

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

In the Matter of

KNFL, Inc.
Tremonton, Utah

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File No. EB-99-DV-025

NAL/Acct. No. 915DV0003

FORFEITURE ORDER

Adopted: April 12, 2000

Released: April 13, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000) against KNFL, Inc, (“KNFL”), licensee of station KNFL(FM), Tremonton, Utah, for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The noted violation involves operation of a radio station without a license.

2. On July 2, 1999, the Commission’s Denver, Colorado, Field Office (“Denver Office”) issued the referenced Notice of Apparent Liability (“NAL”) for a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000) to KNFL for the noted violations.² KNFL filed a response to the NAL on August 2, 1999. For the reasons discussed below, we affirm the forfeiture.

II. BACKGROUND

3. On October 21, 1998, the Denver Office received information indicating that an unauthorized FM translator station operating on the frequency 105.1 MHz was rebroadcasting the signal of KNFL(FM), which is authorized to transmit on frequency 104.9 MHz. On the same day, agents from the Denver Office contacted KNFL(FM)’s general manager, Morgan Skinner, by telephone. Morgan Skinner admitted that the KNFL(FM) signal was being rebroadcasted by an FM translator station operating on 105.1 MHz. In response to the agents’ request for further information about the translator station, Morgan Skinner sent the Denver Office a letter dated October 21, 1998. In that letter, Morgan Skinner admitted that "KNFL [Inc.] purchased the translator, antenna and coaxial cable and had it installed." On November 12, 1998, an agent from the Denver Office informed Morgan Skinner by telephone that his letter contained no information establishing KNFL’s authority to operate an FM translator on 105.1 MHz, and warned him

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability*, NAL Acct. No. 915DV0003 (Compl. & Inf. Bur., Denver Office, Released July 2, 1999).

that he must cease operation of the FM translator station unless he provided evidence of an authorization. Morgan Skinner stated that he would contact his attorney and have the appropriate information faxed to the agent, but the agent never received such information.

4. On March 16, 1999, agents from the Denver Office detected an FM translator station on 105.1 MHz in Logan, Utah, which was rebroadcasting the signal of KNFL(FM). The agents went to the main studio for KNFL(FM) in Logan, Utah, where Steve Skinner (Morgan Skinner's brother) was in charge of the station's operation. Steve Skinner readily admitted that KNFL was operating an FM translator station on 105.1 MHz. At the request of the agents, Steve Skinner terminated the FM translator's operation.

5. On July 2, 1999, the District Director, Denver Office, issued the subject NAL to KNFL in the amount of \$16,000 for the unauthorized operation of the FM translator station in repeated and willful violation of Section 301 of the Act. The Denver Office noted the following in issuing the NAL: as of March 16, 1999, KNFL had no authorization pending for the operation of the FM translator; in light of its several years of experience in the broadcast industry and the six broadcast stations that it operated in Utah, KNFL should be familiar with the Commission's regulations governing broadcast station licenses; KNFL continued to operate the FM translator after being verbally notified that it had no authorization to operate the FM translator; and KNFL's operation of the FM translator would not be permitted by Section 74.1232(e) of the Commission's Rules ("Rules"),³ which prohibits an FM station from providing financial support to an FM translator that would extend the FM station's protected contour.

6. On August 2, 1999, the Commission received KNFL's response to the NAL, in which KNFL requests cancellation or reduction of the proposed forfeiture. KNFL admits that, until March 16, 1999, it operated an FM translator station in the Logan, Utah, area on frequency 105.1 MHz and that this operation was "a technical violation of the rules." KNFL asserts that, until November 20, 1998, it held a construction permit allowing it to operate KNFL(FM) on 105.1 MHz.⁴ KNFL presents several arguments for cancellation or reduction of the proposed forfeiture. First, KNFL contends that two incorrect factual conclusions "served as underpinnings" for the proposed forfeiture. According to KNFL, these are the determination that the coverage of the FM translator operated by KNFL extended beyond the protected contour of KNFL(FM) and the determination that KNFL had not requested an authorization to operate the translator.⁵ Second, KNFL argues that the base amount used for calculation of the proposed forfeiture should have been \$10,000 rather than \$11,000. Third, KNFL asserts that it qualifies for a reduction under

³ 47 C.F. R. § 74.1232(e).

⁴ The construction permit for operation on 105.1 MHz was superseded on November 20, 1998, when the Commission granted an application to modify the license for KNFL(FM).

⁵ According to the Commission's records, on November 30, 1998, KNFL filed a request with the Commission for special temporary authority ("STA") to operate an FM translator station on frequency 105.1 MHz to serve the Logan, Utah, community. The Commission has not acted on that STA request because it is affected by a freeze upon the granting of certain broadcast applications. The purpose of the freeze is to permit the orderly filing of applications following the opening of an auction window. *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Fixed Television Service Licenses*, 12 FCC Rcd. 22363 (1997), para. 61.

each of the downward adjustment factors specified in the Guidelines for Assessing Forfeitures.⁶ These factors are: minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay. KNFL claims its violations are minor because the FM translator station operated within KNFL(FM)'s protected signal contour, apparently did not interfere with authorized transmissions, and did not cause harm to the public. With respect to "good faith or voluntary disclosure," KNFL argues that it was "forthcoming and honest in its dealings with the Commission . . . its principals responded to all inquiries . . . and even sought the grant of an emergency STA as soon as the legality of its operation was questioned." KNFL contends that it has a history of overall compliance because it has not previously been assessed a forfeiture. Finally, KNFL claims it is unable to pay the proposed forfeiture and submits financial statements from 1996, 1997, and 1998 to support that claim. The financial statements, which are marked "unaudited" and do not contain a certification of their correctness, indicate that KNFL's gross revenues were \$56,387 in 1996, \$80,888 in 1997 and \$119,654 in 1998.

III. DISCUSSION

7. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act,⁷ Section 1.80 of the Rules,⁸ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, (rel. Dec. 28, 1999) ("*Policy Statement*"). In examining KNFL's response, Section 503(b) of the Act requires that the Commission take into account 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 other such matters as justice may require. 47 U.S.C. § 503(b)(2)(D).

8. Section 301 of the Act prohibits radio operation without an authorization from the Commission. Neither KNFL's formerly held construction permit for a primary station nor its request for an STA confers any authority to operate an FM translator station on 105.1 MHz. *See Southeast Telephone, Inc.*, DA 00-325 (Enforcement Bureau 2000), and *WRHC Broadcasting Corp.*, DA 00-619 (Enforcement Bureau 2000). We conclude that KNFL's operation of a translator station on the frequency 105.1 MHz between October 21, 1998, and March 16, 1999, was without authorization and, therefore, in repeated and willful violation of Section 301 of the Act.

9. We agree with KNFL that the proper base amount for the forfeiture is \$10,000 rather than \$11,000. However, as indicated below, this does not affect the ultimate forfeiture amount.

10. We reject KNFL's argument that the forfeiture amount should be reduced because incorrect factual conclusions "served as underpinnings" for the proposed forfeiture. As a Commission licensee, KNFL is on notice that it must comply with the Rules and the Act. In this case, KNFL received a specific warning from the Commission and chose to disregard that warning by continuing to operate an unauthorized FM translator station after the warning. This egregious conduct fully justifies increasing the

⁶ See Note to Section 1.80(b)(4) of the Rules, 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

forfeiture from the base amount of \$10,000 to \$16,000. The issue of whether KNFL requested an authorization to operate the translator is irrelevant in this case, since the mere filing of an application does not constitute authority to operate. Moreover, whether the FM translator's signal extended beyond KNFL(FM)'s protected contour is also irrelevant to the issue of whether KNFL repeatedly and willfully violated Section 301 of the Act. Therefore, we need not consider the "factual conclusions" questioned by KNFL.

11. In addition, we reject KNFL's arguments that the proposed forfeiture should be mitigated on the basis of the four downward adjustment factors specified by the Guidelines for Assessing Forfeitures. Because of the extended duration of KNFL's violations and their continuance after a warning, we cannot classify those violations as "minor." Further, nothing in the record justifies a reduction based on a claim of good faith or voluntary disclosure or a history of overall compliance. As to the fourth factor, the NAL informed KNFL that claims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three-year period.⁹ See *Barry A. Stevenson*, 12 FCC Rcd 1976, 1977 (Compl. & Inf. Bur. 1997); *Morradio Inc.*, 14 FCC Rcd at 5201, 5203-04 (Compl. & Inf. Bur. 1999). KNFL supplied financial statements, which are marked "unaudited" and do not contain any certification of their correctness. Furthermore, we cannot determine from the information available that these financial statements were prepared under generally accepted accounting procedures. We, thus, are unable to establish the reliability of KNFL's financial statements and cannot consider them. Therefore, we cannot determine that KNFL is unable to pay the proposed forfeiture.

12. We have examined KNFL's response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that KNFL has failed to justify cancellation or reduction of the proposed forfeiture amount. Therefore, we affirm the forfeiture of sixteen thousand dollars (\$16,000).

IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ KNFL, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of sixteen thousand (\$16,000) for the repeated and willful violation of Section 301 of the Act, which prohibits unlicensed radio operation.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 915DV0003. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th

⁹ NAL at note 3.

¹⁰ 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

¹¹ 47 U.S.C. § 504(a).

Street, S.W., Washington, D.C. 20554.

15. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to counsel for KNFL, Inc., Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, Virginia 22201.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau