

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

In re Application of)	
)	
Tony and Robyn Howell Family Trust)	NAL/Acct. No. MB-201641410019
)	FRN: 0022968929
)	
For Renewal of License for)	
Station KHQN(AM))	Facility ID No. 58480
Spanish Fork, Utah)	File No. BR-20130911ABF

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

Adopted: November 4, 2016

Released: November 4, 2016

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application of the Tony and Robyn Howell Family Trust (Licensee) for renewal of license for KHQN(AM), Spanish Fork, Utah (Station). In this *Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that the Licensee apparently willfully violated Section 73.3539 of the Rules² by failing to file a timely license renewal application for the Station. 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 one thousand five hundred dollars (\$1,500).

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.”³ An application for renewal of the Station’s license should have been filed by June 1, 2013. No such application was filed until September 11, 2013.⁴ The licensee provides no explanation or extenuating circumstances for the untimely filing of the renewal application.

¹ This *NAL* is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and Section 1.80 of the Commission’s rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the Rules. See 47 CFR § 0.283.

² See 47 CFR § 73.3539(a).

³ 47 CFR § 73.3539(a).

⁴ See File No. BR-20130911ABF.

III. DISCUSSION

3. **Proposed Forfeiture.** Licensee in this case failed to file a timely license renewal application for Station KHQN(AM), as required by Section 73.3539(a) of the Rules. The Licensee's renewal application was not received until September 11, 2013, less than 30 days before the Station's license was to expire. Moreover, as noted above, the Licensee did not provide an explanation that would excuse the late filing.

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 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 United States for a forfeiture penalty. 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. 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,⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁶

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.⁷ 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."⁸

6. In this case, the Licensee failed to file a timely renewal application for the Station and has not provided any explanation for the untimely filing. However, the Licensee did file the renewal application prior to the expiration of the Station's license. Taking into consideration all of the factors required by Section 503(b)(2)(D) of the Act⁹ and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely license renewal application.¹⁰

7. **License Renewal Application.** In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹¹ 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)

⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁶ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

⁷ 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, App. A (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(4), note to paragraph (b)(4), Section I.

⁸ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(4).

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ See *Little Miami Local Schools*, Forfeiture Order, 25 FCC Rcd 3553 (MB 2010) (affirming \$1,500 forfeiture issued in Notice of Apparent Liability for failure to file a timely renewal application); *Barnesville Broad., Inc.* Forfeiture Order, 25 FCC Rcd 3561 (MB 2010) (same); *Faith Trinity Assemblies* Forfeiture Order, 25 FCC Rcd 2593 (MB 2010)(same).

¹¹ 47 U.S.C. § 309(k).

there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹² 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.”¹³

8. We find that the Licensee’s apparent violation of Section 73.3539 of the Rules does 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.¹⁴ Further, based on our review of the license renewal application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the captioned license renewal application by separate action upon the conclusion of this forfeiture proceeding if no other issues would preclude grant of the application.¹⁵

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 the Tony and Robyn Howell Family Trust is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for its apparent willful 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*, the Tony and Robyn Howell Family Trust, 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 a check or similar instrument, wire transfer or credit card and must include the NAL/Acct. No. and FRN No. referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Karen Workeman at Karen.Workeman@fcc.gov and Parul Desai at Parul.Desai@fcc.gov. Below are additional instructions the Licensee should follow based upon the form of payment selected.

¹² 47 U.S.C. § 309(k)(1).

¹³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁴ 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, para. 6 (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." *Id.* at 200, para. 11. *See also Ctr. for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

¹⁵ We note that the Bureau has before it an application for Commission consent to the assignment of the Station license and sale of its assets to Sace Broadcasting Corporation. *See* File No. BAL-20160831ABV. We will consider this assignment application in connection with the KHQN(AM) license renewal application upon the conclusion of this forfeiture proceeding.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 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, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.¹⁶

15. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Tony and Robyn Howell Family Trust, P.O. Box 328, Delta, UT 84624, and Mr. Paul Jensen, General Manager, KHQN(AM), 2250 N. University Ave. #4890, Provo, UT 84604.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ See 47 CFR § 1.1914.