

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

In re Applications of)	
)	
PHELPS DODGE BAGDAD, INC.)	NAL/Acct. No. MB-200741410164
)	FRN: 0003800935
For Renewal of Licenses for)	
FM Translator Stations)	
K242AC, Bagdad, Arizona)	Facility I.D. No. 14880
)	File No. BRFT-20050819ADK
)	
K247AC, Bagdad, Arizona)	Facility I.D. No. 14876
)	File No. BRFT-20050819ADL
and)	
)	
K262AA, Bagdad, Arizona)	Facility I.D. No. 14878
)	File No. BRFT-20050819ADM

**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 Phelps Dodge Bagdad, Inc. (the "Licensee"), for renewal of its licenses for FM Translator Stations K242AC, K247AC, and K262AA, all licensed to Bagdad, Arizona (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, 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 Rules³ 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 K242AC, K247AC, and K262AA renewal applications.

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.

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.”⁴ 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,⁵ but were not. In fact, the Licensee did not file the renewal applications until August 19, 2005. The Licensee provides no explanation for the untimely filing of the renewal applications.

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. Moreover, as noted above, the Licensee did not provide an explanation for the late filings.

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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ 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.”¹⁰

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.¹¹ 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.”¹²

⁴ 47 C.F.R. § 73.3539(a).

⁵ See 47 C.F.R. §§ 73.1020, 73.3539(a).

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

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ 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.

¹² 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

6. In this case, the Licensee failed to timely file the renewal applications for K242AC, K247AC, and K262AA. 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 Act¹³ and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 for each of the Stations for the late filings, 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.¹⁴ 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.¹⁵ 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.”¹⁶

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.¹⁷ Further, we find that Stations K242AC, K247AC, and K262AA each served the public interest, convenience, and necessity during the subject license terms. We will therefore grant the license renewal applications below.

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 Phelps Dodge Bagdad, 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 violation 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*, Phelps Dodge Bagdad, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

¹³ 47 U.S.C. § 503(b)(2)(D).

¹⁴ 47 U.S.C. § 309(k).

¹⁵ 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).

¹⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁷ 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).

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 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.

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. 20554.¹⁸

15. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Phelps Dodge Bagdad, Inc., for Stations K242AC, Bagdad, Arizona, K247AC, Bagdad, Arizona, and K262AA, Bagdad, Arizona (respectively File Nos. BRFT-20050819ADK, BRFT-20050819ADL and BRFT-20050819ADM) ARE GRANTED.

16. IT IS FURTHER ORDERED that a copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Phelps Dodge Bagdad, Inc., One North Central Avenue, Floor 16, Phoenix, Arizona 85004, and to its counsel, Jeffrey Rummel, Esquire, Arent Fox PLLC, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

¹⁸ See 47 C.F.R. § 1.1914.