

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

In the Matter of)
CASTELLI MEDIA, LLC) Facility ID No. 182057
Application for License to Cover for Low Power) NAL/Acct. No. 202341420045
Television Station) FRN: 0032494429
K35PH-D, College Station, Texas) LMS File No. 0000232484

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 21, 2023

Released: December 21, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the above-captioned application (Application) of Castelli Media, LLC (CML), for license to cover low power television (LPTV) translator station K35PH-D, College Station, Texas (K35PH-D or Station). In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL),1 we find that CML apparently willfully violated section 73.3598(a) the Commission’s rules (Rules) by failing to timely file a license to cover application,2 and willfully and repeatedly violated section 73.1745 of the Rules3 and section 301 of the Act,4 by engaging in unauthorized operation of the Station after its construction permit had expired. Based upon our review of the facts and circumstances before us, we conclude that CML is apparently liable for a monetary forfeiture in the amount of three thousand five hundred dollars (\$3,500).

II. BACKGROUND

2. K35PH-D was an LPTV station and its original construction permit (CP)5 was granted on August 4, 2020, with a three-year construction period expiring August 4, 2023.6 The Station failed to file a licenses to cover by the CP’s expiration date and the CP was automatically forfeited on August 4, 2023. On September 12, 2023, the Media Bureau’s Video Division issued a letter memorializing the automatic forfeiture of the CP, deleting the Station’s call sign and terminating all authority to construct the Station.7

3. On October 12, 2023, more than two months after the CP was forfeited and nearly seven months after CML states that construction of the Station’s facilities was completed, CML sought

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 47 CFR § 73.3598(a).

3 47 CFR § 73.1745.

4 See 47 U.S.C. § 301.

5 See CDBS File No. BNPDTL-20090825AWA.

6 The CP was subsequently modified but this did not change its expiration date. See LMS File No. 0000210687.

7 See Letter to Castelli Media LLC from Barbara A. Kreisman, Chief, Video Division (Sept. 12, 2023) a copy of which is available at LMS File No. 0000210687.

reconsideration of the cancellation, reinstatement of the Station's expired CP, and permission to file an application for license to cover.⁸ According to CML, the Station completed construction of its facilities and began operating on March 27, 2023.⁹ CML provides documentation that the Station was constructed and operating at that time and have been operating continuously ever since.¹⁰ CML goes on to explain that it failed to file a timely application for license to cover due to an administrative error.¹¹ CML's consulting engineer included a statement that she overlooked filing the Station's license to cover.¹² CML states that "steps are being taken to ensure such an error does not occur again."¹³

4. On December 11, 2023, the Media Bureau's Video Division granted CML's Petition,¹⁴ granted a waiver of the Commission's rules and reinstated the Station's construction permit,¹⁵ and instructed CML to file an application for license to cover within 10 days. CML promptly submitted an application for license to cover (Application) for the Station on December 12, 2023.¹⁶

III. DISCUSSION

5. Pursuant to section 503(b)(1)(B) of the Act,¹⁷ 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.¹⁸ 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.¹⁹ 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,²⁰ and the Commission has so

⁸ See Castelli Media, LLC Petition for Reconsideration (Oct. 12, 2023) (Petition) a copy of which is available at LMS File No. 0000232484.

⁹ Petition at 2.

¹⁰ *Id.* at Attachments A – G.

¹¹ *Id.* at Declaration of Vincent Castelli.

¹² *Id.* at Statement of Susan Hansen.

¹³ *Id.*

¹⁴ See E-Mail to Castelli Media, LLC from Shaun Maher, Video Division (Dec. 11, 2023), a copy of which is available at LMS File No. 0000232484.

¹⁵ A waiver is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown). Providing relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent. See, e.g., *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, para. 11 (2011) (upholding as proper the Bureau's practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process); *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012) (dismissing a petition for reconsideration of an expired construction permit as procedurally improper and treating it instead as a request for waiver). The Division found that based on the specific facts and circumstances presented here waiver was warranted.

¹⁶ LMS File No. 0000232484.

¹⁷ 47 U.S.C. § 503(b)(1)(B).

¹⁸ *Id.* See also 47 CFR § 1.80(a)(1).

¹⁹ 47 U.S.C. § 312(f)(1).

²⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

interpreted the term in the section 503(b) context.²¹ 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.”²²

6. *Apparent Violation.* CML admits that it failed to timely file an application for license to cover as required by section 73.3598(xxx) of the Rules,²³ and continued operating the Station after the CP expired and before filing the Application nearly seven months later. CML explains that it completed construction of the Station’s facilities in accordance with the CP and commenced operation of those facilities well before its expiration date. CML admits that it overlooked submitting the application for license to cover due to an administrative error. It is well settled Commission precedent that administrative oversight is not an excuse for failure to comply with the Commission’s rules.²⁴ Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.²⁵ As a result, for nearly seven months, CML also engaged in unauthorized operation of the Station in violation of section 301 of the Act and section 73.1745 of the Rules.²⁶ We therefore find that CML has apparently violated the Rules and Act and is apparently liable for forfeiture.

7. *Proposed Forfeiture Amount.* The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for the failure to file a required form.²⁷ The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.²⁸ 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 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.”²⁹

8. In this case, CML late-filed the Station’s Application and engaged in unauthorized operation of the Stations for almost seven months. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to \$3,500 because, as an LPTV station, the Station is providing a secondary service.³⁰

²¹ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), recon. denied, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

²² 47 U.S.C. § 312(f)(2).

²³ See 47 CFR § 73.3598(a).

²⁴ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted).

²⁵ See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations).

²⁶ See 47 U.S.C. § 301.

²⁷ 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, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I.

²⁸ *Id.* A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²⁹ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

³⁰ See, e.g., *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of

(continued....)

Stations are only permitted to commence operation pursuant to a valid instrument of authorization and we find that CML's failure represents disregard, or at best ignorance, of Commission's licensing processes and the Act itself.

9. In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for CML's apparent violations, we will act upon the Application upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.

IV. ORDERING CLAUSES

10. 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,³¹ Vincent Castelli, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand five hundred dollars (\$3,500) for its apparent willful violation of section 73.3598(a) of the Commission's rules and apparent willful and repeated violations of section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.³²

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³³ that, within thirty (30) days of the release date of this *NAL*, Castelli Media, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),³⁴ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to VideoNAL@fcc.gov and Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected.³⁵

- 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).³⁶ For

Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (proposing \$3,500 forfeiture for late-filed application for license to cover and four months unauthorized operations) (paid Jan. 20, 2022); *KAZT, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 21-1386 (rel. Nov. 5, 2021) (proposing \$3,500 forfeiture for late-filed application for license to cover and six months unauthorized operations) (paid Nov. 30, 2021). *Cf. The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (finding that although the station is secondary, a forfeiture in the amount of \$6,500 was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

³¹ 47 U.S.C. § 503(b); 47 CFR § 1.80.

³² 47 CFR § 73.3598(a); 47 CFR § 73.1745; and 47 U.S.C. § 301.

³³ 47 CFR § 1.80.

³⁴ Payments made using CORES do not require the submission of an FCC Form 159.

³⁵ 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.

³⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. 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 “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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.

13. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.³⁷ 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.

14. 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(g)(3) of the Commission’s rules.³⁸ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. 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.³⁹ A copy must also be emailed to VideoNAL@fcc.gov and Shaun.Maher@fcc.gov to assist in processing the response.

- 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.

³⁷ See 47 CFR § 1.1914.

³⁸ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁹ 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).

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. 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 section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.⁴⁰

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Castelli Media, LLC, 9925 Haynes Bridge Road, Suite 200-155, Alpharetta, GA 30022, as well as e-mailed to: castellimediasvegas@gmail.com and a copy mailed to: Dan J. Alpert, Esq, 2120 N. 21st Rd., Arlington, VA 22201 and e-mailed to: dja@commlaw.tv.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴⁰ See 47 U.S.C. 503(b)(2)(E); *supra* para. 7.