

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

In re Application of)	
)	
Stein Broadcasting Co., Inc.)	NAL/Acct. No. MB-200741410437
)	FRN: 0003774015
For Renewal of License for Stations)	
KXOX(AM))	Facility I.D. No. 63197
Sweetwater, Texas)	File No. BR-20060717ABO
)	
and)	
)	
KXOX-FM)	Facility I.D. No. 63198
Sweetwater, Texas)	File No. BRH-20060717ABN

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

Adopted: November 30, 2007

Released: December 3, 2007

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned applications of Stein Broadcasting Co., Inc. (the "Licensee"), for renewal of its licenses for Stations KXOX(AM) and KXOX-FM, Sweetwater, Texas (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 file timely license renewal applications for the Stations, and apparently willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in 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 total amount of fourteen thousand dollars (\$14,000), and we grant the captioned KXOX(AM) and KXOX-FM renewal applications and reinstate the Stations' call signs.

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

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.

expiration date of the license sought to be renewed.”⁵ Applications for renewal of the Stations’ licenses should have been filed by April 1, 2005. No such applications were filed, and the Stations’ licenses expired on August 1, 2005. Accordingly, on July 12, 2006, 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 further operation of the Stations was unauthorized and must cease immediately.⁶ Upon receipt of the letter, on July 17, 2006, it filed the captioned license renewal applications and. Subsequently, on August 1, 2006, the Licensee filed requests for special temporary authorization (“STA”) to continue operations pending consideration of the untimely KXOX(AM) and KXOX-FM renewal applications.⁷ The staff granted the STA Requests on August 17, 2006, and they expired on February 17, 2007.⁸ The Licensee then filed requests for additional STA to operate the Stations February 23, 2007.⁹ The staff granted the Second STA Requests on March 13, 2007, and they expired on September 13, 2007.¹⁰ The Licensee did not seek an extension of the Second STA or file for additional authority to continue operating the Stations.

3. In the STA Requests, the Licensee explains it believed it had originally filed the renewal applications on time through the Commission’s CDBS electronic filing system, but realized upon receiving the July 12th Cancellation Letter that the process had not been completed, because the applications showed a status of “Ready” and not filed.

III. DISCUSSION

4. *Proposed Forfeiture.* In this case, the Licensee has failed to file a timely license renewal application for KXOX(AM) and KXOX-FM, as required by Section 73.3539(a) of the Rules. Moreover, it continued operation of the Stations for more than 15 months after their licenses had expired on August 1, 2005, before filing the license renewal applications and seeking STA to so operate, in violation of Section 301 of the Act; it also continued the Stations’ operations after each of two STAs had expired – once for a period of approximately one week after the expiration of the First STA, and for a period of more than two months after the expiration of the Second STA – each constituting an additional violation of the Act. Notwithstanding the Licensee’s explanation that the failure to file properly timely renewal applications for KXOX(AM) and KXOX-FM was inadvertent, licensees are obligated to comply fully with the Rules, including filing timely renewal applications and maintaining in effect the stations’ authorizations.¹¹ Here, 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

⁵ 47 C.F.R. § 73.3539(a).

⁶ *Letters to Stein Broadcasting Co., Inc.* Ref. 1800B3-JDB (Chief, Audio Division, Media Bureau, Jul. 12, 2006).

⁷ *See* File No. BLSTA-20060801AAG & BLSTA-20060801AAF (the “STA Requests”).

⁸ *Letter to David Oxenford, Esq.*, Ref. 1800B3 (Chief, Audio, Division, Media Bureau, Aug. 3, 2006).

⁹ *See* File No. BELSTA-20070223AHQ & BELSTA-20070223AHR (the “Second STA Requests”).

¹⁰ *Letter to Jarrett S. Taubman, Esq.*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Mar. 13, 2007).

¹¹ *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)).

United States for a forfeiture penalty.¹² 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ 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.”¹⁶

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.¹⁷ The guidelines also specify a base forfeiture amount of \$10,000 for station construction and/or operation without an instrument of authorization for the service.¹⁸ 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.”¹⁹

7. In this case, the Licensee failed to file timely renewal applications for KXOX(AM) and KXOX-FM and continued operating the Stations for more than 15 months after their licenses had expired on August 1, 2005, before filing the appropriate renewal applications and seeking STAs to so operate. Additionally, it continued operating the Stations after each of two STAs had expired. Nevertheless, because it had previously been licensed to operate the Station, the latter transgressions are not comparable to “pirate” wireless operations, which typically have been subject to forfeiture 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 propose, for each Station, a forfeiture for the full \$3,000 amount for the failure to timely file the renewal applications, but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000 for each station.²⁰ Thus, we propose a forfeiture in the total amount of \$14,000.

¹² 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1).

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

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

¹⁶ 47 U.S.C. § 312(f)(2).

¹⁷ 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.

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

¹⁹ 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).

²⁰ See, e.g., *Discussion Radio Incorporated*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7438 (2004); *Gospel Media, Inc.*, Letter 19 FCC Rcd 15600 (MB 2004). Although in *Gospel Media*, the Bureau imposed a proposed forfeiture of \$3,000 for unauthorized operation, the unauthorized operation lasted only two weeks. The \$4,000 forfeiture proposed here for unauthorized operation is analogous to use of an unauthorized frequency by a land mobile station holding a license for a different frequency. See, e.g., *In the Matter of Dave Mitchell*, Forfeiture Order, 20 FCC Rcd 1366 (EB 2005); *In the Matter of Joselyn Gordon*, Forfeiture Order, 19 FCC Rcd 23557 (EB 2004).

8. *License Renewal Applications.* In evaluating these applications for license renewal, the Commission's decision is governed by Section 309(k) of the Act.²¹ 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 applications.²² 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.”²³

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.²⁴ Further, we find that Stations KXOX(AM) and KXOX-FM 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 Stein Broadcasting Co., Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fourteen thousand dollars (\$14,000) for its apparent willful violations of Section 73.3539 of the Commission's Rules and apparent 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*, Stein Broadcasting Co., 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,

²¹ 47 U.S.C. § 309(k).

²² 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).

²³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁴ For example, we do not find here that the Licensee's operation of the Stations "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 stations] 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).

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. 20554.²⁵

16. IT IS FURTHER ORDERED, that the call signs KXOX(AM) and KXOX-FM ARE REINSTATED.

17. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Stein Broadcasting Co., Inc. for Stations KXOX(AM) and KXOX-FM, Sweetwater, Texas (File Nos. BR-20060717ABO and BRH-20060717ABN) ARE GRANTED.

18. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Mr. Jeff Stein, Stein Broadcasting Co., Inc., P.O. Box 570, Sweetwater, Texas 79556.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁵ See 47 C.F.R. § 1.1914.