

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

In the Matter of)	Facility ID No. 11248
)	NAL/Acct. No. MB-201141410021
Reier Broadcasting Company, Inc.)	FRN: 0005073184
)	File Nos. BRFT-20011220ABI; BRFT-
Licensee of K265AS)	20041201AWV
Livingston, Montana)	
)	

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

Adopted: October 6, 2011

Released: October 7, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us the license renewal applications (“First Application” and “Second Application,” chronologically)¹ of translator K265AS, Livingston, Montana (“Station”) filed by Reier Broadcasting, Inc. (“Licensee”). Also before us is Capstar TX Limited Partnership’s (“Capstar”) Petition to Deny² and its “Motion to Dismiss”³ filed against the First and Second Applications, respectively, as well as related pleadings.⁴

2. Pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s Rules (“Rules”),⁵ we find that Licensee apparently willfully violated Section 73.3539 of the Rules⁶ by failing to timely file the First Application for the Station and for apparently willfully and repeatedly violating Section 301 of the Act, by engaging in unauthorized operation of the Station after its license had expired.⁷

3. Based upon our review of the facts and circumstances before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of one thousand, two hundred dollars (\$1,200), for these violations. For the reasons set forth below, we deny the Petition to Deny and grant the First Application and Second Applications.

¹ The two applications are for consecutive renewal cycles. The Second Application, filed December 1, 2004, was timely for the next renewal cycle’s expiration date of April 1, 2005.

² Filed Apr. 15, 2002.

³ Filed Mar. 15, 2005.

⁴ Licensee filed an opposition to the Petition to Deny on May 15, 2002, to which Capstar replied on June 11, 2002. Licensee filed an opposition to the Motion to Dismiss on March 25, 2005, to which Capstar replied on March 31, 2005. Capstar’s “Motion to Dismiss” is an unauthorized filing pursuant to Section 1.45 of the Rules (*See, e.g., New Life Broadcasting*, Letter, 25 FCC Rcd 7293, 7294 n.3 (MB 2010) (declining to consider unauthorized pleadings pursuant to Section 1.45 of the Rules)). Accordingly, we dismiss it.

⁵ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

⁶ 47 C.F.R. § 73.3539.

⁷ 47 U.S.C. § 301.

II. BACKGROUND

4. Section 73.3539(a) of the Rules requires that license renewal applications 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.”⁸ The First Application should have been filed by April 1, 1998, four months prior to the Station's August 1, 1998, license expiration date,⁹ but was not. In fact, Licensee did not file the First Application until December 20, 2001, nearly four years after the filing deadline, and did not request Special Temporary Authority (“STA”) to continue operations. Licensee provides no explanation for the untimely filing of the First Application.

5. Capstar filed a Petition to Deny the First Application on April 15, 2002, claiming that the Station has no current authority to operate because its license has expired. Thus, it maintains that the First Application should be treated as an application for a new translator station and dismissed for violating Section 74.1204(a) of the Rules.¹⁰ It further argues that Licensee does not meet the criteria for a request for a waiver of Section 73.3539 of the Rules.¹¹ On December 1, 2004, Licensee timely filed the Second Application.

III. DISCUSSION

6. *Petition to Deny.* First, Capstar alleges that the Commission should deny the First Application because it violates Section 74.1204(a) of the Rules.¹² This Rule pertains only to new applications, but Capstar reasons, without citing authority, that the First Application is essentially new because the Station's authority to operate has expired. We disagree. The penalty for Licensee's violations, under established Commission precedent, is a fine, not dismissal of a renewal application and cancellation of all operating authority.¹³ Furthermore, the Commission has accepted and granted late-filed applications for license renewal and STA.¹⁴ Otherwise, portions of the public airwaves would lay fallow as licensees with expired licenses and other potential applicants wait for a new application filing window. Accordingly, we find Capstar's argument to be unpersuasive.

⁸ 47 C.F.R. § 73.3539(a).

⁹ See 47 C.F.R. §§ 73.1020, 73.3539(a).

¹⁰ 47 C.F.R. § 74.1204(a).

¹¹ 47 C.F.R. § 73.3539. Capstar also argues that the Commission should refrain from acting on the First Application until resolution of an interference complaint filed against the Station in 2000. On June 16, 2010, the Commission concluded that the complaint had been resolved (*See* File No. 20000908ABH; no letter was sent). We thus dismiss this argument as moot.

¹² The Rule reads: “An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field contours with any other authorized commercial or noncommercial educational FM broadcast stations....”

¹³ See, e.g., *Escalante City*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2561, 2564 (MB 2010) (“*Escalante*”) (finding that over seven years of operation without authorization “presents a fairly close call” but still meets the statutory license renewal standard for renewal).

¹⁴ See, e.g., *Gallatin Valley Witness, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2254 (MB 2007) (allowing Licensee to file an application for license renewal after license had expired); *Hawkins Broadcasting Company*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4497 (MB 2007) (same). See also *Snow College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7662 (MB 2008) (allowing licensee to file for STA after license had expired); *Heidelberg College*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2395 (MB 2007) (same).

7. Next, Capstar argues that Licensee does not meet the criteria for a waiver of Section 73.3598 of the Rules, which requires license renewal applications to 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.¹⁵ We have reviewed Commission records and find no evidence indicating that Licensee made such a waiver request. Regardless, we have previously declined to act on similar requests for waivers of Section 73.3539 of the Rules and find no basis to depart from this processing policy in these circumstances.¹⁶

8. *Proposed Forfeiture.* In this case, Licensee has failed to file a timely license renewal application for the Station, as required by Section 73.3539(a) of the Rules.¹⁷ Moreover, as noted above, Licensee continued station operations for more than three years after its license had expired on August 1, 1998, did not request STA to continue operations, in violation of Section 301 of the Act, or provide an explanation for the late filing. Licensees are obligated to comply fully with the Rules, including filing timely renewal applications and maintaining in effect the station's authorization.¹⁸ Here, Licensee did not do so.

9. This Notice of Apparent Liability is issued pursuant to Section 503(b)(1)(B) of the Act.¹⁹ 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.²⁰ 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.²¹ 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, and the Commission has so interpreted the term in the Section 503(b) context.²² 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."²³

10. The Commission's Forfeiture Policy Statement and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for

¹⁵ 47 C.F.R. § 73.3539.

¹⁶ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 3851, 3853 n.15 (MB 2010) citing *Family Radio, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4108, 4109 n.6 (MB 2007) (stating that "[i]n light of the acceptance and grant of the application, we need not act on the waiver request.").

¹⁷ 47 C.F.R. § 73.3539(a).

¹⁸ 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)).

¹⁹ 47 U.S.C. § 503(b)(1)(B).

²⁰ *Id.* See also 47 C.F.R. § 1.80(a)(1).

²¹ 47 U.S.C. § 312(f)(1).

²² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²³ 47 U.S.C. § 312(f)(2).

²⁴ 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.

the service.²⁵ 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.”²⁶

11. In this case, Licensee failed to file a timely renewal application for the Station’s previous license term and continued Station operations for more than three years before filing the appropriate renewal application, never seeking STA to so operate. Nevertheless, because it had previously been licensed to operate the Station, the latter transgression is not comparable to “pirate” broadcast operations, which typically have been subject to forfeitures of approximately \$10,000. In recent decisions, we have assessed forfeitures in the amount of \$250 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act.²⁷ Therefore, the violations here would warrant a total forfeiture amount of \$500. However, Licensee engaged in over three years of unauthorized operations before filing the First Application. 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 increase the forfeiture from the base amount to six hundred dollars (\$600) for each violation.²⁸ Thus, we impose a forfeiture of one thousand, two hundred dollars (\$1,200).

12. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁹ 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.³⁰ 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.”³¹

13. We find that 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

²⁵ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²⁶ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4).

²⁷ 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).

²⁸ 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II, Upward Adjustment Criteria. See *Michael G. Lewis*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13939 (MB 2008) (issuing a forfeiture of five hundred dollars for each violation for a two and one-half year late license renewal application). See also *Escalante* (issuing a forfeiture of one thousand dollars for each violation for a seven-year-late license renewal application).

²⁹ 47 U.S.C. § 309(k).

³⁰ *Id.* 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).

³¹ 47 U.S.C. § 309(k)(2), 309(k)(3).

no evidence of violations that, when considered together, evidence a pattern of abuse.³² Further, we find that the Station served the public interest, convenience, and necessity during the two subject license terms. We will, therefore, grant the First and Second Applications below.

IV. CONCLUSION

14. 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 Reier Broadcasting Company, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$1,200 for its apparent willful violation of Section 73.3539 of the Commission's Rules and its willful and repeated violations Section 301 of the Communications Act of 1934, as amended.³³

15. 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, Reier Broadcasting Company, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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). Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Maureen.McCarthy@fcc.gov. Requests for full payment of the forfeiture proposed in this NAL under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.³⁴

17. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th 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.

18. 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.

³² For example, we do not find here that the Station's 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).

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

³⁴ 47 C.F.R. § 1.1914.

19. IT IS FURTHER ORDERED, that pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Rules,³⁵ the Petition to Deny filed on April 15, 2002, by Capstar TX Limited Partnership IS DENIED; and the license renewal applications (File Nos. BRFT-20011220ABI and BRFT-20041201AWV) of Reier Broadcasting Company, Inc. for translator K265AS, Livingston, Montana, ARE GRANTED.

20. IT IS FURTHER ORDERED that a copy of this NAL shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Mr. William R. Reier, President, Reier Broadcasting Company, Inc., P.O. Box 20, Bozeman, Montana, 59718-2041; to its counsel, Dennis F. Begley, Esq., Reddy, Begley & McCormick, LLP, 1156 15th Street, Suite 610, Washington, D.C. 20005-1770; and to Capstar's counsel, Marissa G. Repp, Esq., Hogan Lovells US LLP, Columbia Square, 555 Thirteenth Street, N.W., Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁵ 47 U.S.C § 309(k); 47 C.F.R. §§ 0.61 and 0.283.