

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

In re Applications of	)	
	)	NAL/Acct. No. MB-200741410160
<b>SPOKANE PUBLIC RADIO, INC.</b>	)	FRN: 0003230208
	)	
For Renewal of License for	)	
FM Translator Stations	)	
K220BW	)	Facility I.D. No. 61935
Kellogg, Idaho	)	File No. BRFT-20050801DDN
	)	
K269DU	)	Facility I.D. No. 61940
Sandpoint, Idaho	)	File No. BRFT-20050801DDO
	)	
and	)	
	)	
K220BX	)	Facility I.D. No. 61938
Coeur D'Alene, Idaho	)	File No. BRFT-20050801DDP

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

**Adopted: January 31, 2007**

**Released: February 15, 2007**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the captioned applications of Spokane Public Radio, Inc. (the "Licensee"), for renewal of its licenses for FM Translator Stations K220BW, Kellogg, Etc., Idaho, K269DU, Sandpoint, Idaho, and K220BX, Coeur D'Alene, Idaho (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"),<sup>1</sup> by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules<sup>3</sup> by failing to timely file license renewal applications for the Stations. 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 four thousand five hundred dollars (\$4,500), and we grant the captioned K220BW, K269DU, K220BX renewal applications.

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

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539.

## 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 expiration date of the license sought to be renewed.”<sup>4</sup> Applications for renewal of the Stations’ licenses should have been filed by June 1, 2005, four months prior to the Station’s October 1, 2005, license expiration date,<sup>5</sup> but were not. In fact, the Licensee did not file the renewal applications until August 1, 2005. The Licensee explains that, although its translators are licensed to communities in Idaho, the primary station they all carry is located in the State of Washington. It apparently believed that it did not have to file renewal applications for the translator stations until the filing deadline for the renewal application for that primary station.<sup>6</sup>

## III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the record indicates that the Licensee has failed to timely file license renewal applications for the Stations, as required by Section 73.3539(a) of the Rules. The Rules provide that license renewal applications 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.<sup>7</sup> No exception is made in the Rules for a translator station whose primary station’s license expires on a date after that for that of the translator station. Accordingly, we reject the Licensee’s explanation.

4. 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 willfully or repeatedly failed 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.<sup>8</sup> 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.<sup>9</sup> 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,<sup>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> 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.”<sup>12</sup>

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<sup>4</sup> 47 C.F.R. § 73.3539(a).

<sup>5</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>6</sup> Application at Exhibit 30.

<sup>7</sup> 47 C.F.R. § 73.3539(a).

<sup>8</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>11</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>12</sup> 47 U.S.C. § 312(f)(2).

5. 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.<sup>13</sup> 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."<sup>14</sup>

6. In this case, the Licensee failed to timely file the K220BW, K269DU, and K220BX renewal applications. Taking into consideration this fact, the fact that the renewal applications were filed prior to expiration of the Stations' licenses, and all of the factors required by Section 503(b)(2)(D) of the Act<sup>15</sup> and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 per station, for a total proposed forfeiture of \$4,500.

7. *License Renewal Applications.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>16</sup> 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.<sup>17</sup> 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."<sup>18</sup>

8. We find that the Licensee's apparent violations of Section 73.3539 of the Rules do not constitute "serious violation[s]" warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>19</sup> Further, we find that Stations K220BW, K269DU, and K220BX served the public interest, convenience, and necessity during the subject license terms. We will therefore grant the license renewal applications below.

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<sup>13</sup> 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.

<sup>14</sup> 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).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>16</sup> 47 U.S.C. § 309(k).

<sup>17</sup> 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).

<sup>18</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>19</sup> 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).

#### IV. ORDERING CLAUSES

9. 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 Spokane Public Radio, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand five hundred dollars (\$4,500) for its apparent willful and repeated violations of Section 73.3539 of the Commission's Rules.

10. 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*, Spokane Public 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.

11. 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 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.

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

13. 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.

14. 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.<sup>20</sup>

15. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Spokane Public Radio, Inc. for Stations K220BW, Kellogg, Etc., ID, K269DU, Sandpoint, ID, and K220BX, Coeur D'Alene, ID (respectively File Nos. BRFT-20050801DDN, BRFT-20050801DDO, and BRFT-20050801DDP) ARE GRANTED.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Spokane Public Radio, Inc., 2319 N. Monroe Street,

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<sup>20</sup> See 47 C.F.R. § 1.1914.

17. Spokane, Washington 99205 and to its counsel, Ernest T. Sanchez, Esq., The Sanchez Law Firm, 2300 M Street, N.W., Suite 800, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau