL).

5 Id. at para. 4 citing 47 CFR § 73.1745(a) and 47 U.S.C. § 301.

6 Id. Because the Station had a pending license to cover application on file, we did not consider the Station’s full power operations that resumed on September 25, 2023, as unauthorized for purposes of the proposed forfeiture. Id. at 3, n. 29.

7 Id. at para. 4.

2. In a January 22, 2024 Request for Reduction, RBI “urges that the Commission reduce the forfeiture to \$3,000.”⁸ RBI argues that there was no intent when it “filed the wrong form at the correct time” and that it is in the “process of instituting safeguards so that errors like the present one can be minimized and hopefully eliminated.”⁹ RBI also contends that “the omission, in the context they were made, caused no harm.”¹⁰

3. RBI also argues that the forfeiture amount was excessive.¹¹ RBI cites to three prior Commission forfeiture decisions (that were cited in the *NAL*) that it argues represent “precedent to support the reduction of the forfeiture amount.”¹²

III. DISCUSSION

4. 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 particular, 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.¹⁶ The guidelines also specify a base forfeiture amount of \$10,000 for each incident of construction and operation without an instrument of authorization for the service.¹⁷ In assessing forfeitures, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2) 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.”¹⁸

5. Here, RBI does not claim inability to pay nor does it claim that the forfeiture was imposed in error. RBI only argues that the forfeiture amount was excessive and its violations inadvertent.¹⁹ First, RBI argues that the forfeiture is excessive because it is being “‘targeted’ because of

⁸ See *Roseland Broadcasting, Inc. - Request for Reduction* (Jan. 22, 2024) (Request), a copy of which is available to Facility ID No. 48834.

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.* citing *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042 (2021) (*Southwest Colorado*); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 36 FCC Rcd 15530 (2021) (*KAZT*); and *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, 37 FCC Rcd 4111 (2022) (*Ettie Clark*).

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 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.”).

¹⁷ *Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15; 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

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

¹⁹ Request at 4.

its past error.”²⁰ However, as discussed above and in the *NAL*, taking into account a licensee’s history of prior offenses when determining an appropriate forfeiture amount is within the Bureau’s discretion and consistent with the standards set forth in the Act, the Rules, and *Forfeiture Policy Statement*. This is not the Bureau targeting RBI, but taking all facts into account when determining an appropriate forfeiture amount. Further, unlike the cases cited by RBI, which the Bureau itself cited,²¹ none of them involved a situation where there was a history of prior violations, as is present here, and all involved single instances of unauthorized operation and failure to timely file an application, as opposed to the multiple violations found here.²² These distinctions are what led the Bureau to find that a larger proposed forfeiture was appropriate.

6. Second, in arguing that the fine was excessive RBI contends that its violations were inadvertent, not intentional, and that there was no actual harm that *resulted* from its failure. 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.²³ The legislative history to Section 312(f)(1) of the Act clarifies that, “[a]s defined . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”²⁴ The Commission has also determined that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”²⁵ As such, RBI’s assertion that it did not intend to violate the law is unavailing.

7. RBI goes on to argue that “[t]he Commission has previously offered relief when inadvertence was the cause of an FCC problem” and provides citations to the Commission’s *Bishop Perry* case and a subsequent *Brewster Academy* case that relies on the Commission’s findings in *Bishop Perry*.²⁶ Not only does RBI fail to explain how these cases support its request for a forfeiture reduction, but on their face we find the cases do not justify relief in this case. Both cases dealt with appeals of Universal Service Administrative Company decisions denying E-rate program applications for inadvertent clerical, ministerial, and procedural errors. In *Bishop Perry*, the Commission determined that it was in the public

²⁰ *Id.*

²¹ See *NAL* at para. 5, n. 35.

²² In the *Southwest Colorado, KAZT* and *Ettie Clark* cases cited in the *NAL*, *supra* n. 12, the stations had a single case of failure to file a license to cover and a period of unauthorized operations and no history of similar past violations.

²³ 47 U.S.C. § 312(f)(1) (emphasis added).

²⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), reprinted in 1982 U.S.C.C.A.N. 2294-95.

²⁵ 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); *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.”). Likewise, it is well settled precedent that subsequent remedial actions, such as the efforts noted by RBI in its response to avoid future violations, response at 4, do not excuse or nullify a licensee’s violation of a Commission rule. See *Turner I*, 28 FCC Rcd 15455, 15460, para. 14 (Enf. Bur. 2013), citing *Seawest Yacht Brokers dba San Juan Marina Friday Harbor*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994) (noting that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations”); *Station KGVV, Inc.*, Memorandum Opinion and Order, 42 FCC 2d 258, 259, para. 6 (1973); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 699, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”)).

²⁶ Request at 4 citing *Requests for Review of Decisions of the Universal Service Administrator by Brewster Academy*, Order, 22 FCC Rcd 9185 (WCB 2007) (*Brewster Academy*); *Bishop Perry*, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry*).

interest to permit otherwise eligible E-rate applications to cure clerical, ministerial or procedural error.²⁷ The Commission also found that a “slight delay” in the receipt of E-rate applications does not warrant the complete rejection of them.²⁸ However, in arriving at its conclusion in *Bishop Perry*, the Commission made clear that its decision was based “in the context of the purposes of section 254 and cannot be applied generally to other Commission rules that are procedural in nature.”²⁹ The case before us not only has nothing to do with the Commission’s E-rate program, but we find the violations are more than procedural, ministerial, or clerical in nature.

8. At issue in the case before us is series of misfiled applications and violations that drive at the very core of the Commission’s statutory obligation to maintain order in the spectrum bands.³⁰ Obtaining a valid instrument of authorization prior to engaging in operation is one of the most basic requirements the Commission places on broadcasters. RBI also appears to have been aware of what applications should have been filed, but either filed them months late or, based on guidance from its outside legal counsel, chose not to make the necessary filings. These facts show more than the type of procedural, ministerial or clerical errors found in *Bishop Perry* and its progeny that the Commission has found warrants relief in the context of E-rate applications. While RBI contends that the Station’s operation did not cause any interference or harm to others, failure to take appropriate action here merely encourages others to disregard our licensing rules, be it intentionally or unintentionally. And we again draw upon the fact that RBI was recently admonished for a similar violation,³¹ making it all the more important to make clear that licensees must abide by our licensing procedures, including making all necessary filings and operating pursuant to valid instruments of authorization.

9. We have considered RBI’s Request and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We have already reduced the forfeiture amount in light of the Station’s secondary status and RBI provides no evidence that it has an inability to pay the fine or that the Bureau erred in its findings. Despite RBI’s efforts to downplay the nature of the violations, RBI does not dispute that it committed the violations. We therefore find that RBI willfully violated section 73.3598(a) of the Rules by failing to timely file a license to cover application and 73.1635(a) by failing to file for special temporary authority,³² and willfully and repeatedly violated section 73.1745(a) of the Rules³³ and section 301 of the Act,³⁴ by engaging in unauthorized operation. Accordingly, we conclude that based on the facts and circumstances a forfeiture in the amount of nine

²⁷ *Bishop Perry*, 21 FCC Rcd at 5317, 5320, 5324 and 5327-8, paras. 2, 9, 14, and 23. The Commission later clarified that clerical or ministerial errors that warrant relief include “only the kinds of errors that a typist might make when entering data from one list to another, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application, or making an arithmetic error.” *School and Libraries Universal Service Support Mechanism*, Order, 26 FCC Rcd 6487, 6489, para. 5 (2011). These are not the type of inadvertent errors or oversights present here.

²⁸ *Bishop Perry*, 21 FCC Rcd at 5321-22, para. 12.

²⁹ *Id.* at 5320, para. 9.

³⁰ See e.g., 47 U.S.C. §§ 151 and 301.

³¹ See Letter to Roseland Broadcasting, Inc., K07AAJ-D, Bakersfield, CA from Barbara A. Kreisman, Chief, Video Division (Oct. 13, 2023) a copy of which is available at LMS Facility ID No. 181741.

³² 47 CFR §§ 73.3598(a) and 73.1635(a).

³³ 47 CFR § 73.1745(a).

³⁴ See 47 U.S.C. § 301.

thousand five hundred dollars (\$9,500), as proposed in the *NAL* is warranted.³⁵ Furthermore, as stated in the *NAL*, we will grant the Station's pending license application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant.³⁶

IV. ORDERING CLAUSES

10. 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,³⁷ that Roseland Broadcasting, Inc. **SHALL FORFEIT** to the United States the sum of nine thousand five hundred dollars (\$9,500) for willfully violated sections 73.3598(a) and 73.1635(a) of the Commission's rules by failing to timely file a license to cover application and request for special temporary authority,³⁸ and willfully and repeatedly violated section 73.1745(a) of the Rules³⁹ and section 301 of the Act,⁴⁰ by engaging in unauthorized operation.

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),⁴¹ 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:⁴²

- 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).⁴³ For additional

³⁵ 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 *NAL* at para. 9; 47 U.S.C. § 309(k). While the Station is authorized to continue to operate during the pendency of its License Application pursuant to the parameters set forth therein, if the Station must operate at variance from these parameters it must file all required notifications and applications with the Commission. Any questions with regards to making such filings should be directed to Shaun Maher, Attorney-Advisor, Video Division, Media Bureau by e-mail at Shaun.Maher@fcc.gov (legal) or Mark Colombo, Associate Division Chief, Video Division, Media Bureau by e-mail at Mark.Colombo@fcc.gov (LMS/technical). See *NAL* at n.36.

³⁶ See LMS File No. 0000218484. While the Station is authorized to continue to operate during the pendency of its license application pursuant to the parameters set forth therein, if the Station must operate at variance from these parameters it must file all required notifications and applications with the Commission. Any questions with regards to making such filings should be directed to Shaun Maher, Attorney-Advisor, Video Division, Media Bureau by e-mail at Shaun.Maher@fcc.gov (legal) or Mark Colombo, Associate Division Chief, Video Division, Media Bureau by e-mail at Mark.Colombo@fcc.gov (LMS/technical).

³⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

³⁸ 47 CFR §§ 73.3598(a) and 73.1635(a).

³⁹ 47 CFR § 73.1745(a).

⁴⁰ See 47 U.S.C. § 301.

⁴¹ Payments made using CORES do not require the submission of an FCC Form 159.

⁴² 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.

⁴³ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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.

12. Requests for full payment of the forfeiture proposed in this Forfeiture Order under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.⁴⁴ 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. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Roseland Broadcasting, Inc., 888C 8th Avenue, Suite 733, New York, New York 10019 as well as by e-mail to legal@box733.com, and to RBI’s counsel, Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, DC 20036, as well as e-mailed to aaron@s-plaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

⁴⁴ See 47 CFR § 1.1914.