

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

In re Applications of)	
)	
Calvary Baptist Church)	Facility I.D. No. 8396
)	NAL/Acct. No.: MB-200741410366
For Renewal of License for)	FRN: 0009289034
FM Translator Station W249AS)	File Nos. BRFT-20030715AAQ
Norwich, New York)	BRFT-20070319ABV

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

Adopted: July 16, 2007

Released: July 17, 2007

By the Associate Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned applications of Calvary Baptist Church (the "Licensee"), for renewal of its license for FM translator Station W249AS, Norwich, New York (the "Station"). 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"),¹ by the Associate Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3539 of the Rules,³ by failing to timely file license renewal applications for the Station, and willfully and repeatedly violated Section 301 of the Act,⁴ by engaging in the unauthorized operation of the Station after its authorization had expired. 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 seven hundred fifty dollars (\$750), and we reinstate the Station's call sign and grant the captioned W249AS 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."⁵ This Licensee failed to timely file license renewal applications for the Station during the last two renewal cycles.

3. During the previous license term for New York stations, an application for renewal of the Station's license should have been filed by February 1, 1998, four months prior to the Station's June 1,

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3539.

⁴ See 47 U.S.C. § 301.

⁵ 47 C.F.R. § 73.3539(a).

1998, license expiration date, but was not. Accordingly, on June 12, 2003, the Staff wrote to the Licensee, indicating that the Station's license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's data base. The Licensee was also advised that any further operation of the Station was unauthorized and must cease immediately.⁶ Upon receipt of the Cancellation Letter, on July 15, 2003, the Licensee filed a license renewal application for the station.⁷ One day later, it filed a petition for reconsideration ("Petition") of the Cancellation letter⁸ and request for Special Temporary Authorization ("STA")⁹ to continue operation of the Station pending consideration of the untimely renewal application. In the STA request, the Licensee indicates that it properly filed a license renewal application for the Station in 1997,¹⁰ but was not aware of the fact that it should have renewed its license one year later, as required by the rule changes for FM translator renewal dates.¹¹ The Commission had no record of receiving the Petition and the STA Request until they were submitted as an attachment to the Licensee's March 19, 2007, supplemental license renewal application.¹² The STA Request was accepted for filing on March 20, 2007, and granted by the staff on July 13, 2007.¹³

4. During the current license renewal cycle for New York broadcast stations, a supplemental license renewal application should have been filed by February 1, 2006, four months prior to the June 1, 2006, expiration date for New York stations, but was not.¹⁴ In fact, the Licensee did not file the application until March 19, 2007,¹⁵ more than nine months after the New York station licenses had expired. The Licensee explained that it mistakenly believed that it was not to file another renewal application for the Station until the pending 2003 Renewal Application had been granted.¹⁶ Upon being

⁶ *Letter to Calvary Baptist Church*, Ref 1800B3 (Chief, Audio Division, Office of Broadcast License Policy, Media Bureau, June 12, 2003) ("Cancellation Letter").

⁷ File No. BRFT-20030715AAQ (the "2003 Renewal Application").

⁸ In light of our action reinstating the call sign for Station W249AS and granting its renewal application, we need not take action on the Petition.

⁹ See BLSTA-20030716AEM.

¹⁰ BRFT-19970214YB, granted on June 30, 1997.

¹¹ 47 C.F.R. § 74.15. The FM translator license renewal dates were amended effective December 20, 1994, to permanently coincide with those of full service radio stations operating in the same state. Additionally, the broadcast station license renewal form, FCC Form 303-S, was revised to enable transmitter stations co-owned with primary stations in the same state which rebroadcast the signal of the primary station to file for license renewal on a single application form with their primary station. See *In the Matter of Modifying Renewal Dates for Certain Stations Licensed under Part 74 of the Commission's Rules*, Report and Order, 9 FCC Rcd 6504 (1994), 60 Fed. Reg. 10511-01 (Feb. 27, 1995). This rule making proceeding acknowledged that the action taken would require FM translator stations in certain states to file two license renewal applications in a short period of time, but indicated that this result was "unavoidable." 9 FCC Rcd at 6505.

¹² See BRFT-2007319ABV, Attachment 6.

¹³ *Letter to Brian K. Conover, Calvary Baptist Church*, Ref. 1800B3-KCB (Chief, Audio Division, Media Bureau, July 13, 2007).

¹⁴ A licensee whose renewal application is in deferred status must file a supplemental renewal application on the date a regular renewal application would otherwise be due. See *Faith Center, Inc.*, Memorandum Opinion and Order, 99 FCC 2d 1164 (1984), quoting *Carlisle Broadcasting Associates*, Memorandum Opinion and Order, 59 FCC 2d 885 (1976).

¹⁵ See BRFT-20070319ABV.

¹⁶ See Application, Exhibit 6.

advised by the staff of this error, the Licensee sought the advice of legal counsel and filed the supplemental renewal application “as soon as [was] possible.”¹⁷

III. DISCUSSION

5. *Proposed Forfeiture.* In this case, the Licensee has failed to timely file license renewal applications for the Station, as required by Section 73.3539(a) of the Rules, during two separate renewal cycles. Moreover, during the Licensee’s first renewal cycle, it continued operating the Station for more than five years after its license had expired on June 1, 1998, before filing the appropriate renewal application and seeking an STA to so operate, in violation of Section 301 of the Act. Moreover, it continued operating the Station for more than nine months after New York station licenses expired on June 1, 2006, before filing the appropriate supplemental renewal application. Licensees are obligated to comply fully with the Rules, including timely filing the Station’s renewal application and maintaining in effect the Station authorization.¹⁸ It did not do so during two license renewal cycles.

6. 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.¹⁹ 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.²⁰ 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,²¹ and the Commission has so interpreted the term in the Section 503(b) context.²² 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.”²³

7. 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.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.²⁵ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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,

¹⁷ File No. BRFT-20070319ABV, Exhibit 6.

¹⁸ 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).

¹⁹ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. 1.80(a)(1).

²⁰ 47 U.S.C. § 312(f)(1).

²¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²³ 47 U.S.C. § 312(f)(2).

²⁴ 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.

²⁵ 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.”²⁶

8. In this case, the Licensee has failed to timely file license renewal applications for the Station, as required by Section 73.3539(a) of the Rules, during two separate renewal cycles. Moreover, during the Licensee’s first renewal cycle, it continued operating the Station for more than five years after its license had expired on June 1, 1998, before filing the appropriate renewal application, and seeking an STA to so operate, in violation of Section 301 of the Act. Moreover, it continued operating the Station for more than nine months after New York station licenses expired on June 1, 2006, before filing the appropriate supplemental renewal application. Nevertheless, because it had previously been licensed to operate Station W249AS, the transgression is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into account these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to two hundred fifty dollars (\$250) for each violation. Thus, we propose forfeiture in the total amount of seven hundred fifty (\$750).

9. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²⁷ 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.²⁸ 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.”²⁹

10. We find that the Licensee’s 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, evidence a pattern of abuse.³⁰ Further, we find that FM translator Station W249AS served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

²⁶ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

²⁷ 47 U.S.C. § 309(k).

²⁸ 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).

²⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³⁰ 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).

11. 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 Baptist Church is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of seven hundred fifty dollars (\$750) for its apparent willful and repeated violation of Section 73.3539 of the Commission's Rules and willful and repeated violation of Section 301 of the Communications Act of 1934, as amended.

12. 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 Baptist Church SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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.

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th 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.

15. 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.

16. 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. 20554.³¹

17. IT IS FURTHER ORDERED that the call sign W249AS IS REINSTATED.

18. IT IS FURTHER ORDERED, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal applications of Calvary Baptist Church for FM translator Station W249AS, Norwich, New York (File Nos. BRFT-20030715AAQ and BRFT20070319ABV) ARE GRANTED.

19. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. Brian Conover, Calvary Baptist Church, 75 Calvary Drive, Norwich, New York 13815.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Robbins
Associate Chief, Media Bureau

³¹ See 47 C.F.R. § 1.1914.