

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

In the Matter of	)	
	)	NAL/Acct. No. MB-200741410160
<b>Spokane Public Radio, Inc.</b>	)	FRN: 0003230208
	)	
Licensee of FM Translator Stations	)	
K220BW	)	Facility ID No. 61935
Kellogg, Idaho	)	File No. BRFT-20050801DDN
	)	
K269DU	)	Facility ID No. 61940
Sandpoint, Idaho	)	File No. BRFT-20050801DDO
	)	
and	)	
	)	
K220BX	)	Facility ID No. 61938
Coeur D'Alene, Idaho	)	File No. BRFT-20050801DDP

**FORFEITURE ORDER**

**Adopted: February 16, 2010**

**Released: February 17, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* we issue a monetary forfeiture in the amount of seven hundred and fifty dollars (\$750) to Spokane Public Radio, Inc. ("Spokane"), licensee of FM translator stations K220BW, Kellogg, Idaho; K269DU, Sandpoint, Idaho; and K220BX, Coeur D'Alene, Idaho (collectively, "Stations"), for its willful violation of Section 73.3539 of the Commission's Rules ("Rules")<sup>1</sup> by failing to timely file license renewal applications for the Stations.

**II. BACKGROUND**

2. On February 15, 2007, the Bureau issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of four thousand, five hundred dollars (\$4,500) to Spokane for these violations.<sup>2</sup> In response to the NAL, Spokane submitted a response ("Response") on March 19, 2007.

3. As noted in the NAL, Spokane's renewal applications for the Stations' current license term were due on June 1, 2005, four months prior to the October 1, 2005, expiration date.<sup>3</sup> Spokane did not file the applications until August 1, 2005. It explained that although the translators are licensed to communities in Idaho, the primary station which they all carry, KPBX(FM), is located in Spokane, Washington, apparently believing that the renewal application filing deadline for KPBX(FM) would also

<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *Spokane Public Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 3200 (MB 2007).

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

apply to the Stations. Spokane states that its failure to timely file the renewal applications was unintentional and caused by its misunderstanding of allegedly ambiguous text in the renewal application Form 303-S and instructions. Therefore, it argues, the forfeiture should be cancelled.

### III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the “Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>6</sup> 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.<sup>7</sup>

5. Spokane does not dispute that it failed to file timely renewal applications for the Stations, but states that the violation was unintentional. Specifically, it asserts that its staff misunderstood and misinterpreted text that it found “ambiguous” in Form 303-S and the accompanying instructions.<sup>8</sup> According to Spokane, its confusion centered around Section I, Item 6b of Form 303-S, which states, “Does this application include one or more FM translator station(s) ... in addition to the station listed in Section 1? (The callsign(s) of any associated FM translators ... will be requested in Section V).”<sup>9</sup> Spokane further cites the Form 303-S Instructions for Item 6b, which state:

If the applicant seeks the joint renewal for an FM or TV translator, or LPTV station and its co-owned primary FM, TV, or LPTV station, that applicant should indicate “Yes” to Item 6b, and skip directly to Item 7. The applicant should provide information with regard to such translator station for which renewal is sought in response to Section V below.<sup>10</sup>

Spokane states that this language suggests that translator license renewals should be filed jointly with that of the primary station that is rebroadcast. It maintains that it “is nowhere stated that these instructions only apply if the translator and the full service station are in the same state . . . .”<sup>11</sup> In further support of its argument, Spokane cites to the following language from the Commission order (“*Renewal Order*”) revising Form 303-S and consolidating renewal cycles: “These form revisions will permit translator stations co-owned with primary stations in the same state which rebroadcast the same signal as the primary station to file for license renewal on a single application form with their primary station.”<sup>12</sup>

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> *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).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Response at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 7, citing *Modifying Renewal Dates for Certain Stations Licensed Under Part 74 of the Commission’s Rules and Revising FCC Form 303-S*, Report and Order, (“*Renewal Order*”) 9 FCC Rcd 6504, 6504 (1994).

Spokane maintains that this language indicates that the Commission “simply overlooked” situations in which the primary station and its associated translators are not located within the same state.<sup>13</sup>

6. We reject Spokane’s assertion that the Form 303-S and instructions are ambiguous. Indeed, the *Renewal Order* cited by Spokane is explicit that only licensees who operate translator stations “in the same state” as the primary station may file using a single renewal application.<sup>14</sup> It follows then that translators in other states with different renewal cycles must file renewal applications separately from the primary station.<sup>15</sup>

7. Moreover, as the Commission has held, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.<sup>16</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>17</sup>

8. We have considered Spokane’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 Spokane willfully<sup>18</sup> violated Section 73.3539 of the Rules. However, in light of the Commission’s recent decisions assessing forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules, we reduce the forfeiture amount *sua sponte* to \$250 for each FM translator station, totaling \$750.<sup>19</sup>

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<sup>13</sup> Response at 7-8.

<sup>14</sup> See *Renewal Order*, 9 FCC Rcd 6504 at ¶ 1 and n 10. See also 47 C.F.R. § 73.1020(a)(13)(i) and (a)(15)(i) (establishing different timing for stations in Idaho than for stations in Washington).

<sup>15</sup> *Id.* Item 6b and the instructions pertinent to that item in FCC Form 303-S merely acknowledge the possibility of a joint filing (“If the applicant seeks a joint renewal for an FM or TV translator . . . and its co-owned primary . . . station . . .”). The form does not address the issue of when a joint filing is allowed or is not allowed.

<sup>16</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>17</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

<sup>18</sup> 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*, 6 FCC Rcd at 4387-88.

<sup>19</sup> See, e.g., *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (reducing *sua sponte* forfeiture amount from \$1,500 to \$250 for translator station’s late renewal filing); *Good News Translator Assoc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 20922 (MB 2007) (finding translator licensee apparently liable for monetary forfeiture in the amount of \$250 for its willful violation of Section 73.3539 of the Rules); *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same).

#### IV. ORDERING CLAUSES

9. 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,<sup>20</sup> that Spokane Public Radio, Inc. SHALL FORFEIT to the United States the sum of seven hundred and fifty dollars (\$750) for willfully violating Section 73.3539 of the Commission's Rules.

10. 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.<sup>21</sup> Payment of the 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).<sup>22</sup>

11. 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 Spokane Public Radio, Inc., c/o Richard Kunkel, 2319 N. Monroe Street, Spokane, WA 99205, and its counsel, Ernest T. Sanchez, The Sanchez Law Firm, 2300 M Street, N.W., Suite 800, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

<sup>20</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> See 47 C.F.R. § 1.1914.