

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

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

FORFEITURE ORDER

Adopted: January 12, 2024

Released: January 12, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Boundary County TV Translator District (Licensee), licensee of television translator (TV translator) stations K46HZ-D, Bonners Ferry, Idaho, and K50GL-D, Bonners Ferry, Idaho (collectively, Stations). We find that the Licensee willfully violated section 74.788¹ 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 Rules² and section 301 of the Communications Act of 1934, as amended (Act),³ by engaging in unauthorized operation of the Stations after their construction permits had expired.

II. BACKGROUND

2. On October 13, 2023, the Media Bureau (Bureau) issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL) in the amount of thirteen thousand dollars (\$13,000) to Licensee.⁴ In the NAL, we found that the Licensee had failed to timely file licenses to cover as required by section 74.788 of the Rules.⁵ Further, as a result of its late filing, we found that Licensee apparently engaged in unauthorized operation of the Stations in violation of section 73.1745 of the Rules⁶ and section 301 of the Act.⁷ The NAL gave the Licensee thirty days to pay the full amount of the

¹ 47 CFR § 74.788.

² 47 CFR § 73.1745.

³ 47 U.S.C. § 301.

⁴ Boundary County TV Translator District, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-953 (MB Oct. 13, 2023) (NAL). Broken down, the proposed forfeiture came to six thousand, five hundred dollars (\$6,500) per station.

⁵ 47 CFR § 74.788.

⁶ 47 CFR § 73.1745.

⁷ 47 U.S.C. § 301.

proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁸

3. On November 8, 2023, the Licensee submitted a written response in which it did not dispute that it had violated the Rules and Act, but requested that we reconsider the proposed forfeiture based on the Licensee's claimed inability to pay the proposed forfeiture amount.⁹ The Response included copies of Licensee's Income Statements for the periods 2020-2021, 2021-2022 and 2022-2023 in support of this request. The Stations are community translators serving rural areas that, would otherwise have limited, if any, over-the-air television service.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,¹⁰ section 1.80 of the rules,¹¹ and the Commission's *Forfeiture Policy Statement*.¹² In assessing forfeitures, section 503(b)(2) 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.¹³

5. 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 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.¹⁴ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁵ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁶ 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.¹⁷

6. Here, the Licensee has provided us with its Income Statements for the three year periods of 2020-2021, 2021-2022, and 2022-2023 in order to demonstrate that the proposed forfeiture of \$13,000 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,¹⁸ although a forfeiture equal to five percent

⁸ *Id.* at 5, para. 11.

⁹ Letter from Boundary County TV Translator District (dated Nov. 8, 2022) (on file at LMS File Nos. 0000218655 and 0000218656) (Response).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 CFR § 1.80.

¹² 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).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ See *NAL* at 6, para. 14.

¹⁵ 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).

¹⁶ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁷ *Id.*

¹⁸ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

of gross revenues has been found to be excessive where a licensee operated at a significant loss.¹⁹ In this case, the proposed forfeiture amount in the *NAL* equals approximately seven percent of Licensee's gross revenue, as averaged over the last three years and the Licensee has not operated at a loss during that time period. The Commission has also reduced forfeiture amounts when the station(s) in question are translators in rural areas that provide the only over-the-air broadcast service to viewers in their service area(s).²⁰ As such, based on the facts before us, we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's financial information, 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 that a reduction in the total forfeiture amount to two thousand dollars (\$2,000) is appropriate for the violations involved in this case and is reasonable based on the Licensee's finances. This amount represents a fine of \$1,000 per station.

7. Accordingly, 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 willfully²¹ violated section 74.788 of the Commission's rules²² and willfully and repeatedly²³ violated section 73.1745 of the Rules²⁴ and section 301 of the Communications Act.²⁵ However, for the reasons set forth above, we find that reducing the forfeiture to \$2,000 is warranted.²⁶

IV. ORDERING CLAUSES

8. 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 Boundary County TV Translator District **SHALL FORFEIT** to the United States the sum of two thousand dollars (\$2,000) for willfully violating section 74.788 of the Commission's rules²⁸ and willfully and repeatedly violation

¹⁹ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (*Valley Air*) (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).

²⁰ See e.g. *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (rel. 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).

²¹ 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*).

²² 47 CFR § 74.788.

²³ 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 *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²⁴ 47 CFR § 73.1745.

²⁵ 47 U.S.C. § 301.

²⁶ As stated in the *NAL*, we will act on the Applications following the conclusion of this forfeiture proceeding if there are no issues other precluding grant. See *NAL* at para. 9. Also pending before the Commission is an application for renewal of the Stations' licenses. See *id.* at n.29. 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).

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

²⁸ 47 CFR § 74.788.

section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934.²⁹

9. 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),³⁰ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification of payment must be e-mailed to VideoNAL@fcc.gov and Shaun Maher at Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³¹

- 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).³² 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.

10. 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 20554.³³ Questions regarding payment procedures should be directed to the Financial

²⁹ 47 CFR § 73.1745 and 47 U.S.C. § 301.

³⁰ Payments made using CORES do not require the submission of an FCC Form 159.

³¹ 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.

³² Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

³³ See 47 CFR § 1.1914.

Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

11. **IT IS FURTHER ORDERED** that a copy of this Order 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 by e-mail to: ELAUTOMATION@STARBAND.NET.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
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Media Bureau