

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

In re Application of)	
)	
Rufus Resources, LLC)	Facility ID No. 52048
)	NAL/Acct. No. MB-201841410010
For Renewal of License for Station KMFR(AM),)	FRN: 0023542277
Pearsall, Texas)	File Nos. BRH-20170303AAN

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

Adopted: April 17, 2018

Released: April 17, 2018

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the captioned application (Application) of Rufus Resources, LLC (Licensee), for renewal of the license for Station KMFR(AM), Pearsall, Texas (Station). In this *Memorandum Opinion and Order and 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, and apparently willfully and repeatedly violated Section 301 of the Act,³ by continuing Station operations after its license and special temporary authority (STA) had expired. Based upon our review of the facts and circumstances before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of seven thousand dollars (\$7,000).

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 An application for renewal of the Station’s license should have been filed by September 26, 2016, four months prior to the Station’s January 26, 2017, license expiration date,⁵ but was not. Instead, on February 15, 2017, two weeks after the Station’s license expired, the Licensee filed a request for STA (STA Request), seeking authority to remain on the air

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 FCC’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.

³ 47 U.S.C § 301.

⁴ 47 CFR § 73.3539(a).

⁵ During the previous round of radio station renewal filings and while the Station was licensed to a different entity, we renewed the Station’s license for a term of two years instead of a full term of eight years. See *Broadcast Actions*, Public Notice, Report No. 48415 (Jan. 29, 2015); *San Antonio Radioworks, LLC*, Letter Order, Ref. 1800B3-TH (MB Jan. 26, 2015). As a result, the Station faced an earlier deadline for filing its renewal application than other stations licensed to communities in Texas.

despite the expiration of its license.⁶ In the STA Request, the Licensee indicated that it had acquired the Station on April 9, 2015, and “inadvertently and temporarily lost sight of the exact date by which a new application for renewal of license would be due.” Licensee subsequently filed the Application on March 3, 2017. Licensee did not provide any explanation in the Application as to why the Application was untimely or why it had not been filed at the time of the STA Request. Staff granted the STA Request on March 6, 2017, indicating that the authorization would expire “(1) 180 days from the date of [the] letter; or (2) upon action of the pending [Application], whichever is sooner” and that grant of the STA Request was “without prejudice to whatever action, if any, the staff deems appropriate in light of the failure to file a timely license renewal application for [the Station].”⁷ The Licensee did not request an extension of the STA, and it expired on September 2, 2017. No subsequent request for STA has been filed.

III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee failed to file a timely license renewal application for the Station, as required by Section 73.3539(a) of the Rules. Moreover, the Licensee continued Station operations for over one month without authorization from the time its license had expired on January 26, 2017, to the time the staff granted the STA Request on March 6, 2017, in violation of Section 301 of the Act, and continued unauthorized Station operations after the expiration of the STA on September 2, 2017.

4. This NAL is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, a person who is found 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹

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.¹² The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.¹³ 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,

⁶ BLSTA-20170215AAU.

⁷ *KMFR(AM), Pearsall, Texas*, Letter Order, Ref. 1800B3 (MB Mar. 6, 2017).

⁸ 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR 1.80(a)(1).

⁹ 47 U.S.C. § 312(f)(1).

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

¹¹ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹² *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 CFR § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹³ A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁴

6. In this case, the Licensee failed to file a timely renewal application for the Station and continued Station operations for more than a month after the expiration of its license and before the staff granted the STA Request, and then continued unauthorized operations after the expiration of the STA. Nevertheless, because it had previously been licensed to operate the Station, the latter transgression is not comparable to “pirate” wireless operations, which typically have been subject to forfeitures of \$10,000 or higher. Taking into consideration all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture for the full \$3,000 amount for the failure to file a timely renewal application but reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000. Thus, we propose a forfeiture in the amount of seven thousand dollars (\$7,000).¹⁵

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁶ 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.¹⁷ 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.”¹⁸

8. We find that the Licensee’s apparent violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.¹⁹ 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 license renewal application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant of the application.

¹⁴ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 53; 47 CFR § 1.80(b)(4).

¹⁵ *See, e.g., Chisholm Trail Commc’ns, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 107 (MB 2018) (\$7,000 forfeiture assessed where licensee was issued a two-year renewal, failed to timely file renewal application, and continued station operations after expiration of license).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ 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 Center 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).

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 Rufus Resources, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven thousand dollars (\$7,000) for its apparent willful violation of Section 73.3539 of the FCC's Rules and apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the FCC's Rules, that, within thirty (30) days of the release date of this *NAL*, Rufus Resources, LLC, 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, wire transfer or credit card, and must include the *NAL*/Acct. No. and FRN No. referenced herein. 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 Alexander.Sanjenis@fcc.gov and Michael.Wagner@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- 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: Albert Shuldiner, 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 20554.²⁰

15. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Rufus Resources, LLC, c/o David Martin Phillip, 210 North Panna Maria Avenue, Karnes City, TX 78118.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁰ See 47 CFR § 1.1914.