



Federal Communications Commission  
Washington, D.C. 20554

February 12, 2019

*In Reply Refer to:*  
1800B3-HOD

Wolfgang Kurtz  
Alaska Educational Radio System, Inc.  
12358 Roundtable Drive  
Seward, AK 99664

Gary Rose  
Turquoise Broadcasting Co., LLC  
PO Box 8125  
Tumacacori, AZ 85640

In re: **Alaska Educational Radio System,  
Inc.**  
NAL/Account No. MB-201841410016

K223BJ, Eagle River, Alaska  
Facility ID No. 146553  
File No. BRFT-20130925AAF

K283AZ, Anchorage, Alaska  
Facility ID No. 154428  
File No. BRFT-20130930ASY

**Petition for Reconsideration**

Dear Sirs:

We have before us a Petition for Reconsideration (Petition) filed on November 19, 2018, by Alaska Educational Radio System, Inc. (AERS), licensee of FM translator stations K223BJ, Eagle River, Alaska, and K283AZ, Anchorage, Alaska (together, Translators). AERS seeks reconsideration of a Forfeiture Order released by the Media Bureau's Audio Division (Division) on October 18, 2018.<sup>1</sup> Also before us is a pleading filed by Turquoise Broadcasting Company, LLC (Turquoise), on December 12, 2018 (Opposition). For the reasons discussed below, we deny the Petition and deny in part and otherwise dismiss the Opposition.

**Background.** On July 18, 2018, the Division issued a Notice of Apparent Liability for Forfeiture (NAL), which proposed a forfeiture in the amount of ten thousand dollars (\$10,000) to AERS for violations of the Commission's rules (Rules) that occurred at K223BJ, K283AZ and another AERS translator station.<sup>2</sup> AERS filed a response to the NAL, requesting reduction or cancellation of the proposed forfeiture.<sup>3</sup> Among other things, AERS stated that its annual operating budget was less than \$1,000 for 2015, 2016 and 2017, that it had no liquid assets and that its "fixed assets" amounted to less

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<sup>1</sup> *Alaska Educational Radio Sys., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 18-1063 (MB Oct. 18, 2018) (Forfeiture Order).

<sup>2</sup> *Alaska Educational Radio Sys., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 6758 (MB 2018) (NAL).

<sup>3</sup> Letter from Wolfgang Kurtz, President, AERS, to Marlene H. Dortch, Secretary, FCC (rec'd Sept. 4, 2018).

than \$20,000.<sup>4</sup> AERS indicated that it would provide financial statements for the previous three years by September 24, 2017, but failed to do so.<sup>5</sup>

On October 17, 2018, the Division issued the Forfeiture Order at issue here. Therein, the Division rejected all of AERS' arguments, including those related to financial hardship. Specifically, the Division noted that, while AERS stated it would provide financial documentation, it had not done so. Finding no basis for reduction of the proposed monetary forfeiture, the Division issued a forfeiture in the amount of eight thousand dollars (\$8,000).<sup>6</sup>

AERS timely filed the Petition. Therein, AERS for the first time argues that a forfeiture order released by the Division in 2010 "has direct bearing" on its case.<sup>7</sup> According to AERS, this decision and those relied upon by the Division therein demonstrate that "there is apparent latitude for the reduction of Forfeitures notwithstanding the stipulations cited" in the Forfeiture Order.<sup>8</sup> AERS also reiterates its claim that it is unable to pay and requests a reduction in the forfeiture amount.<sup>9</sup> AERS does not include any financial documentation to support this claim but suggests that it will provide "further documentation" by the end of November 2018.<sup>10</sup> To date, the Commission has received no additional material from AERS.

Turquoise then filed its Opposition. Therein, Turquoise notes that the NAL required AERS to pay certain application filing fees because the translators at issue had been operating as commercial translators at the time the applications were filed. Turquoise asserts that the Division "overlooked the payment of regulatory fees" for the operation of these commercial translator stations and urges the Division to require AERS to pay "past due" regulatory fees related to these stations.<sup>11</sup> In addition, Turquoise asserts that AERS has "a pattern of never paying FCC assessed fines," "AERS should be denied further FCC application processing due to failure to pay the outstanding fines," and AERS "failed to provide the requested proof of financial hardship."<sup>12</sup>

**Discussion.** The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts or arguments not known or existing at the time of the petitioner's last opportunity to present such matters.<sup>13</sup> A petition for reconsideration that simply reiterates arguments previously considered and rejected will be denied.<sup>14</sup>

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Forfeiture Order, DA 18-1063, at paras. 5-6, 8. The amount of the forfeiture differs from that proposed in the NAL because the Bureau cancelled that portion of the NAL attributable to violations occurring at the third AERS translator station. *Id.* at para. 7. It did so because, after the release of the NAL, AERS surrendered—and staff cancelled—that translator's license. *Id.*

<sup>7</sup> Petition at 1, citing *Friends of Christian Radio*, Forfeiture Order, 25 FCC Rcd 2580 (MB 2010).

<sup>8</sup> *Id.*, citing *Best Media, Inc.*, Forfeiture Order, 24 FCC Rcd 4140 (MB 2009) (*Best Media*); and *Valley Baptist Church and Christian School*, Forfeiture Order, 23 FCC Rcd 8740 (MB 2008) (*Valley Baptist Church*).

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> Opposition at 3.

<sup>12</sup> *Id.*

<sup>13</sup> See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

<sup>14</sup> *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert denied*, 387 U.S. 967 (1966).

On reconsideration, AERS reiterates its unsubstantiated claim that it is unable to pay the forfeiture. The Division considered and rejected this claim in the *Forfeiture Order*.<sup>15</sup> Accordingly, we deny this portion of the Petition. We dismiss the remainder of the Petition, which consists of AERS' argument that *Friends of Christian Radio* and the cases cited therein demonstrate that "there is apparent latitude for the reduction" of the forfeiture adopted in this case.<sup>16</sup> The Commission issued its decisions in *Friends of Christian Radio* and the other two cases cited by AERS between 2008 and 2010. We believe that, by exercising due diligence, AERS could have presented this argument when it filed its response to the NAL. Accordingly, we dismiss this new argument.<sup>17</sup>

We find that the Division considered and rejected Turquoise's argument that because AERS had not paid a forfeiture proposed by the Media Bureau's Audio Division in 2009, the Commission's "red light" rules required the Commission to halt processing of all AERS applications. To the extent that Turquoise seeks to reargue this issue here, we deny its Opposition. To the extent that it argues that the AERS' failure to pay the forfeiture at issue here triggers the Commission's "red light" rules, we reject this argument. As the NAL explained, the Commission does "not treat monetary forfeitures imposed after issuance of a notice of apparent liability as debts owed to the United States until the forfeiture ha[s] been partially paid or a court of competent jurisdiction has ordered payment of the forfeiture and such order is final."<sup>18</sup> Finally, to the extent that Turquoise alleges that the Division erred in requiring AERS to pay

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<sup>15</sup> Forfeiture Order, DA 18-1063, at para. 6 (stating that 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; and noting that AERS had not provided such documentation).

<sup>16</sup> Petition at 1.

<sup>17</sup> In any event, we find *Friends of Christian Radio* and the other two cases cited therein distinguishable. Each of these cases involved a late-filed renewal application while this case involves violations of the Rules governing operation of FM translators. In *Friends of Christian Radio*, the Commission *sua sponte* reduced the forfeiture at issue since it had done the same in *Best Media* and *Valley Baptist Church*. *Friends of Christian Radio*, 25 FCC Rcd at 2582, para. 7 (explaining that the Bureau was reducing the forfeiture amount to \$250 based on "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"), citing *Best Media* and *Valley Baptist Church*. Likewise, the Commission relied on *Valley Baptist Church* in *sua sponte* reducing the forfeiture imposed in *Best Media*. *Best Media*, 24 FCC Rcd at 4143, para. 9 (explaining that the Bureau was reducing the forfeiture amount to \$500 based on "the Commission's recent decisions assessing forfeitures in the amount of \$500 against licensees of translator stations for violations of Section 73.3539 of the Rules and Section 301 of the Act"), citing *Valley Baptist Church*. *Valley Baptist Church*, in turn, relies on other decisions where the Bureau *sua sponte* reduced forfeitures assessed for the same violations. *Valley Baptist Church*, 23 FCC Rcd at 8741-42, para. 7 (explaining that the Bureau was reducing the forfeiture amount to \$250 based on "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"), citing *Good News Translator Assoc.*, Memorandum Opinion 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) (*Good News*); and *Bible Broad. Network, Inc.*, Memorandum Opinion and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 11445 (MB 2007) (same) (*Bible Broad.*). It should be noted that, in reducing the forfeitures being assessed in *Good News* and *Bible Broadcasting*, the Bureau relied on the fact that the renewal applications were filed prior to expiration of the stations' licenses. *Good News*, 22 FCC Rcd at 20923, para. 6; *Bible Broad.*, 22 FCC Rcd at 11446, para. 6. Further, while the Bureau did reference the fact that the station at issue in *Friends of Christian Radio* was licensed to the "secondary FM translator service," *Friends of Christian Radio*, 25 FCC Rcd at 2582, para. 7, its primary rationale in reducing the forfeiture was the need to treat similarly situated parties similarly. See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965). None of these cases establish that a reduction in forfeiture is warranted where a translator station has operated (or ceased operations) in violation of the Commission's technical rules.

<sup>18</sup> See NAL, 33 FCC Rcd at 6760, para. 6, citing *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540, 6542 n.16 (2004). See also 47 CFR §§ 1.1901 (defining the terms "claim" and "debt" to include "forfeitures issued after a notice of apparent liability that have been partially paid or for which a court of

application fees for the Translators but not “past due” regulatory fees, we find this portion of its Opposition constitutes an untimely petition for reconsideration of the NAL and dismiss it.<sup>19</sup>

Finally, we note that the above-referenced applications to renew the Translators’ licenses remain pending. As we stated in the NAL,<sup>20</sup> we will grant them by separate action upon the conclusion of this forfeiture proceeding so long as there are no other issues that would preclude such action.

**Ordering Clauses.** Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Alaska Educational Radio System, Inc., on November 19, 2018, IS DENIED. IT IS FURTHER ORDERED that the pleading filed by Turquoise Broadcasting Company, LLC, on December 12, 2018, IS DENIED IN PART AND OTHERWISE DISMISSED.

Sincerely,



Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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competent jurisdiction has ordered payment and such order is final”); 1.1905 (providing that “the assessment and collection of monetary forfeitures imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80” and that, “[a]fter compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings”).

<sup>19</sup> 47 U.S.C. § 405(a) (petitions for reconsideration must be filed no later than 30 days after public notice of Commission decision). Petitions for reconsideration of the NAL were due on August 17, 2018. The Commission may not waive this statutory deadline absent extraordinary circumstances. *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986). No such circumstances are present here.

<sup>20</sup> NAL, 33 FCC Rcd at 6766, para. 21.