

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

In re Applications of	)	
	)	
<b>Katherine Timmerman Hagler</b>	)	NAL/Acct. Nos. MB-201041410020, MB-
	)	201041410021
	)	FRN: 0013186960
For Renewal of License for FM Translator	)	
Stations W285AJ	)	Facility I.D. No. 33504
Montgomery, Alabama	)	File No. BRFT-20060125AGW
	)	
and	)	
	)	
W296AI	)	Facility I.D. No. 33501
Montgomery, Alabama	)	File No. BRFT-20060125AGR

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

**Adopted: October 18, 2010**

**Released: October 19, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned applications (the “Renewal Applications”) of Katherine Timmerman Hagler (the “Licensee”), for renewal of license for FM Translator Stations W285AJ and W296AI, Montgomery, Alabama (the “Stations”). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully violated Section 73.3539 of the Rules,<sup>3</sup> by failing to file timely license renewal applications for the Stations, and apparently willfully and repeatedly violated Section 301 of the Act,<sup>4</sup> by engaging in unauthorized operation of the Stations after the licenses had expired. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand dollars (\$1,000), and we grant the captioned license renewal applications for the Stations, and reinstate the Stations’ call signs.

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539.

<sup>4</sup> See 47 U.S.C. § 301.

## II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”<sup>5</sup> Applications for renewal of the Stations’ licenses should have been filed by December 1, 2003, four months prior to the Station’s April 1, 2004, license expiration date,<sup>6</sup> but were not. Accordingly, on March 17, 2005, the staff wrote to the Licensee, indicating that the Stations’ licenses had 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. The Licensee was advised that any operation of the Stations was unauthorized and must cease immediately.<sup>7</sup>

3. Upon receipt of the *License Expiration Letters*, the Licensee filed requests for Special Temporary Authorization (“STA”) to operate the Stations on April 4, 2005.<sup>8</sup> In the STA requests, the Licensee indicates that her failure to timely file the renewal applications was inadvertent, as she had prepared paper versions of the applications which she believed her spouse had mailed to the Commission.<sup>9</sup> In the Renewal Applications, Licensee indicates that, on March 29, 2005, she attempted to electronically file the renewal applications, but was unable to submit the required fees electronically because she had lost her FRN password and could not reset it. The Licensee then attempted to pay the required fees via mail with a paper copy of FCC Form 159 sent to the Commission’s bank depository. The Licensee states that she does not have copies or receipts indicating that the fees were processed by the bank. Until January 2006, the Licensee assumed the renewal applications were pending as they appeared to her as listed in the “READY” status. When the Licensee’s counsel contacted Commission staff, in January 2006, and discovered that the required fees were never received, the Licensee successfully re-filed the renewal applications, with the required fees, on January 25, 2006.<sup>10</sup>

## III. DISCUSSION

4. *Proposed Forfeiture.* Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station’s authorization.<sup>11</sup> In this case, the Licensee has failed to file timely license renewal applications for the Stations, as required by Section 73.3539(a) of the Rules. Moreover, she continued operating the Stations after the licenses had expired on

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<sup>5</sup> 47 C.F.R. § 73.3539(a).

<sup>6</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>7</sup> *Letter to Katherine Timmerman Hagler re: W285AJ(FM)*, Ref. 1800B3-DW (MB Mar. 17, 2005); and *Letter to Katherine Timmerman Hagler re: W296AI(FM)* Ref. 1800B3-DW (MB Mar. 17, 2005) (collectively, the “*License Expiration Letters*”).

<sup>8</sup> See File Nos. BLSTA-20050404AEN and BLSTA-20050404AEO. The staff granted the STA Requests on January 26, 2006, with expiration dates of July 26, 2006. *Letter to Mr. Richard J. Hayes, Esq., re: DW285AJ(FM)*, Ref. 1800B3 (MB Jan. 26, 2006); and *Letter to Mr. Richard J. Hayes, Esq., re: DW285AI(FM)*, Ref. 1800B3 (MB Jan. 26, 2006). On June 26, 2006, the Licensee filed two extension of existing STA applications for the Stations, File Nos. BESTA-200626ACC and BESTA-200626ACD, that are currently pending.

<sup>9</sup> The Licensee now acknowledges that absent a request for waiver, FCC Form 303-S is available online and is required to be filed electronically.

<sup>10</sup> Renewal Applications at Exhibit 1.

<sup>11</sup> See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license “rests solely and exclusively with the licensee”) (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

April 1, 2004, and did not request STAs to operate the Stations until more than one year after the licenses' expiration date, in violation of Section 301 of the Act.

5. This NAL is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have failed willfully or repeatedly 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.<sup>12</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.<sup>13</sup> 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,<sup>14</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>15</sup> 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."<sup>16</sup>

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>17</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.<sup>18</sup> 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)(D) 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."<sup>19</sup>

7. In this case, the Licensee failed to file timely renewal applications and continued Station operations for more than one year after the licenses had expired on April 1, 2004, before filing the appropriate renewal applications and requests for STAs to so operate. Licensee's difficulties in paying the appropriate filing fee for the Renewal Applications is, in this instance, irrelevant because even had she been able successfully to tender the filing fees in March of 2005, the attendant renewal applications would still be filed more than one year after the Stations' licenses had expired. Nevertheless, because the Licensee had previously been licensed to operate the Stations, the latter transgressions are not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to two hundred fifty

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<sup>12</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. 1.80(a)(1).

<sup>13</sup> 47 U.S.C. § 312(f)(1).

<sup>14</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>15</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>16</sup> 47 U.S.C. § 312(f)(2).

<sup>17</sup> *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); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>18</sup> A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

<sup>19</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

dollars (\$250) each for the late-filings and the unauthorized operations. Thus, we propose a forfeiture in the total amount of one thousand dollars (\$1,000).<sup>20</sup>

8. *License Renewal Applications.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>21</sup> That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>22</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>23</sup>

9. We find that the Licensee's violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.<sup>24</sup> Further, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant the license renewal applications below.

#### 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, that Katherine Timmerman Hagler is hereby NOTIFIED of her APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000) for apparent willful violations of Section 73.3539 of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Katherine Timmerman Hagler SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>20</sup> See, e.g., *Lusk TV Club*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 12651, 12653 (MB 2009); *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140, 4143 (MB 2009) (\$2,000 forfeiture issued to licensee of four FM Translator Stations for late renewal filing and unauthorized operation).

<sup>21</sup> 47 U.S.C. § 309(k).

<sup>22</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>23</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>24</sup> For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

12. 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).

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

14. 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.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>25</sup>

16. IT IS FURTHER ORDERED, that the call signs W285AJ and W296AI ARE REINSTATED.

17. IT IS FURTHER ORDERED, that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Katherine Timmerman Hagler for FM Translator Station W285AJ, Montgomery, Alabama (File No. BRFT-20060125AGW) and W296AI, Montgomery, Alabama (File No. BRFT-20060125AGR) ARE GRANTED.

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Katherine Timmerman Hagler, 8671 Old Marsh Way, Montgomery, Alabama, 36117, and to her counsel, Richard J. Hayes, Jr., Esq., Attorney at Law, P.O. Box 200, Lincolnville, Maine 04849.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>25</sup> See 47 C.F.R. § 1.1914.