

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

In the Matter of

Butterfield Broadcasting Corporation
Licensee of AM Broadcast Station KULE
Ephrata, Washington
Facility ID No: 4041

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File Number EB-02-ST-308
NAL/Acct. No.200332980005
FRN 0001567817

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 30, 2003

By the District Direction, Seattle Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Butterfield Broadcasting Corporation (“Butterfield”), licensee of radio station KULE (AM) in Ephrata, Washington, has apparently willfully and repeatedly violated Section 73.3526(e)(1) of the Commission's Rules (“Rules”)¹ by failing to maintain a copy of the station’s authorization in the station’s public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended,² that Butterfield is apparently liable for forfeiture in the amount of two thousand dollars (\$2,000).

II. BACKGROUND

2. On May 17, 1999, the Seattle Office issued an Official Notice of Violation pertaining to KULE for, in part, violating Section 73.3526(e)(1) of the Rules by failing to have a current FCC authorization in the public inspection file.³ The Media Bureau advised the licensee how to obtain the necessary reissued authorization on May 25, 1999. On November 19, 2002, the Federal Communications Commission’s (“FCC”) Media Bureau notified Butterfield Broadcasting Corporation, licensee of station KULE, that according to FCC records the station had failed to obtain a reissued station authorization. Also at that time, the Media Bureau specifically advised Butterfield to ensure that KULE had an accurate and current license, and warned of possible monetary forfeitures if a subsequent inspection revealed continuing non-compliance.

¹ 47 C.F.R. § 73.3526(e)(1).

² 47 U.S.C. § 503(b).

³ File No. 99ST441

3. On January 28, 2003, an agent from the FCC's Seattle Office inspected KULE's license folder within the public inspection file at KULE's main studio. The agent determined that KULE's authorization was not in the station's public inspection file. Station personnel were unable to locate a copy of the station authorization anywhere at the station.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

5. Section 73.3526(e)(1) of the Rules requires that the station's public inspection file include a copy of the current FCC authorization to operate the station, as well as any other documents necessary to reflect any modifications thereto or any conditions that the FCC has placed on the authorizations. The Rules require the station authorization to be retained in the file until replaced by a new authorization, at which time a copy of the new authorization and any related material must be placed in the file. Butterfield had been advised at least twice by the FCC of the requirement to maintain a copy of the station's authorization in the station's public inspection file. However, Butterfield neglected to take the minimal steps necessary to ensure compliance with the Rule.

6. Based on the evidence before us, we find that Butterfield Broadcasting Corporation, licensee of station KULE (AM), Ephrata, Washington, willfully and repeatedly violated Section 73.3526(e)(1) of the Commission's Rules by failing to maintain a copy of KULE's current authorization in the public inspection file.

7. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"),⁵ sets a base forfeiture amount of \$10,000 for violating the public file rules. In assessing the monetary forfeiture amount, we must also take into

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act. . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2), 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[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."

⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* 12 FCC Rcd 17087 (1997), (recon. denied), 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement").

account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ While the station did maintain a public inspection file, Butterfield neglected to ensure compliance with the Rules even after being warned and advised several times to obtain a reissued license and to maintain a copy of the station's authorization at the station. Considering the evidence before us and applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude a \$2,000 forfeiture is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Butterfield Broadcasting Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for violating Section 73.3526(e)(1) of the Rules.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Butterfield Broadcasting Corporation, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. number and FRN referenced in the caption.

11. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. number and FRN referenced in the caption.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail, #7001 2510 0007 6500 0721, Return Receipt Requested to Butterfield Broadcasting Corporation, 706 Butterfield Road, Yakima, Washington 98901.

FEDERAL COMMUNICATIONS COMMISSION

Dennis J. Anderson
District Director
Seattle Office

Attachment A – FCC List of Small Entities, October 2002

⁹ See 47 C.F.R. § 1.1914.