

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of)
)
Pollack/Belz Communication Company, Inc.)
)
Licensee of Station KLAX-TV)
Alexandria, Louisiana)
)
Facility ID No. 52907)

MAR -7 2014

**Federal Communications Commission
Bureau / Office**

NAL/Acct. No. 20134140061
FRN 0006096200

To: The Chief, Video Division, Media Bureau

REQUEST FOR CANCELLATION OF PROPOSED FORFEITURE

Pollack/Belz Communication Company, Inc. ("PBC"), by counsel, hereby requests cancellation of the Notice of Apparent Liability for Forfeiture (the "NAL") released February 5, 2014 in the above matter.

As will be shown below, imposition of a forfeiture against PBC under the circumstances relating to its application for renewal of its license would represent a departure from past practice. Further, such forfeiture cannot be sustained in light of the purpose of the rule on which the forfeiture is based. Thus, a decision to proceed with the forfeiture would amount to unfair treatment of a licensee who has acted in good faith to serve the public interest and to comply with FCC regulations.

I. Background.

As noted in the NAL, PBC filed an application for renewal of the license of Station KLAX-TV on February 1, 2005, covering the eight year term ending June 1, 2005. That application was filed timely pursuant to Section 73.3539(a) of the Commission's

Rules. The 2005 license renewal application remains pending. We repeat: in the space of *nine years*, the Commission has taken *no action* on the license renewal application that PBC filed **in 2005**.

PBC was at all times prepared to file an application for *renewal* of a license for the 2005-2013 term if such a grant of such license had ever been issued. However, the renewal requested in 2005 was not issued, and to this day has not been issued.

In or about late May, 2013, Nathaniel W. Hardy, counsel for PBC, received a call from a member of the Commission's staff requesting that PBC file an application to renew the Station's license. PBC promptly complied with this request, to the extent that it could, by filing what actually amounted to a *supplement*, on Form 303S, to the still-pending application for renewal of the Station's license, on Monday, June 3, 2013.

II. The Commission's Rules Do Not Provide for the Filing of an Application to "Renew" a License that Does Not Exist.

Years ago, similar circumstances were more frequently encountered because license terms were only three years in length. In an agency that had not yet heard of "management by objectives," action on license renewal applications was often delayed for three years or more. Where action on license renewal applications was delayed beyond the period that would normally be covered by the new license term, the Commission did not require the filing of a second license "renewal" application – one to renew a license that had not yet been granted. Instead, the Commission would invite licensees to file *supplements* to their renewal applications in order to supply the Commission with updated information on the licensee's service to the public.

This policy made sense in that it respected the reality that in order for a license to be “renewed,” the license must have been *issued* in the first place. The text of Section 73.3539 of the Rules states that an application for renewal 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*.....” The Rule provides no procedure for the submission of an application “renewing” a license that has not yet been issued.

The text of the NAL reveals the difficulty that its author had in squaring PBC’s circumstances with the construct of a violation of a rule that, by its plain language, does not address make PBC’s situation. It asserts that “the license term for KLAX-TV *would have expired*” on June 1, 2013 and pursuant *to the Public Notice* [PBC] was therefore required to file its license renewal application by February 1, 2013.”

The use of the conditional mood in reference to the KLAX-TV license term is revealing. The Division is unable to state squarely that the subject KLAX-TV license term **did** expire, or was set to expire, on June 1, 2013, because the license for that term had never been issued. That which has not been issued cannot “expire,” any more than a man who has never been born cannot die.

Nevertheless, nothing in Section 73.3539 is stated in the conditional mood. The rule does not call for the filing of license renewal applications for periods when a license *would* expire if it had only been issued, but only for renewal of licenses that actually *have* been issued.

It is one thing to use a Public Notice to call for actions that are not required based on an agency's rules as they exist, and quite another to impose forfeitures for licensees who act in accordance with the rules rather than such Public Notice.

III. The Congress Did Not Give the Commission Authority to Impose Forfeitures for a Perceived Violation of a Public Notice that Conflicts with the Agency's Rules.

The NAL cites as its core authority Section 503(b)(1)(B) of the Communications Act of 1934, as amended. There, the Commission was given authority to impose forfeiture penalties on those who have “willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission.” However, the Congress did not give the Commission authority to levy forfeitures based on violations of Public Notices, especially where such Public Notices conflict with the plain meaning of the Rules, to say nothing of the provisions of the Act itself.

Not only do the Rules not provide for the filing of applications for renewal of non-existent licenses, but they lack any provision authorizing the imposition of forfeitures against licensees who fail to submit such applications at any particular time. Moreover, we have not been able to find any instances where, under the procedures formerly in place, a *forfeiture* was levied against any licensee on account of a delay in the submission of the sort of supplement to a license renewal application that had been submitted pursuant to Section 73.3539. The interpretation of Section 73.3539 that held say at that time made eminent sense. No reason has been articulated for changing it. We can imagine that the Bureau at some point desired to call for the filing of new “renewal” applications

rather than “supplements” because its CDBS functions did not include creation of supplements to renewal applications. However, the mere fact that the correct pigeonhole had not yet been created in CDBS provides no justification for issuing a forfeiture against a licensee who did not use what the Bureau determined *ad hoc* would be the default pigeonhole by a deadline that is mentioned nowhere in the agency’s rules.

The NAL points to a 2012 public notice¹ in which the Media Bureau (not the Commission) purported to change this practice, without ever acknowledging what the prior practice had been. The 2012 public notice called for the submission of a “renewal application” by licensees whose prior license renewal application had not yet been granted. However, no reason or justification was given for this change in policy.² Accordingly, under the Administrative Procedures Act, the change cannot be enforced against a licensee such as PBC.

IV. The Communications Act Does Not Contemplate Stacked Applications for Renewal of License Creating Effective License Terms Exceeding Eight Years.

Section 307(c) of the Act states that each license for a broadcast station “shall be for a term of not to exceed 8 years. Upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed 8 years from the date of expiration of the preceding license....” This language implies that an application for renewal may only be filed if the subject license has been granted in the first place. Further, it does not contemplate a license term of 16 years, which would be the effective result of

¹ *Media Bureau Announces Revisions to License Renewal Procedures* (etc.), Public Notice, 27 FCC Rcd 2460 (MB 2012).

² It does not appear that PBC was sent a copy of the 2012 public notice.

the Commission's resorting to a procedure in which a license renewal application for the 2005-2013 term would be considered at the same time as (or even before) the application for renewal of the license for the 1997-2005 term had been acted on.

The Act also requires that "[i]n order to *expedite action* on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applications for such renewal, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application...."

The Commission's failure to act on PBC's renewal application from 2005 makes a mockery of the Congressional intent that the Commission expedite action on renewal applications. The Commission should feel some sense of proportion, then, in fining PBC for a four month delay in submitting an second "renewal" application when the Commission has been unable to act for *eight years*. Unfortunately, the NAL reveals no such sense of any responsibility on the part of the agency to act swiftly if it is to punish licensees for failing to act swiftly.

In that regard, we would submit that any information as to PBC's operations in the period from 2005 to 2013 is not material to the decision primarily before the Commission, which is whether to grant the 2005 renewal application. Once that decision has been made, and the license has been renewed for the term through 2013, PBC is of course happy to submit all material information with respect *that* term.

V. PBC Reserves the Right to Submit Financial Information.

The Commission's authority to assess forfeitures is conferred by Section 503(b)(2)(D) of the Communications Act, which provides:

The amount of such forfeiture penalty shall be assessed by the Commission, or its designee, by written notice. In determining the amount of such a forfeiture penalty, the Commission or its designee shall 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.

The Commission has incorporated the requirements of Section 503 of the Act in Section 1.80(b) of the Rules:

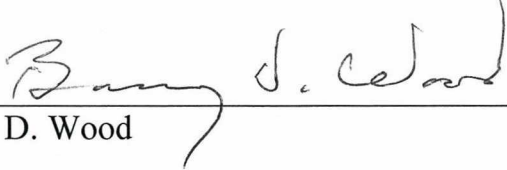
- (4) Factors considered in determining the amount of the forfeiture penalty. In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

Given the factors discussed in the previous sections of this Request, the forfeiture should be cancelled. If not, PBC reserves the right to submit financial information in mitigation.

In light of the foregoing, PBC requests that the Commission cancel the forfeiture proposed in the NAL.

Respectfully submitted,

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