

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

In the Matter of)	NAL/Acct. No. MB200741410074
)	FRN: 0009794611
Pikes Peak Community College)	
)	
Licensee of)	Facility I.D. No. 85384
)	File No. BRFT-20050706AAU
FM Translator Station K268AR)	
Pueblo, Colorado)	
)	
and)	Facility I.D. No. 76218
)	File No. BRFT-20050708ABC
FM Translator Station K206BZ)	
Manitou Springs, Colorado)	

FORFEITURE ORDER

Adopted: October 1, 2009

Released: October 2, 2009

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to Pikes Peak Community College (“Licensee”), licensee of FM Translator Stations K228EY (formerly K268AR), Pueblo, Colorado, and K206BZ, Manitou Springs, Colorado (collectively, the “Stations”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file license renewal applications and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Stations.¹

II. BACKGROUND

2. On February 6, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of fourteen thousand dollars (\$14,000) to Licensee for these violations.² Licensee filed a Request for Reduction of Proposed Forfeiture (“Request”) and a Supplement to its Request (“Supplement”) on March 8, 2007, and October 23, 2007, respectively.

3. As noted in the NAL, Licensee’s applications for renewal of each of the Stations’ licenses should have been filed by December 1, 2004. No such applications were filed, and the licenses each expired on April 1, 2005. Accordingly, on June 24, 2005, the staff wrote to Licensee indicating that the Stations’ licenses had each expired and that (1) all authority to operate the Stations was terminated; and (2) the Stations’ call letters were deleted from the Commission’s data base. Licensee was advised

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Pikes Peak Community College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2258 (MB 2007).

that any further operation of the Stations was unauthorized and must cease immediately.³ Upon receipt of the letter, Licensee tendered the renewal applications and simultaneously filed requests for special temporary authorization (“STA”) to continue operations pending consideration of the untimely K228EY and K206BZ renewal applications. In the STA requests, Licensee explained that it had timely filed the renewal application for the originating station KEPC(FM), Colorado Springs, Colorado, but that it had inadvertently failed to include FM translator Stations K268AR and K206BZ in that application. The staff granted the STAs on July 11, 2005. On February 6, 2007, the staff advised Licensee of its apparent liability for a forfeiture of \$14,000 for its failure to timely file the Stations’ renewal applications and for unauthorized operation of the Stations.⁴ In response, Licensee filed the subject Request and Supplement.

4. In support of its Request and Supplement, Licensee advances several arguments why the \$14,000 forfeiture amount proposed in this case was excessive, including, among others, that it is inconsistent with more recent forfeitures assessed against translators. It asserts that these reasons warrant a reduction of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and the Commission’s *Forfeiture Policy Statement*.⁷ In assessing forfeitures, Section 503(b)(2)(E) 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.⁸

6. Licensee argues that the forfeiture amount is inconsistent with recent forfeitures assessed against translator stations for late-filed renewals and unauthorized operation.⁹ As such, it asserts that “the forfeiture amount assessed against [it] should be \$1,000.00, rather than the \$14,000.00 assessed in the NAL.”¹⁰ We agree. We have considered Licensee’s response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully¹¹ violated

³ *Letters to Pikes Peak Community College*, Ref. 1800B3-JDW (Chief, Audio Division, Media Bureau, Jun. 24, 2005).

⁴ The Commission granted the above-referenced license renewal application on February 15, 2007.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ See Supplement at 2.

¹⁰ *Id.* at 3. In its Response, Licensee also argued that (1) the fine was excessive for translators; (2) the infractions were minor and warranted downward adjustment; (3) cases where licensees filed STAs (as opposed to those who did not) also warranted downward adjustment; (4) the forfeiture amount was inconsistent with forfeitures issued by the Enforcement Bureau for similar violations, and (5) as a small college, it would be unable to pay the full forfeiture amount. However, because we accept Licensee’s argument in its subsequently-filed Supplement, these arguments are moot and need not be considered further.

¹¹ 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 Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

Section 73.3539 of the Rules and willfully and repeatedly¹² violated Section 301 of the Act.¹³ However, given the Commission's recent decisions assessing forfeitures in the amount of \$500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act,¹⁴ we reduce the forfeiture amount assessed against each Station to \$500, for a total of \$1,000.¹⁵

IV. ORDERING CLAUSES

7. 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,¹⁶ that Pikes Peak Community College, SHALL FORFEIT to the United States the sum of one thousand dollars (\$1,000) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).¹⁸

¹² Section 312(f)(1) 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)(1). *See also Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹³ 47 U.S.C. § 301.

¹⁴ *See KSOP, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20950, 20952 (MB 2007) (issuing NAL in the amount of \$500 for translator station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

¹⁵ *See, e.g., Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4143 (MB 2009) (reducing forfeiture amount from \$7,000 to \$500 for translator station's late renewal filing and unauthorized operation); *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740, 8742 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station's late renewal filing).

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

¹⁷ 47 U.S.C. § 504(a).

¹⁸ *See* 47 C.F.R. § 1.1914.

9. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail to: Pikes Peak Community College, 5675 Academy Blvd., Colorado Springs, Colorado 80906, and to its counsel, Lee J. Peltzman, Esquire, Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington D. C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau