

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

In re Applications of)	
)	
Danbury Community Radio, Inc.)	NAL/Acct. No. MB-200741410371
)	FRN: 0003581253
For Renewal of License for)	
)	Facility I.D. No. 15393
Station WFAR(FM), Danbury, Connecticut)	File No. BRED-20061013ADT
)	
and)	
)	
FM Translator Station W250AA, Danbury, Connecticut)	Facility I.D. No. 15397
)	File Nos. BRFT-20030624ABD

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

Adopted: February 14, 2008

Released: February 15, 2008

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Danbury Community Radio, Inc. (the "Licensee") for renewal of its licenses for Class D noncommercial educational Station WFAR(FM) and FM translator Station W250AA, Danbury, Connecticut (individually, the "Station" and collectively, 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"),¹ by the Chief, Audio Division, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules,³ by failing to timely file a license renewal application for the Stations, and willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in the unauthorized operation of the Stations after their authorizations 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), grant the captioned WFAR(FM) and W250AA renewal applications, and reinstate the call sign for Station W250AA.

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

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 U.S.C. § 301.

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that an application for renewal of a broadcast station license 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.”⁵ The Licensee filed a license renewal application on February 2, 1990, for the license renewal period for W250AA ending on June 1, 1990.⁶ This application was granted by the staff, and the authorization specified a license expiration date of June 1, 1997. The Licensee filed a license renewal application on March 17, 1997.⁷ However, by virtue of changes to the Rules regarding FM translator renewal dates,⁸ the expiration date for the subsequent license term was set as April 1, 1998, to synchronize license terms and renewal filing dates for all Connecticut radio licenses. Although the Licensee should have filed a license renewal application by December 1, 1997, to comport with rule changes for FM translator renewal dates, it did not do so. When the March 1997 Renewal Application was granted on December 11, 1998, it specified an expiration date of April 1, 1998, the expiration date for all Connecticut radio licenses. Accordingly, on June 12, 2003, the Staff wrote to the Licensee, indicating that the Station’s license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station’s call letters were deleted from the Commission’s data base. The Licensee was also advised that any further operation of the Station was unauthorized and must cease immediately.⁹ Upon receiving the Cancellation Letter, the Licensee promptly filed the captioned license renewal application for W250AA.¹⁰ It did not file a request for Special Temporary Authorization (“STA”) to continue the Station’s operations.

3. During the current renewal cycle, an application for renewal of the Licensee’s primary and translator licenses should have been filed by December 1, 2005, four months prior to the Stations’ April 1, 2006 license expiration date,¹¹ but was not. In fact, the Licensee did not file the renewal application until October 13, 2006, more than six months after the Stations’ licenses had expired.¹² Shortly thereafter, on October 18, 2006, the Licensee filed requests for STA for WFAR(FM) and W250AA to continue operations pending consideration of the late-filed renewal application.¹³ In the STA request for WFAR(FM), the Licensee explained that WFAR(FM) is a Class D station with “meager

⁵ 47 C.F.R. § 73.3539(a).

⁶ See File No. BRFT-19900202TC.

⁷ See File No. BRFT-19970317YB (the “March 1997 Renewal Application”).

⁸ 47 C.F.R. § 74.15. The FM translator license renewal dates were amended effective December 20, 1994, to conform with those of full service radio stations licensed to communities in the same state. Additionally, the broadcast station license renewal form, FCC Form 303-S, was revised to enable co-owned translator and associated primary stations licensed to communities in the same state to file for license renewal on a single application form. See *In the Matter of Modifying Renewal Dates for Certain Stations Licensed under Part 74 of the Commission’s Rules*, Report and Order, 9 FCC Rcd 6504 (1994). This rule making proceeding acknowledged that the action taken would require FM translator stations in certain states to file two license renewal applications within a short period of time, but concluded that this result was “unavoidable.” 9 FCC Rcd at 6505.

⁹ *Letter to Danbury Community Radio, Inc.*, Ref 1800B3 (MB Jun. 12, 2003) (“Cancellation Letter”).

¹⁰ See File No. BRFT-20030624ABD.

¹¹ See 47 C.F.R. §§ 73.1020, 73.3539(a).

¹² See BRED-20061013ADT.

¹³ See BLSTA-20061018ADB and BLSTA-20061018ACZ.

resources,” and that the failure to file the WFAR(FM) license renewal application was inadvertent.¹⁴ In the STA request for W250AA, the Licensee references its confusion regarding the December 1998 grant of its previous renewal application which it believed specified an erroneous expiration date of April 1, 1998.¹⁵ The STA request for WFAR(FM) was granted by the staff on October 19, 2006, and the STA request for W250AA was granted by the staff on July 31, 2007.¹⁶ A timely request for extension of the STA for Station WFAR(FM) was filed on April 9, 2007, and was granted by the staff on July 31, 2007.¹⁷

III. DISCUSSION

4. *Proposed Forfeiture.* The W250AA license expired on April 1, 1998. The Licensee did not file a supplemental renewal application to preserve the Station’s license, and it continued to operate the Station after that date without seeking an STA. Moreover, during the current renewal cycle, the Licensee has failed to timely file a license renewal application for the Stations, as required by Section 73.3539(a) of the Rules, and it continued operating the Stations for more than six months after their licenses had expired on April 1, 2006, in violation of Section 301 of the Act. Licensees are obligated to fully comply with the Rules, including timely filing their Stations’ renewal application and maintaining in effect the Station authorizations.¹⁸ Here, the Licensee did not do so.

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.¹⁹ 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.²⁰ 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,²¹ 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

¹⁴ The Licensee states that it relied on Commission mailings to alert it to filing obligations but that apparently a 2003 change-of-address notification was not entered into the Commission’s records; accordingly, states the Licensee, it received no notification of the necessity for filing the WFAR(AM) renewal application. However, the Licensee acknowledges its responsibility for complying with the Commission’s regulations and filing deadlines. BLSTA-20061018ADB, Exhibit 38.

¹⁵ BLSTA-20061018ACZ, Exhibit 38.

¹⁶ See *Letter to Peter Tannenwald, Irwin, Campbell & Tannenwald, P.C.*, Ref. 1800B3 (MB Oct. 19, 2006); *Letter to Peter Tannenwald, Esq., Irwin, Campbell & Tannenwald, P.C.*, Ref. 1800B3-KCB (MB Jul. 31, 2007).

¹⁷ See BELSTA-20070410AAY; *Letter to Peter Tannenwald, Irwin, Campbell & Tannenwald, P.C.*, Ref. 1800B3-KCB (MB Jul. 31, 2007).

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); see also 47 C.F.R. § 1.80(a)(1).

²⁰ 47 U.S.C. § 312(f)(1).

²¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

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

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

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.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.²⁵ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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

7. In this case, although the W250AA license expired on April 1, 1998, a license renewal application was not filed until 2003. Nevertheless, the Station continued to operate during this period. Moreover, during the current renewal cycle, the Licensee failed to timely file the WFAR(FM) and W250AA renewal application and continued Stations’ operations for more six months after the Stations’ licenses had expired before filing the appropriate renewal application and seeking STAs to so operate. Nevertheless, the Licensee had previously held licenses to operate Stations WFAR(FM) and W250AA, the transgression is not comparable to “pirate” operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into account 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 dollars (\$250) each for the late filing and unauthorized operation for both Stations. Thus, we propose a total forfeiture in the total amount of one thousand dollars (\$1,000).

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁷ 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.²⁸ 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.”²⁹

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.

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; 47 C.F.R. § 1.80(b)(4).

²⁷ 47 U.S.C. § 309(k).

²⁸ 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).

²⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

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, evidence a pattern of abuse.³⁰ Further, we find that Stations WFAR(FM) and W250AA 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 Danbury Community Radio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand dollars (\$1,000) for its apparent willful and repeated violation of Section 73.3539 of the Commission's Rules and willful and repeated violation of 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*, Danbury Community Radio, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. 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.

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. 20554.³¹

16. IT IS FURTHER ORDERED, that the call sign W250AA IS REINSTATED.

³⁰ 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).

³¹ *See* 47 C.F.R. § 1.1914.

17. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Danbury Community Radio, Inc. for Class D noncommercial educational Station WFAR(FM) and FM translator Station W250AA, Danbury, Connecticut (File Nos. BRFT-20030624ABD and BRFT-20061013ADT) 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 Danbury Community Radio, Inc., 25 Chestnut Street, Danbury, Connecticut 06810-6816, and to its counsel, Peter Tannenwald, Esquire, Fletcher, Heald, and Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau