

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

In the Matter of
ELKO TELEVISION DISTRICT
Licensee of Stations K32GK-D, Elko, NV;
K34HE-D, Elko, NV; K36HA-D, Elko, NV;
K35OI-D, Starr Valley, NV; K28PJ-D, Elko, NV
Facility ID Nos.: 129068, 129071, 129073,
128758, 129150
NAL/Acct. No.: 202341420017
FRN: 0006952121
LMS File Nos. 201074, 201080

FORFEITURE ORDER

Adopted: August 28, 2023

Released: August 28, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of one thousand and forty five dollars (\$1045) to Elko Television District (Licensee), licensee of K32GK-D, Elko, NV; K34HE-D, Elko, NV; K36HA-D, Elko, NV; K35OI-D, Starr Valley, NV; and K28PJ-D, Elko, NV (Stations). We find that the Licensee willfully violated section 73.3539(a) of the Commission’s rules (Rules) by failing to timely file license renewal applications for the Stations (Applications).1

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.”2 An application for renewal of the Stations’ licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations’ licenses expiration date of October 1, 2022.3 The applications were not filed until September 28, 2022. The Licensee provided no explanation for its untimely filing of the Applications.

3. On April 18, 2023, we issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL) proposing a forfeiture in the amount of seven thousand five hundred dollars (\$7,500) to Licensee for its apparent violations of section 73.3539(a) of the Rules.4 The NAL gave the

1 See 47 CFR § 73.3539; Application of Elko Television District for Renewal of License, LMS File No. 201080 (filed Sep. 28, 2022). As is permitted, the licensee filed for renewal of the of the licenses of stations K32GK-D, K34HE-D, K36HA-D, and K35OI-D in a single renewal application. Application of Elko Television District for Renewal of License, LMS File No. 201074 (filed Sep. 28, 2022).

2 Id. § 73.3539(a).

3 Id. §§ 73.1020, 73.3539(a).

4 Elko Television District, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-334 (Vid. Div. April. 18, 2023) (NAL).

Licensee thirty days to pay the full amount of the proposed forfeiture, or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁵

4. On May 9, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based Licensee's claimed inability to pay it, stating that the Licensee "is a taxpayer-funded Special District established by the State of Nevada and the City and County of Elko."⁶ The Response also noted that the Licensee's trustees lacked institutional knowledge and detailed steps taken after receipt of the *NAL* to maintain compliance in the future.⁷ On July 6, 2023, at the request of Video Division staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022, in order to demonstrate that imposition of the proposed forfeiture would be excessive.⁸

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁹ section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we "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 such other matters as justice may require."¹²

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed 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; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹³ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁵ If gross revenues are sufficiently great,

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Elko Television District at 1-2 (dated May 8, 2023) (Response).

⁷ Response at 2, 5.

⁸ Amendment to Response to Notice of Apparent Liability for Forfeiture for Elko Television District (dated July 6, 2023).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 CFR § 1.80.

¹¹ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ *See NAL* at 5, para. 14.

¹⁴ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁶

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$7,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁷ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.¹⁸ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$1045 is appropriate for the violations involved in this case.¹⁹ This amounts to \$209 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²⁰ violated section 73.3539(a) of the Rules.²¹ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to one thousand and forty five dollars (\$1045) is warranted.

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Elko Television District, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2299 for its apparent willful violation of section 73.3539(a) of the Commission's rules, 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing

¹⁶ *Id.*

¹⁷ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

¹⁸ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

¹⁹ See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service).

²⁰ 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. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²¹ 47 CFR § 73.3539(a).

House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²² or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²³

- 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).²⁴ 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 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.

11. Requests for full payment of the forfeiture proposed in this *Order* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁵ 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.

²² Payments made using the Commission's CORES system do not require the submission of an FCC Form 159.

²³ 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.

²⁴ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 CFR § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Elko Television District, P.O. Box 456, Elko, NV 89803. A copy shall also be sent to its counsel, Adam J. Sandler, Esq. by electronic mail to adam.sandler@pillsburylaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau