

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

In re Application of)	
)	
Cultural Energy)	Facility ID No. 82299
)	NAL/Acct. No. MB-202141410024
For Renewal of KCEI(FM))	FRN: 0017027764
Red River, New Mexico)	File No. 0000122398

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

Adopted: March 12, 2021

Released: March 12, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Cultural Energy (Licensee) for renewal of its license for KCEI(FM), Red River, New Mexico (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find the Licensee apparently willfully violated section 73.3539 of the Commission's Rules (Rules)³ by failing to timely file a 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 three thousand dollars (\$3,000).

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 30, 2019, the first day of the fourth full calendar month prior to the Station's license expiration date of January 31, 2020.⁵

3. The Licensee did not file the Application until September 24, 2020.⁶ In the Application, the Licensee indicates that the failure to timely file was "an inadvertent oversight," and states that it filed the Application "as soon as [the failure to timely file] was brought to its attention."

¹ File No. 0000122398.

² 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.

³ See 47 CFR § 73.3539.

⁴ 47 CFR § 73.3539(a).

⁵ See 47 CFR § 73.3539(a); *Cultural Energy*, File No. BRED-20130528ALJ, Letter Order (MB Jan. 31, 2018) (renewing the Station's license for a period of two years).

⁶ The Licensee did not file the Application prior to the January 31, 2020, license expiration date either. However, we did not—as is our standard procedure—notify the Licensee of the license's impending expiration. See *Atl. City Bd. of Educ.*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9384, n. 30 (2016) (noting that the Bureau "has

III. DISCUSSION

4. *Proposed Forfeiture.* 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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the section 503(b) context.¹⁰ 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.”¹¹

5. The Commission’s Forfeiture Policy Statement and section 1.80(b)(9) of the Rules establish a base forfeiture amount of \$3,000 for the failure to timely file a required form.¹² 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)(E) of the Act, including “the nature, circumstances, extent

modified its processing policies to promptly notify stations that have failed to file their renewal applications”). *See also, e.g., Radio License Expirations*, Public Notice, DA 21-13 (MB Jan. 6, 2021); *Radio License Expirations*, Public Notice, 35 FCC Rcd 12737 (2020); *Radio License Expirations*, Public Notice, 35 FCC Rcd 9455 (MB 2020) (all reminding licensees that had missed the deadline for filing renewal applications for their station licenses of the upcoming expiration date for those licenses). Nor did we cancel the Station’s license, its special temporary authority (STA), or its call sign, or otherwise notify the Licensee of the license’s expiration. *Cf., e.g., Broadcast Actions*, Public Notice, Report No. 49920 (MB Feb. 5, 2021) (cancelling radio station licenses for failure to file renewal applications). Further, at all times since January 31, 2020, the Licensee has held STA to operate the Station at reduced power. *See* File Nos. BESTA-20200925AAU, BLSTA-20200918AAV, BESTA-20200324AAH, BESTA-20190930AAA. *See also* Email from Dale Bickel, Senior Electronics Engineer, Audio Division, Media Bureau, FCC, to Matthew McCormick, Esq., Counsel for Cultural Energy (Oct. 2, 2020 06:48 EDT); *Cultural Energy*, File No. BLSTA-20200918AAV, Letter Order (MB Oct. 2, 2020); Email from Dale Bickel, Senior Electronics Engineer, Audio Division, Media Bureau, FCC, to Matthew McCormick, Esq., Counsel for Cultural Energy (March 31, 2020 08:34 EDT); Email from Dale Bickel, Senior Electronics Engineer, Audio Division, Media Bureau, FCC, to Matthew McCormick, Esq., Counsel for Cultural Energy (Sept.30, 2019 07:10 EDT). The Bureau’s extension of the STA after the date the Station’s license expired may have contributed to the Licensee’s confusion over the renewal deadline. Finally, we note that the Licensee promptly filed the Application and a new request for STA to continue operating the Station as soon as it was made aware of the license’s expiration. Given these unique factors, we do not believe it would be appropriate to pursue enforcement action related to operation of the Station after January 31, 2020. *Cf. Ward Broad. Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5592, 5592, para. 2 (MB 2020) (proposing a forfeiture for unauthorized operation of a station where renewal application was not filed prior to expiration of station’s license; Bureau notified licensee that station’s license had expired, that all authority to operate the Station was terminated, and that the Station’s call letters were deleted from the Commission’s database, and thus licensee was “on notice” that any further operation of station was unauthorized).

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

⁸ 47 U.S.C. § 312(f)(1).

⁹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹¹ 47 U.S.C. § 312(f)(2).

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)(9), note to paragraph (b)(9), Section I.

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.”¹³

6. In this case, the Licensee failed to timely file a license renewal application for the Station, as required by section 73.3539(a) of the Rules. While the Licensee indicates that the failure to timely file the Application was an “inadvertent oversight,” we note that “‘inadvertence,’ . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”¹⁴ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose the full \$3,000 base forfeiture amount for the failure to file a timely renewal application.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁵ 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.¹⁶ 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.”¹⁷

8. We find that the Licensee’s apparent violation of section 73.3539 of the Rules does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.¹⁸ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the Application.

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 FCC’s rules, that Cultural Energy is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful violation of section 73.3539 of the FCC’s rules.

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*, Cultural Energy **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the

¹³ 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(9).

¹⁴ *Southern California*, 6 FCC Rcd at 4387, para. 3.

¹⁵ 47 U.S.C. § 309(k).

¹⁶ 47 U.S.C. § 309(k)(1).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ 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).

proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),¹⁹ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²⁰

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²¹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and then choose the "Pay by Credit Card" option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account—the bill number is the NAL Account number with the first two digits excluded—and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Any requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's Rules.²³ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct.

¹⁹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁰ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²¹ Instructions for completing the form may be obtained at <https://transition.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 CFR § 1.1914.

²³ 47 CFR §§ 1.16 and 1.80(f)(3).

No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.²⁴

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

14. 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.²⁵

15. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Cultural Energy, 112 Civic Plaza Drive, Taos, NM 87571, and its counsel, Matthew McCormick, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁴ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

²⁵ *See, e.g., Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).