

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

| | | |
|-----------------------------------|---|-----------------------------|
| In the Matter of |) | |
| |) | |
| Alpha & Omega Communications, LLC |) | Facility I.D. No. 27621 |
| Licensee of Station KCLP-CA |) | NAL/Acct. No.: 201541420015 |
| Boise, Idaho |) | FRN: 0005898093 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 10, 2015

Released: June 10, 2015

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION:

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ we find that Alpha & Omega Communications, LLC (the "Licensee"), licensee of Station KCLP-CA, Boise, Idaho ("KCLP" or "Station"), willfully and/or repeatedly violated Section 73.3539(a) of the Rules by failing to timely file with the Commission its Application for Renewal of Broadcast Station License (Form 303-S).² 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 Twenty-Four Hundred Dollars (\$2,400).

II. BACKGROUND:

2. Section 73.3539(a) of the Rules requires a broadcast television license renewal application to 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...."³ The Station's license was scheduled to expire on October 1, 2014. In accordance with Section 73.3539(a) of the Rules, the Licensee was required to file its Form 303-S to renew the license of KCLP on or before June 2, 2014.⁴ The Licensee did not file its Form 303-S until August 5, 2014.⁵

III. DISCUSSION

3. *Proposed Forfeiture.* 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

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

² 47 C.F.R. § 73.3539(a).

³ *Id.*

⁴ *Id.* Because June 1, 2014 fell on a weekend, a license renewal application filed on June 2, 2014 would have been considered timely. See also *Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S License Renewal Application; Television License Renewal Filings Accepted Beginning May 1, 2012*, Public Notice, 27 FCC Rcd 2460 (MB 2012).

⁵ See *Application for Renewal of Broadcast Station License*, FCC File No. BRTTA - 20140805ADM.

Commission...shall be liable to the United States for a forfeiture penalty.”⁶ 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.⁷ Furthermore, the Commission has held that any inadvertent errors, oversights or failures to become familiar with Commission requirements are willful violations.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 The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. Section 312(f)(2) of the Act also 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

4. In violation of Section 73.3539(a) of the Rules, the Licensee failed to file a timely application for renewal of its broadcast license for KCLP. A Form 303-S for KCLP was not filed with the Commission until August 5, 2014—two months and three days after the filing deadline. While the application was filed prior to the expiration date listed on the Station’s license, this late filing constitutes an apparent willful and/or repeated violation of Section 73.3539(a) of the Rules.

5. The Commission’s *Forfeiture Policy Statement* and the notes to Section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.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 and Section 1.80 of the Rules, 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.”¹³

6. We note that although in some instances the Video Division has decided to issue admonishments instead of forfeitures due to a late filed license renewal application, in this case we believe a forfeiture is appropriate due to the lengthy delay in filing the application.¹⁴ Although the

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

⁷ 47 U.S.C. § 312(f)(1); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “Commission interpretations of “willful” do not require licensee intent to engage in a violation”).

⁸ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that “[t]he fact that a licensee’s violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional”); *see also Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

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

¹⁰ *See Southern California*, 6 FCC Rcd at 4388.

¹¹ 47 U.S.C. § 312(f)(2); *see also Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

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); *see also* 47 C.F.R. § 1.80(b), note to paragraph (b)(8), Section I.

¹³ 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8) and note to paragraph (b)(8), Section II.

¹⁴ *See, e.g., PTP Holdings, Inc.*, Admonishment Letter, 28 FCC Rcd 13845 (MB 2013) (issued an admonishment letter for filing its license renewal application 9 days after the filing deadline); *WDKA Acquisition Corp.*, (continued....)

license renewal application was filed prior to the expiration date listed on the station's license, here the filing was over two months late which resulted in significant delay in consideration of the licensee's application for both the public and the Commission. The Commission has found in such situations that forfeiture is appropriate.¹⁵

7. Upon review of the facts, circumstances, and nature of the violation, we find that a forfeiture in the amount of \$2,400 is appropriate for the Licensee's failure to timely file its license renewal application, in apparent willful and/or repeated violation of Section 73.3539(a) of the Rules.¹⁶

IV. ORDERING CLAUSES

8. 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 Alpha & Omega Communications, LLC, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Twenty-Four Hundred Dollars (\$2,400) for its apparent willful and/or repeated violation of Section 73.3539(a) of the Commission's Rules.

9. **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*, Alpha & Omega Communications, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Electronic notification of payments should also be sent to Alison Nemeth at Alison.Nemeth@fcc.gov on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code).¹⁸

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

(...continued from previous page)

Memorandum Opinion and Order, 29 FCC Rcd 9781 (2014) *aff'd* Forfeiture Order, 28 FCC Rcd 16398 (Vid. Div. 2013) ("*WDKA Acquisition*") (finding that a licensee's late filing of one month and three days warranted a forfeiture because the impact of such a late filing was "materially worse" than in cases where the Commission has only admonished stations for failing to file a timely license renewal application).

¹⁵ The Commission has found that the staggered license renewal process set forth by Section 73.1020 of the rules, 47 C.F.R. § 73.1020, helps to "solicit public input, as well as evaluate and grant applications in an organized, timely, and administratively efficient manner." *WDKA Acquisition*, 29 FCC Rcd at 9782, ¶ 3. Late license renewal filings that cause the petition to deny period to be extended beyond the expiration date listed on a station's license "may disrupt, to a greater extent, Commission processes established for review of license renewal applications and public participation in the license renewal process." *Id.*

¹⁶ See *supra* fn. 15.

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

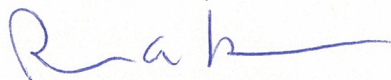
11. Any request for full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If there are questions regarding payment procedures, the respective Company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. 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: Alison L. Nemeth, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. In addition, to the extent practicable, a copy of the response, if any, should be sent via e-mail to Alison.Nemeth@fcc.gov.

13. 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.²⁰

14. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Alpha & Omega Communications, LLC, 314 S. Redwood Road, Salt Lake City, UT 84104, and to its counsel, Barry D. Wood, Wood, Martin & Hardy, P.C., 3300 Fairfax Drive, Suite 202, Arlington, VA 22201-4400.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁹ See 47 C.F.R. § 1.1914.

²⁰ See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that “[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee’s ability to pay. Other financial indicators may be considered....”).