



Federal Communications Commission
Washington, D.C. 20554

December 4, 2023

In Reply Refer to:
1800B3-AS

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In re: W253AF, Bennington, Vermont
Absolute Broadcasting, LLC
Facility ID No. 83187
File Nos. BLFT-19980824TA, BLFT-20171221AAJ,
and BMPFT-20180221AAB

Dear Counsel:

The Commission's May 17, 2023, Memorandum Opinion and Order in this proceeding reinstated the license for FM translator station W253AF, Nashua, New Hampshire (Station), and directed the Media Bureau to determine the appropriate enforcement action for Absolute Broadcasting, LLC's (Absolute) violations of the Commission's rules.¹ The principal noncompliance issue discussed in the Order was Absolute's use of an antenna that did not conform to the specifications in its construction permit and Absolute's failure to seek consent to modify its authorization.² Section 74.1521 of the Commission's rules requires that FM translator and booster licensees and permittees seek prior approval for any change in a station's transmission system.³ Absolute's failure to seek authorization for its antenna system resulted in unauthorized operation of the Station in violation of the Commission's rules.

The Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings,⁴ and its exercise of that discretion with respect to enforcement investigations is within the

¹ *Absolute Broadcasting LLC*, Memorandum Opinion and Order, FCC 23-38 (May 17, 2023) (Order).

² Order at 10. A detailed discussion of the background of the case and the underlying facts is set out in the Order.

³ 47 CFR § 74.1251(a) ("No change, either mechanical or electrical . . . may be made in FM translator or booster apparatus which has been certificated by the Commission without prior authority of the Commission.").

⁴ See *Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23922, 23932, para. 24 (2004) (citing *Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7186 (1999)).

agency's jurisdiction.⁵ The Supreme Court has repeatedly recognized that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."⁶ Such considerable discretion is necessary because, among other reasons, "[t]he agency is far better equipped . . . to deal with the many variables involved in the proper ordering of its priorities."⁷

Although unauthorized operation of a broadcast station can lead to termination of the station license or imposition of a significant forfeiture, we find that the unique facts of this case do not justify either action on our part. As the Commission noted in its Order, the Station's unauthorized operation was for a very short duration, Absolute reported its noncompliance and, most importantly, the Station has already spent considerable time off air due to the original cancellation of its license. On the facts presented here, we find that an additional monetary forfeiture would be unwarranted and excessive. Considering the record as a whole and consistent with our discretion in enforcement proceedings, we find that an admonishment, rather than a forfeiture, is appropriate for the unauthorized operation in this case.⁸ We caution Absolute to be more diligent regarding any future actions requiring prior Commission authorization.

Accordingly, IT IS ORDERED that Absolute Broadcasting LLC IS ADMONISHED for its apparent violation of section 74.1251(a) of the Commission's rules, 47 CFR § 74.1251(a).

IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Commission's rules, 47 CFR § 73.3526(e)(10), a copy of this letter order and as otherwise required all related investigatory materials SHALL BE RETAINED in the online public inspection file of the Station's primary station, WGHM(AM), until grant of the next license renewal application.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁵ See 47 U.S.C. § 403. See also *Viacom Inc., ESPN Inc.*, Forfeiture Order, 30 FCC Rcd 797, 804, para. 18 (2015); *Spanish Broad. Sys. Holding Co., Inc.*, Forfeiture Order, 27 FCC Rcd 11956, 11959, para. 8, n.30 (EB 2012) (Section 403 provides broad discretion as to the type of misconduct the Commission may investigate and subject to enforcement action).

⁶ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (citing *United States v. Batchelder*, 442 U.S. 114 (1979); *United States v. Nixon*, 418 U.S. 683 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Confiscation Cases*, 7 Wall. 454 (1869)).

⁷ *Heckler v. Chaney*, 470 U.S. at 831.

⁸ See Note 2 to 47 CFR § 1.80(b)(11). See also *Tabback Broad. Co.*, 15 FCC Rcd 11899, 11900, para. 5 (2000) (Commission finds that staff "appropriately exercised its discretion" in admonishing Licensee, rather than issuing a forfeiture, for public file and accessibility violations).