

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

In re Application of )
)
CALVARY CHAPEL OF TWIN FALLS, INC. ) Facility I.D. No. 92559
) NAL/Acct. No. MB-2007414140113
) FRN: 0005005699
For Renewal of License for ) File No. BRFT-20050531ASS
FM Translator Station K201FP )
Arapaho, Oklahoma )
)
)
For Renewal of License for ) Facility I.D. No. 92560
FM Translator Station K216FR ) File No. BRFT-20050531AST
Clinton, Oklahoma )
)
)

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 31, 2007

Released: February 16, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Calvary Chapel of Twin Falls, Inc. (the "Licensee"), for renewal of its licenses for FM translator Stations K201FP, Arapaho, and K216FR, Clinton, Oklahoma (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 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 three thousand dollars (\$3,000), and we grant the captioned K201FP and K216FR renewal applications.

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 February 1, 2005, four months prior to the Stations' June 1, 2005, license

<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.

<sup>4</sup> 47 C.F.R. § 73.3539(a).

expiration dates,<sup>5</sup> but were not. In fact, the Licensee did not file the renewal applications until May 31, 2005, the day before the Stations' licenses were set to expire. The Licensee states that the untimely filing of the renewal applications are due to the fact that the K216FR was first constructed as Station K219FK in August 2002 and licensed in October 2002, and subsequently received (and has been operating with) a modification of facilities to specify its current channel and facilities since December of 2003;<sup>6</sup> the Licensee apparently did not realize that it would need to file renewal applications for the stations so soon after the licensing of K216FR's modified facilities.

### 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. Notwithstanding any clerical errors that it may have made in calculating a license renewal deadline, the Licensee was obligated to fully comply with the Rules, including timely filing the Stations' renewal applications and maintaining in effect the Stations' authorizations.<sup>7</sup>

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>

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

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

<sup>6</sup> See File No. BRFT-20050521ASS at Exhibit 30. Station K201FP, the Licensee indicates, is located on the same tower as K216FR. *Id.* at Exhibit 34.

<sup>7</sup> 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)).

<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).

<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.

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 K201FP and K216FR 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 \$3000.

7. *License Renewal Application.* 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 a “serious violation” 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 K201FP and K216FR each served the public interest, convenience, and necessity during their 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 Calvary Chapel of Twin Falls, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000) for its apparent willful violation of Section 73.3539 of the Commission’s Rules.

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<sup>14</sup> 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 II.

<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 Station operation "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 station] 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).

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*, Calvary Chapel of Twin Falls, 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 Calvary Chapel of Twin Falls, Inc. for FM translator Stations K201FP, Arapaho, Oklahoma (File No. BRFT-20050531ASS) and K216FR, Clinton, Oklahoma (File No. BRFT-20050531AST) 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 Calvary Chapel of Twin Falls, Inc., P.O. Box 391, Twin Falls, Idaho 83303, and its counsel Cary S. Tepper, Esq., Booth, Freret, Imlay & Tepper, PC, 7900 Wisconsin Ave., N.W., Suite 304, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai  
Chief, Media Bureau

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<sup>20</sup> See 47 C.F.R. § 1.1914.