

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

In the Matter of)
)
EDDIE FLOYD) MB Docket No. 10-157
) NAL/Acct. No. 201041410018
Licensee of FM Translator Station K273AF,) FRN: 0011733425
Carson City, NV)
) Facility ID No. 13529
EDDIE FLOYD)
)
and)
)
WILKS LICENSE COMPANY-RENO LLC)
)
For Assignment of License of FM Translator) File No. BALFT-20070904ACU
Station K273AF, Carson City, NV)
)
EDDIE FLOYD)
)
For Modification of License of FM Translator) File No. BMLFT-20071218ABH
Station K273AF, Carson City, NV)
)

ORDER TO SHOW CAUSE
HEARING DESIGNATION ORDER
AND
NOTICE OF APPARENT LIABILITY FOR A FORFEITURE

Adopted: August 5, 2010

Released: August 5, 2010

By the Commission:

I. INTRODUCTION

1. By this Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability for a Forfeiture, we commence a hearing proceeding before an Administrative Law Judge to determine ultimately whether Walter Edward Floyd, aka Eddie Floyd, licensee of FM Translator Station K273AF, Carson City, NV, is qualified to be and remain a Commission licensee and, as a consequence thereof, whether his license for Station K273AF should be revoked and the above-captioned applications should be denied. As explained more fully below, we take this action on the basis of Floyd's felony conviction relating to money laundering and his apparent failure to inform the Commission about such misconduct.

II. BACKGROUND

2. Floyd has been licensee of Station K273AF since August 14, 2001.¹ On December 29, 2006, Floyd entered a guilty plea in United States District Court, District of Nevada to one count of violating 18 U.S.C. § 1956(a)(1)(B)(I), involving money laundering, and one count of violating 18 U.S.C. § 2, aiding and abetting a felony crime, both felonies. According to a Memorandum of Plea Negotiation,² from approximately April 19, 2002 to March 24, 2004, Floyd provided real property located in Doyle, California, to an individual by the name of Daren Mabunda for the purpose of cultivating marijuana. Floyd drafted a fictitious lease for the real property to cover payments by Mabunda to Floyd for the marijuana operation. Between April 22, 2002, and August 18, 2003, Floyd received payments from Mabunda totaling \$37,500, which Floyd deposited in his bank accounts. In December 2003, Floyd gave Mabunda 400,000 shares of stock in a company he owned, “Nevada Matters,” in exchange for approximately \$110,000. In February 2004, Floyd gave Mabunda an additional 100,000 shares in the company in exchange for \$27,500. The court found these payments constituted money laundering by Floyd in the total amount of \$175,000. Floyd acknowledged in the Memorandum of Plea Negotiation that all payments he received came from the proceeds of Mabunda’s drug trafficking activity, and Floyd engaged in the transactions with Mabunda in order to conceal and disguise the source of the funds. On March 30, 2007, Floyd was sentenced to 48 months in federal prison, to commence on June 1, 2007.³ He was released by the Federal Bureau of Prisons on May 21, 2010, and is currently under the jurisdiction of the U.S. Probation Office on three years of supervised release.

3. On September 4, 2007, after he began serving his prison sentence, Floyd filed the captioned application on FCC Form 345⁴ seeking Commission consent to the assignment of the license for Station K273AF to Wilks License Company-Reno LLC (“Wilks”). Therein, despite his recent felony conviction, Floyd responded in the affirmative to the following inquiry at Item No. 8:

Adverse Findings. Licensee/permittee certifies that, with respect to the licensee/permittee and any party to the application, no adverse finding has been made, nor has an adverse final action been taken by a court or administrative body in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media-related antitrust or unfair competition; fraudulent statements to another government unit; or discrimination.

¹ On October 1, 2005, Floyd apparently allowed his license for Station K273AF to expire without filing a timely application for renewal. More than seven months later, on May 15 and 16, 2006, respectively, Floyd filed an application for renewal of license of Station K273AF and a request for Special Temporary Authority (“STA”) to allow him to operate Station K273AF during the pendency of his license renewal application. The staff promptly granted Floyd an STA for six months. Floyd apparently allowed the STA to lapse without seeking an extension thereof, but continued operating Station K273AF. In *Eddie Floyd*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (Chief, Media Bur., rel. Feb. 5, 2007) (“NAL”), the staff granted the license renewal application for Station K273AF and found Floyd apparently liable for a forfeiture in the amount of \$7,000 for failing to file a timely renewal application and for operating Station K273AF without authority. Floyd did not respond to the NAL or pay the forfeiture. In a separate action today, the Media Bureau is releasing a Forfeiture Order relating to that NAL.

² See *United States v. Walter Edward Floyd*, Criminal No. 3:06-CR-21-RLH, Memorandum of Plea Negotiation, (dated Dec. 22, 2006; entered Dec. 29, 2006, U.S. District Court, District of Nevada).

³ See *United States v. Walter Edward Floyd*, Criminal No. 3:06-CR-0021-RLH-RAM, Judgment, at 1-2 (Mar. 30, 2007).

⁴ Application for Transfer of Control of a Corporate Licensee or Permittee, or for Assignment of License or Permit if TV or FM Translator Station or Low Power Television Station.

4. Subsequently, on October 25, 2007, Floyd filed an amendment on FCC Form 345 to his assignment application regarding the rebroadcast of another station. Again, despite his felony conviction, he responded in the affirmative to Item No. 8. Thereafter, on December 18, 2007, Floyd filed the other captioned application on FCC Form 350⁵ in which he proposed to make technical modifications to the facilities of Station K273AF. FCC Form 350 contains an inquiry at Item No. 8 which is substantially similar to the inquiry at Item No. 8 of FCC Form 345. Floyd responded yet a third time in the affirmative, despite his felony conviction. Floyd certified to the Commission under penalty of perjury in each application that the information provided therein was true and correct.

III. DISCUSSION

5. Section 312(a)(2) of the Communications Act of 1934, as amended (the “Act”),⁶ provides that the Commission may revoke any license if “conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application.” In addition, pursuant to Section 309(e) of the Act,⁷ the Commission is required to designate an application for evidentiary hearing if a substantial and material question of fact is presented regarding whether grant of the application would serve the public interest, convenience, and necessity. The character of the applicant is among those factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought.⁸ In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, “evidence of any conviction for misconduct constituting a felony.”⁹ The Commission has found that “[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant’s or licensee’s propensity to obey the law” and to conform to provisions of both the Act and the agency’s rules and policies.¹⁰

6. In the instant case, Floyd’s felony conviction relating to money laundering of proceeds from illegal drug trafficking raises serious questions about Floyd’s propensity to comply with the Commission’s rules and, consequently, his basic character qualifications to be and remain the licensee of Station K273AF. Floyd’s felony conviction also raises substantial and material questions whether the public interest would be served by grant of the two applications. Accordingly, appropriate issues will be designated for hearing.

7. The courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”¹¹ Misrepresentation and lack of candor

⁵ Application for an FM Translator or FM Booster Station License.

⁶ 47 U.S.C. § 312(a)(2).

⁷ 47 U.S.C. § 309(e).

⁸ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210-11, ¶ 60 (1986), *recon. denied*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Ass’n for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987), *recon. granted in part*, 5 FCC Rcd 3252 (1990), *recon. on other grounds*, 6 FCC Rcd 3448 (1991), *modified on other grounds*, 7 FCC Rcd 6564 (1992) (“*Character Policy Statement*”).

⁹ See *Character Policy Statement*, 5 FCC Rcd at 3252 ¶ 4.

¹⁰ *Id.*

¹¹ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000), *cert. denied*, 532 U.S. 920 (2001); see also 47 C.F.R. § 1.17 (requiring truthful and accurate statements in all statements to the Commission); 47 C.F.R. § 1.65 (setting forth deadlines for revising or amending pending FCC applications if such applications are no longer substantially accurate or complete or there has been a substantial change as to any other matter of decisional significance).

raise serious concerns as to whether a licensee will be truthful in future dealings with the Commission.¹² Misrepresentation is a false statement of fact made with intent to deceive.¹³ Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.¹⁴ Intent can be shown in many ways. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive.¹⁵ Intent to deceive can also be inferred when one has a clear motive to deceive.¹⁶ Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a motive.¹⁷

8. Floyd's apparent repeated failure to disclose his felony conviction in three filings with the Commission raises very serious questions whether he misrepresented material facts to, and/or was lacking in candor in his dealings with, the Commission, in willful and/or repeated violation of Section 1.17 of the Commission's Rules.¹⁸ The mere existence of an inaccuracy in any application, without any indication that there was intentional deception, is insufficient to justify consideration of a misrepresentation or lack of candor issue in an evidentiary hearing.¹⁹ In this case, however, as set forth above, Floyd failed to disclose his felony conviction in response to a direct question in three separate Commission applications. In addition, Floyd had a clear motive for not revealing his felony conviction to the Commission -- to conceal information that could potentially disqualify him as a Commission licensee and block the proposed sale of Floyd's translator station to Wilks.

9. Floyd should have revealed the existence of his felony conviction in response to the inquiry set forth above in each of his three filings with the Commission. He did not do so, and, instead, certified under penalty of perjury that all of the statements therein were true, complete, correct, and made in good faith even though his filings appear to have satisfied none of these standards. Such apparent false certifications raise additional concerns about Floyd's propensity to deal truthfully with the Commission. Under the circumstances presented here, appropriate issues will be designated relating to the disposition of the applications and Floyd's character qualifications to be and remain a Commission licensee.

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 312(a) and (c) of the Communications Act of 1934, as amended,²⁰ and Section 1.91(a) of the Commission's Rules,²¹ Eddie Floyd is hereby ORDERED TO SHOW CAUSE why his license for FM Translator Station K273AF,

¹² *Character Policy Statement*, 102 FCC 2d at 1210-11 ¶ 60.

¹³ See *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

¹⁴ *Id.*

¹⁵ "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

¹⁶ See, e.g., *RKO General, Inc.*, Decision, 4 FCC Rcd 4679, 4684, ¶ 29 (Rev. Bd. 1989).

¹⁷ *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n. 39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983) (Commission stated that "the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred.").

¹⁸ 47 C.F.R. § 1.17.

¹⁹ See, e.g., *Greater Muskegon Broadcasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15464, 15472-73, ¶¶ 22-23 (1996).

²⁰ 47 U.S.C. §§ 312(a) and (c).

²¹ 47 C.F.R. § 1.91(a).

Carson City, NV, SHOULD NOT BE REVOKED in a proceeding before an administrative law judge, at a time and place to be specified in a subsequent order, upon the following issues:

- (a) To determine whether Eddie Floyd misrepresented material facts to, and/or engaged in a lack of candor before, the Commission in his responses to inquiries in either one or both of the captioned applications for assignment of license (as originally filed and as amended) and for modification of Station K273AF, in willful and/or repeated violation of Section 1.17 of the Commission's Rules;
- (b) To determine whether Eddie Floyd made false certifications in either one or both of the captioned applications for assignment of license (as originally filed and as amended) and of modification of Station K273AF;
- (c) To determine the effect of Eddie Floyd's felony conviction on his qualifications to be and remain a Commission licensee;
- (d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Eddie Floyd is qualified to be a Commission licensee;
- (e) To determine whether the license for FM Translator Station K273AF, Carson City, NV, should be revoked.

11. IT IS FURTHER ORDERED, pursuant to Sections 309(e) and 309(k) of the Act,²² that the captioned applications for assignment of license and of modification of Station K273AF, filed by Eddie Floyd, ARE DESIGNATED FOR A HEARING, before an administrative law judge at a time and place to be specified in a subsequent Order, upon the following issue:

- (a) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether either one or both of the captioned applications for assignment of license and for modification of Station K273AF, filed by Eddie Floyd, should be granted.

12. IT IS FURTHER ORDERED that, in accordance with Section 312(d) of the Act,²³ the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues specified in paragraph 10, above, shall be on the Enforcement Bureau, and, in accordance with Section 309(e) of the Act, the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issue specified in paragraph 11, above, shall be on Eddie Floyd.

13. IT IS FURTHER ORDERED, that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to Section 503(b)(1) of the Act,²⁴ whether an ORDER OF FORFEITURE should be issued against Eddie Floyd in an amount not to exceed \$37,500 for each of the three instances in which Eddie Floyd apparently engaged in willful and/or repeated violations of Section 1.17 of the Commission's Rules.²⁵

²² 47 U.S.C. § 309(e), (k).

²³ 47 U.S.C. § 312(d).

²⁴ 47 U.S.C. § 503(b)(1).

²⁵ 47 C.F.R. § 1.17.

14. IT IS FURTHER ORDERED that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Act.²⁶

15. IT IS FURTHER ORDERED, that, to avail himself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to Sections 1.91 and 1.221 of the Commission's Rules,²⁷ Eddie Floyd, in person or by attorney, shall file by September 13, 2010, a written appearance in triplicate stating that he will appear at the hearing and present evidence on matters specified in this Order. If Eddie Floyd fails to file a written notice of appearance within the time specified, or a petition to accept, for good cause shown, such written appearance beyond the expiration of the 30 day time period, the two captioned applications shall be dismissed with prejudice for failure to prosecute²⁸ and the issue specified in paragraph 11 shall be deemed to be moot. Furthermore, if Eddie Floyd fails to file a timely written notice of appearance, the right to a hearing on all issues specified in paragraph 10, above, shall be deemed to be waived.²⁹ In the event that a hearing on the issues in paragraph 10 is waived, the Chief Administrative Law Judge (or presiding officer if one has been designated) shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.³⁰

16. IT IS FURTHER ORDERED, that the Chief, Enforcement Bureau IS MADE A PARTY to this proceeding without the need to file a written appearance.

17. IT IS FURTHER ORDERED, that, pursuant to Section 309(e) of the Act, Wilks License Company-Reno LLC is deemed a party in interest and shall be permitted to participate in this proceeding, provided, by September 13, 2010, it files, in triplicate, a written notice of appearance stating its intent to appear at the hearing and present evidence on matters specified herein.

18. IT IS FURTHER ORDERED, that a copy of each document filed in this proceeding by or on behalf of Eddie Floyd and/or Wilks License Company-Reno LLC SHALL BE SERVED on the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554.

19. IT IS FURTHER ORDERED, that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first class mail to Walter Edward Floyd, aka Eddie Floyd, at his address of record: 405 Apple Street, Reno, NV 89502.

20. IT IS FURTHER ORDERED, that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested, and by regular first class mail to Wilks License Company-Reno LLC, at 3775 Mansell Road, Alpheretta, GA 30022, with a copy to Richard Zaragoza, Esq., Pillsbury Winthrop Show Pittman LLP, 2300 N Street, N.W., Washington, DC 20037.

²⁶ 47 U.S.C. § 503(b)(3).

²⁷ 47 C.F.R. §§ 1.91, 1.221.

²⁸ See 47 C.F.R. § 1.221(c).

²⁹ See 47 C.F.R. § 1.92(a)(1).

³⁰ See 47 C.F.R. § 1.92(c).

21. IT IS FURTHER ORDERED, that the Secretary of the Commission shall cause to have this Order or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary