

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

|                              |   |                               |
|------------------------------|---|-------------------------------|
| In re Application of         | ) |                               |
|                              | ) |                               |
| Faith Community Church       | ) | Facility I.D. No. 20542       |
|                              | ) | NAL/Acct. No. MB-201141410009 |
| For Renewal of License for   | ) | FRN: 0020326112               |
| FM Translator Station W261AE | ) | File No. BRFT-20101115DMW     |
| Camden, Delaware             | ) |                               |

MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 22, 2011

Released: August 23, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau ("Bureau") has before it the captioned application of Faith Community Church (the "Licensee") for renewal of its license for FM Translator Station W261AE, Camden, Delaware (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),<sup>1</sup> by authority delegated to the Bureau under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently willfully violated Section 73.3539 of the Rules<sup>3</sup> by failing to file a timely license renewal application for the Station, and apparently willfully and repeatedly violated Section 301 of the Act<sup>4</sup> by continuing Station operations after its license had expired. 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 five hundred dollars (\$500), and we grant the Station's license renewal application.

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."<sup>5</sup> An application for renewal of W261AE's license should have been filed by April 1, 2006. No such application was filed, and the Station's license expired on August 1, 2006. Accordingly, on October 18, 2010, the staff wrote to the Licensee, indicating that the Station's license had expired and that: (1) all authority to operate the Station was terminated; and (2) the

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539.

<sup>4</sup> See 47 U.S.C. § 301.

<sup>5</sup> 47 C.F.R. § 73.3539(a).

Station's call letters had been deleted from the Commission's data base. The Licensee was advised that any operation of the station was then unauthorized and must cease immediately.<sup>6</sup> Upon receipt of the *License Expiration Letter*, on November 15, 2010, the Licensee tendered both the subject license renewal application for the Station and a request for special temporary authority to continue station operations pending consideration of the license renewal application.<sup>7</sup> It also filed a Petition for Reconsideration of the *License Expiration Letter* on November 15, 2010. In both the renewal application and the STA Request, the Licensee stated that its failure to file a timely renewal application for the Station was inadvertent.

### III. DISCUSSION

3. *Proposed Forfeiture.* In this case, the Licensee failed to file a timely license renewal application for Station W261AE, as required by Section 73.3539(a) of the Rules. Moreover, Licensee violated Section 301 of the Act by continuing to operate the Station for more than four years after the license had expired on August 1, 2006, before filing the appropriate renewal application and seeking STA to so operate. Licensees are obligated to comply fully with the Rules and the Act, including filing a timely renewal application and maintaining in effect the station's authorization.<sup>8</sup> Here, the Licensee did not do so.

4. 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 failed willfully or repeatedly 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.<sup>9</sup> 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.<sup>10</sup> 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,<sup>11</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>12</sup> 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."<sup>13</sup>

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules

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<sup>6</sup> *Letter to Faith Community Church* Ref. 1800B3-KAW (MB Oct. 18, 2010) (the "*License Expiration Letter*").

<sup>7</sup> See File No. BLSTA-20101115DMV (the "STA Request"). The staff granted the STA Request on November 22, 2010, and it was set to expire on May 22, 2011. *Letter to A. Wray Fitch, III, Esq.*, Ref. 1800B3 (MB Nov. 22, 2010). However, on May 3, 2011, the Licensee filed a request for extension of the STA, which remains pending. See File No. BELSTA-20110503ABQ.

<sup>8</sup> See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

<sup>9</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

<sup>10</sup> 47 U.S.C. § 312(f)(1).

<sup>11</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>12</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>13</sup> 47 U.S.C. § 312(f)(2).

establish a base forfeiture amount of \$3,000 for the failure to file a required form.<sup>14</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service.<sup>15</sup> 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)(D) 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.”<sup>16</sup>

6. In this case, the Licensee failed to file a timely renewal application and continued Station operations for more than four years after the Station’s license had expired on August 1, 2006, before filing the appropriate renewal application and the STA Request. Nevertheless, because it had previously been licensed to operate the Station, the latter transgression is not comparable to “pirate” wireless operations, which typically have been subject to forfeitures of approximately \$10,000. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, and given the Commission’s recent decisions assessing forfeitures against licensees of “secondary” services,<sup>17</sup> we reduce the proposed forfeiture for violation of Section 73.3539 of the Rules from the \$3,000 base amount to \$250 and reduce the proposed forfeiture for the unauthorized operation from the \$10,000 base amount to \$250. Thus, we propose a forfeiture in the total amount of \$500.<sup>18</sup>

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>19</sup> 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.<sup>20</sup> 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.”<sup>21</sup>

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<sup>14</sup> 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 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>15</sup> A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>17</sup> Fm Translator stations are “secondary” services, which generally “primary” stations are not required to protect. See 47 C.F.R. § 74.1203.

<sup>18</sup> See, e.g., *Kane County Special Service District # 1*, Forfeiture Order, 25 FCC Rcd 3550, 3552 (MB 2010) (\$500 forfeiture imposed for late-filing and unauthorized operation of FM Translator station where a license renewal application was filed nearly two years after the station’s license had expired).

<sup>19</sup> 47 U.S.C. § 309(k).

<sup>20</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>21</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

8. We find that the Licensee's violations of Section 73.3539 of the Rules and Section 301 of the Act do not constitute "serious violations" warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>22</sup> Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will, therefore, grant Licensee's Petition for Reconsideration and reinstate the Station's call sign, and we will grant the captioned renewal application below.

#### 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 Commission's Rules, that Faith Community Church is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five hundred dollars (\$500) for its apparent willful violation of Section 73.3539 of the Commission's Rules and apparent willful and repeated violations of Section 301 of the Communications Act of 1934, as amended.

10. 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, Faith Community Church SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

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.

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<sup>22</sup> For example, we do not find here that the Licensee's operation of the Station "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 (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.*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>23</sup>

15. IT IS FURTHER ORDERED that the November 15, 2010, Petition for Reconsideration filed by Faith Community Church. IS GRANTED.

16. IT IS FURTHER ORDERED that the call sign W261AE IS REINSTATED.

17. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Faith Community Church for FM Translator Station W261AE (File No. BRFT-20101115DMW) IS GRANTED.

18. IT IS FURTHER ORDERED that a copy of this *NAL* shall be sent, by First Class and Certified Mail-Return Receipt Requested, to Faith Community Church., 2240 S. Dupont, Camden, DE 19934, and to its counsel, A. Wray Fitch, III, Esq., Gammon & Grange, P.C., 8280 Greensboro Drive, 7<sup>th</sup> Floor, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>23</sup> See 47 C.F.R. § 1.1914.