

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

In the Matter of)	
)	
Alaska Educational Radio System, Inc.)	NAL/Acct. No. MB-201841410016
)	FRN: 0008610982
Licensee of FM Translator Stations K223BJ,)	Facility ID Nos. 146553, 146578 154428
Eagle River, Alaska, DK300BY, Willow Creek,)	File Nos. BRFT-20130925AAF, BRFT-
Alaska, and K283AZ, Anchorage, Alaska)	20130930ASZ, BRFT-20130930ASY
)	

FORFEITURE ORDER

Adopted: October 17, 2018

Released: October 18, 2018

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Alaska Educational Radio System, Inc. (AERS), licensee of FM translator stations K223BJ, Eagle River, Alaska, and K283AZ, Anchorage, Alaska, for willfully and repeatedly violating Section 74.1263 of the FCC's Rules (Rules) by discontinuing the operations of K223BJ and K283AZ on four different occasions without authority to do so.¹ In addition, we cancel that portion of the underlying *Memorandum Opinion and Order and Notice of Apparent Liability for a Forfeiture (NAL)* that found AERS apparently liable for a forfeiture in relation to its operation of a third FM translator station DK300BY,² Willow Creek, Alaska.³

II. BACKGROUND

2. On July 18, 2018, the Media Bureau (Bureau) issued the *NAL*, which proposed a forfeiture in the amount of ten thousand dollars (\$10,000) to AERS for violations of Section 74.1263 of the Rules that occurred at K223BJ, K283AZ and K300BY.⁴ As noted in the *NAL*, K223BJ was off the air on three different occasions, but AERS did not notify the Commission that the translator had gone off the air or seek special temporary authority (STA) for the translator to remain silent.⁵ AERS also failed to

¹ 47 CFR § 74.1263(c).

² At AERS' request, Staff cancelled DK300BY's license on August 13, 2018. *See Broadcast Actions*, Public Notice, Report No. 49301 (MB Aug. 16, 2018).

³ *See* 47 CFR § 73.561(d).

⁴ *Alaska Educational Radio Sys., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 18-738 (MB July 18, 2018) (*NAL*).

⁵ *NAL*, DA 18-738, at paras. 4 and 19. K223BJ was silent from January 31, 2010, until January 30, 2011; from March 26, 2012, until March 22, 2013; and from March 26, 2013, until March 23, 2014. *Id.* at para. 4.

notify the Commission or obtain permission for a period of silence at K283AZ,⁶ and a period of silence at DK300BY.⁷

3. AERS filed a response to the *NAL*, requesting reduction or cancellation of the proposed forfeiture.⁸ It asserts that it was unaware of the violations set forth in the *NAL*.⁹ AERS also argues that the proposed forfeiture is “disproportionate” because the translators’ violations stemmed from “a single source”—silences at the translators’ primary station. Finally, AERS states that its annual operating budget was less than \$1,000 for 2015, 2016 and 2017, that AERS has no liquid assets and that its “fixed assets” amount to less than \$20,000.¹⁰ AERS indicates that it will provide financial statements for the previous three years by September 24, 2017.¹¹ To date, we have received no such statements.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹² Section 1.80 of the Rules,¹³ and the Commission’s Forfeiture Policy Statement.¹⁴ 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.¹⁵

5. We reject AERS’ argument that it was unaware of the violations and that they “would have been remedied immediately if [it] had been aware.”¹⁶ The fact that AERS was unaware of the violations does not serve to excuse or mitigate them.¹⁷ We further reject AERS’ assertion that the proposed forfeiture is disproportionate since all of the unauthorized silences stemmed from the silence of a single “originating facility.” The Commission’s records indicate that this was not the case. K223BJ rebroadcast the signal of DKABN-FM, while K283AZ and DK300BY rebroadcast the signals of other stations.¹⁸

⁶ *Id.* at para. 19. K223AZ was silent from September 30, 2013, through September 29, 2014. *Id.*

⁷ *Id.* K300BY was silent from September 30, 2013, through September 30, 2014. *Id.*

⁸ Letter from Wolfgang Kurtz, President, AERS, to Marlene H. Dortch, Secretary, FCC (rec’d Sept. 4, 2018) (Response).

⁹ Response at 1. AERS notes that it had filed applications to assign the licenses of K223BJ and its primary station, DKABN-FM, Kasilof, Alaska, to Kenai Cares, Inc. *Id.* AERS states that Kenai Cares and the attorney it shared with Kenai Cares made representations that they would provide assistance “in maintaining compliance” at these stations. *Id.*

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² 47 U.S.C. § 503(b).

¹³ 47 CFR § 1.80.

¹⁴ *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).

¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹⁶ Response at 1.

¹⁷ See *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 123, para. 5 (EB 2014).

¹⁸ K283AZ rebroadcasts the signal of KZND-FM, Houston, Alaska. DK300BY rebroadcast the signal of KZND-FM from 2008 until September 2014, when it began rebroadcasting the signal of KVNT(AM), Eagle River, Alaska.

6. Finally, we reject AERS' claim of financial hardship. As we noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to financial hardship unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflect the licensee's current financial status.¹⁹ While AERS indicated it would provide such documentation, it has not done so. Accordingly, we will not reduce the forfeiture based on financial hardship.²⁰

7. We do, however, cancel that portion of the proposed forfeiture attributable to an unauthorized period of silence at DK300BY. We do so because, since the release of the *NAL*, AERS surrendered—and staff cancelled—the translator's license.²¹

8. We have considered the Licensee's response to the *NAL* in light of the above statutory factors, the Rules, and the Commission's Forfeiture Policy Statement. We conclude that the Licensee willfully violated Section 74.1263 of the Rules, and we find that there is no other basis for reduction of the proposed monetary forfeiture. We will therefore issue a forfeiture in the amount of eight thousand dollars (\$8,000).

IV. ORDERING CLAUSES

9. In light of the Alaska Educational Radio System, Inc.'s surrender of the license of DK300BY, IT IS HEREBY ORDERED that, pursuant to Section 504(b) of the Communications Act of 1934, as amended,²² and Sections 0.61, 0.283, and 1.80(f)(4) of the Rules,²³ that portion of the *Notice of Apparent Liability for a Forfeiture*, NAL/Acct. No. MB-201841410016, issued to Alaska Educational Radio System, Inc., and attributable to its operation of DK300BY IS CANCELLED.²⁴

10. IT IS FURTHER 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,²⁵ that Alaska Educational Radio System, Inc., SHALL FORFEIT to the United States the sum of eight thousand dollars (\$8,000) for willfully and willfully and repeatedly violating Section 74.1263 of the Commission's Rules.

11. 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

¹⁹ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount based on financial hardship).

²⁰ See, e.g., *Lake County Cmty. Radio*, Forfeiture Order, 31 FCC Rcd 7659, 7661, para. 8 (MB 2016) (forfeiture not reduced where licensee provided no documentation regarding its ability to pay); *Peconic Public Broad.*, Forfeiture Order, 31 FCC Rcd 1904, 1906, para. 5 (MB 2016) (same), *aff'd Peconic Public Broad.*, Memorandum Opinion and Order, 31 FCC Rcd 7082 (MB 2016); *Westport Bd. of Educ.*, Forfeiture Order, 26 FCC Rcd 1088, 1089-90, para. 6 (MB 2011) (same).

²¹ See *supra* note 2.

²² 47 U.S.C. § 504(b).

²³ 47 CFR §§ 0.61, 0.283, 1.80(f)(4).

²⁴ See, e.g., *Alma Coll., Mount Pleasant Baptist Acad., Mount Pleasant Public Schools, and Central Michigan Univ.*, Memorandum Opinion and Order, 18 FCC Rcd 21275, 21031 n.38 (WTB 2003) (because station license surrendered, no enforcement action warranted).

²⁵ 47 U.S.C. § 503(b); 47 CFR §§ 0.283, 1.80.

within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²⁶

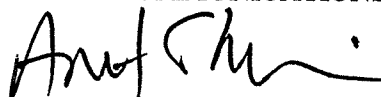
12. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the NAL/Acct. No. and FRN No. referenced herein. Regardless of the form of payment, a completed FCC Form 159 must be submitted. When completing the FCC Form 159, enter the 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 Heather.Dixon@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Requests for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²⁷

14. 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 Alaska Educational Radio System, Inc., 12415 Merlin Drive, Seward, AK 99664, and its counsel, David Tillotson, 4606 Charleston Terrace, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION



Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁶ 47 U.S.C. § 504(a).

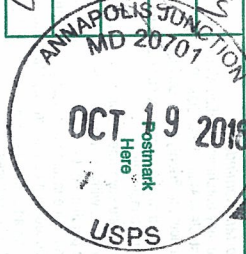
²⁷ See 47 CFR § 1.1914.

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 City, State, ZIP+4

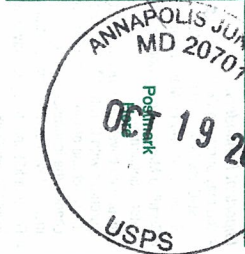
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- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
Alaska Educational Radio Systems, Inc.
12415 Merlin Drive
Seward, AK 99664

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☒ Agent ☐ Addressee
 B. Received by (Printed Name) NOELAN KURTZ C. Date of Delivery 11/6/13
 D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

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☐ Insured Mail ☐ C.O.D.
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Article Addressed to:
David Tilletson
4606 Charleston Terrace
Washington, DC 20007

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☒ Agent ☐ Addressee
 B. Received by (Printed Name) NOELAN KURTZ C. Date of Delivery 11/6/13
 D. Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

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