

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

In re Applications of	)	
	)	
<b>Baton Rouge Progressive Network</b>	)	Facility I.D. No. 123985
	)	NAL/Acct. No. MB-200941410027
For Minor Modification and License to Cover for	)	FRN: 0014200414
Station WHYR-LP	)	File No. BMPL-20051101AAC
Baton Rouge, Louisiana	)	File No. BMPL-20060208AMJ
	)	File No. BLL-20060313AAE
	)	File No. BPL-20081006ABL
	)	File No. BPL-20090803AGN

**MEMORANDUM OPINION AND ORDER  
AND  
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 25, 2010**

**Released: January 26, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us an April 10, 2006, “Petition for Reconsideration of Grant of Construction Permit, and Petition to Deny License to Cover and Associated Amendments for ‘Ethics, Inc.’” filed by Baton Rouge Progressive Network (“BRPN”), amended on April 29, 2006 (collectively, the “Petition”). The Petition seeks reconsideration of the staff’s November 18, 2005, and February 8, 2006, actions granting two minor modification applications<sup>1</sup> for low power FM (“LPMF”) station WHYR-LP, Baton Rouge, Louisiana (the “Station”). The Petition also seeks reconsideration of the staff’s March 13, 2006, grant of Ethics Inc.’s (“Ethics”) covering license application (“License Application”) for the Station.<sup>2</sup> Ethics opposed the Petition on April 27, 2006 (the “Opposition”), and supplied an additional comment from its consulting engineer, Ron Erickson, on May 11, 2006.<sup>3</sup> Also before the staff are Informal Objections filed by BRPN on September 26, 2007 (“2007 Objection”), and August 17, 2009 (“2009 Objection”), respectively, to minor modification applications filed for the Station by Ethics on July 23, 2007,<sup>4</sup> and August 3, 2009, respectively.<sup>5</sup> We also have before us BRPN’s June 12, 2006, “Request for Investigation into Apparent False Representation, False Certification, and False Claim to obtain a U.S. Government Benefit” (“Request for Investigation”), reiterating allegations made in the

<sup>1</sup> File No. BMPL-20051101AAC was granted by the staff on November 18, 2005; File No. BMPL-20060208AMJ was granted by the staff on February 8, 2006.

<sup>2</sup> File No. BLL-20060313AAE. The Petition also seeks to deny Ethics’ application for a further minor change to the Station’s facilities. See File No. BPL-20060320AAG (“March 2006 Modification Application”). This application, however, was dismissed by the staff on December 10, 2008.

<sup>3</sup> See Ethics, Inc.’s “Petition to Dismiss Claimant Petition for Reconsideration of Grant of Construction Permit and Petition to Deny License to Cover and Associate Amendments for ‘Ethics, Inc.’” (April 26, 2006) (“Ethics Petition to Dismiss”) and “Reply from Ron Erickson, Consulting Engineer” (May 11, 2006) (the “Erickson Comments”).

<sup>4</sup> BPL-20070723AAD (the “2007 Application”). The 2007 Application was dismissed by the staff on December 10, 2008.

<sup>5</sup> File No. BPL-20090803AGN (the “2009 Application”).

Petition and Objections that Ethics had “hijacked” the Station.<sup>6</sup> In addition, we have before us an additional minor modification application for the Station, filed by Ethics on October 6, 2008;<sup>7</sup> this application is unopposed.

2. 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>8</sup> by the Chief, Audio Division, Media Bureau, by authority delegated under Section 0.283 of the Rules, we find that Ethics willfully and repeatedly violated Section 310(d) of the Act<sup>9</sup> and Section 73.3540 of the Rules<sup>10</sup> by engaging in an unauthorized transfer of control of the Station beginning in November of 2005. Based on our review of the facts and circumstances before us, we conclude that Ethics is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000). Additionally, for the reasons set forth below, we grant the Petition and 2009 Objection; dismiss the 2007 Objection as moot; waive the LPFM construction deadline and revise the permit’s expiration date; rescind the grant of the Modification Applications and License Application filed by Ethics and dismiss those applications; and dismiss Ethics’ 2008 and 2009 Applications.

## II. BACKGROUND

3. BRPN is a non-profit, non-stock corporation. The original BRPN Board of Directors consisted of four persons: Ava Hernandez, Jason Todd, Lee Abbott and Kyle Sirman.<sup>11</sup> The original WHYR-LP construction permit was issued to BRPN on September 14, 2004.<sup>12</sup> The permit bore an expiration date of March 14, 2006.

4. Ethics also is a non-profit, non-stock corporation, which filed an unsuccessful application for an LPFM Station in Baton Rouge.<sup>13</sup> Its Board of Directors consists of three persons: Elaine C. Rougeau, Eric F. Holden, and Pierson Ross Holden.<sup>14</sup> Its application was dismissed on May 17, 2005.<sup>15</sup>

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<sup>6</sup> BRPN filed a Supplement to this Request on February 20, 2007, with affidavits indicating that a station identifying itself as “WHYR” had been constructed in Baton Rouge; inasmuch as the actual permittee, BRPN, had not constructed any facility, it claims that these transmissions are illegal. Supplement at 3.

<sup>7</sup> File No. BPL-20081006ABL (the “2008 Application”).

<sup>8</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>9</sup> 47 U.S.C. § 310(d).

<sup>10</sup> 47 C.F.R. § 73.3540.

<sup>11</sup> The current BRPN board consists of three persons: Andrew Weber, R. David Brown, and Hassan Ghosn. See Louisiana Secretary of State’s Office database viewed on August 21, 2009: <http://www400.sos.louisiana.gov/cgi-bin?rqstyp=crpdtlC&rqsdta=34949902N>.

<sup>12</sup> File No. BNPL-20000605ACF.

<sup>13</sup> See File No. BNPL-20000602ABW.

<sup>14</sup> Our review of the database of the Louisiana Secretary of State’s Office shows that this non-profit corporation originally was formed on December 11, 1998, as “Heaven Sent/ Ethics, Inc.,” and that as viewed on August 21, 2009, the corporation is “active” but “not in good standing for failure to file a current Annual Report.” See <http://www400.sos.louisiana.gov/cgi-bin?rqstyp=crpdtlC&rqsdta=34716899N>.

<sup>15</sup> See *GSRI Property Owners Association*, Memorandum Opinion and Order, 20 FCC Rcd 10241 (2005).

5. Ethics principals, using the Station's call sign and BRPN's Consolidated Database System ("CDBS") electronic filing account, filed a series of applications (collectively, the "Modification Applications") to modify BRPN's construction permit subsequent to issuance of the Station's construction permit<sup>16</sup>. On November 1, 2005, an application was filed proposing a change in the Station's transmitter location and technical facilities.<sup>17</sup> The application was filed by "The Baton Rouge Progressive Network" and electronically "signed" and certified by Ms. Rougeau; it lists the board members of both Ethics and BRPN as parties to the application.<sup>18</sup> On February 8, 2006, an application was filed by "Ethics, Inc." and was electronically signed and certified by Ron Erickson, Ethics' consulting engineer,<sup>19</sup> proposing to return to the Station's original transmitter site with a significantly lower antenna height.<sup>20</sup> It lists only the four BRPN board members as parties to the application.<sup>21</sup> The grant of the uncontested February 2006 Modification Application<sup>22</sup> automatically converted the name of the permittee in the Commission's CDBS data base to "Ethics, Inc."<sup>23</sup>

6. Ethics then filed the License Application on March 13, 2006, the day before the Station's construction permit was due to expire. This application also was signed by Ethics' consulting engineer, Mr. Erickson (who also was listed as the contact representative for the application), and was granted by the staff on the day it was filed. The following day BRPN board member Lee Abbott submitted a request for an extension of time to *construct* the Station.<sup>24</sup> Abbott stated that BRPN could not meet its 18-month deadline to construct the Station due to Hurricane Katrina.

7. After grant of the License Application, Ethics filed two additional "modification" applications. The March 2006 Modification Application, filed one week after grant of the License Application, proposed no changes in the Station's technical facilities but simply indicated that it was correcting "an error in which three of the board members of Ethics, Inc. were inadvertently left off" the

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<sup>16</sup> Ethics filed the Modification Applications, the License Application, the 2008 Application, and the 2009 Application in the name of Ethics but using BRPN's FCC Registration Number ("FRN") and password. As a result, staff accepted and processed the applications. We caution all applicants to closely safeguard their passwords and related information, *e.g.*, personal security questions, in order to ensure that only authorized users can access the applicant's account and account information through the Commission Registration System ("CORES").

<sup>17</sup> File No. BMPL-20051101AAC, granted November 18, 2005.

<sup>18</sup> Ethics has not claimed, much less shown, that Ms. Rougeau or any of Ethics' other Board members were actually elected or appointed to BRPN's board. *See* Opposition at 3.

<sup>19</sup> 47 C.F.R. § 73.3513(a)(3) requires that an application be signed by an officer if the applicant is a corporation.

<sup>20</sup> File No. BMPL-20060208AMJ, granted February 2, 2006 ("February 2006 Modification Application").

<sup>21</sup> On May 11, 2006, Ethics' Erickson filed an unsworn declaration stating that he became aware of the dispute over control of the license only after he had made filings to the Commission on Ethics' behalf in good faith, believing that Ms. Rougeau was the legal representative for the group validly holding the permit. *See* Erickson Comments at 2.

<sup>22</sup> *See* n.1, *supra*.

<sup>23</sup> No Commission approval is needed for a corporate name change by a broadcast licensee or permittee. 47 C.F.R. § 73.3544(c) provides for issuance of a revised station authorization upon written notice to the Commission of such a name change. The CDBS electronic filing system treats a name change in an application filed with the permittee's or licensee's FRN as such a written notice.

<sup>24</sup> *See Letter to Peter H. Doyle, Chief, Audio Division, from Lee M. Abbott, Board Member, Baton Rouge Progressive Network* submitted March 14, 2006.

previous modification application.<sup>25</sup> This application, which was dismissed on December 10, 2008,<sup>26</sup> listed the four original BRPN board members and the three original Ethics board members, and was signed and certified by Ethics' Consulting Engineer Ron Erickson. The 2007 Application, also dismissed on December 10, 2008,<sup>27</sup> disclosed that Jason Todd, Ava Hernandez, Lee Abbott, and Kyle Sirman (BRPN's original board members) had been removed from the Ethics' board of directors on April 19, 2006. Both of these applications were dismissed because they were filed on the incorrect FCC Form.

8. On April 10, 2006, BRPN filed the Petition, alleging that the granted Modification Applications and License Application were not filed by BRPN, the entity holding the original construction permit for the Station, but by Ethics.<sup>28</sup> BRPN contends that Ethics lacked authority to file these applications. The Objections filed by BRPN similarly argue that Ethics "hijacked" the Station.<sup>29</sup> In its Opposition, Ethics states that the claims made in the Petition were based on speculation, and denies any wrongdoing. It also claims that BRPN principals had moved outside the state of Louisiana and that BRPN had "abandoned" both the construction permit and operation of any LPFM Station and had "tacitly approved" Ethics' construction and operation of the Station.

9. More recently, Ethics filed two additional applications concerning the Station. In the 2008 Application, Ethics seeks a "temporary" relocation of the Station's technical facilities to the home of Ethics' President Ms. Rougeau because: (1) the formerly licensed site was seized and electric power disconnected after it was discovered that the property belonged to the city of Baton Rouge and was fraudulently leased to Ethics; and (2) Hurricane Gustav had damaged the Station's technical facilities, which had thereafter been relocated to Ms. Rougeau's house with the help of a volunteer.<sup>30</sup> In the 2009 Application, Ethics requests authority to take the Station silent. This silent authority was improperly requested on FCC Form 318.

### III. DISCUSSION

10. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of petitioner's last opportunity to present such matters.<sup>31</sup> Petitions for reconsideration which rely on facts not previously presented to the Commission may be granted if the Commission determines that consideration of the facts relied on is required in the public interest.<sup>32</sup> As set forth below, BRPN has met this public interest standard.

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<sup>25</sup> 2006 Modification Application, Section II, Item 3(a) and Attachment 1.

<sup>26</sup> See n.2, *supra*.

<sup>27</sup> See n.4, *supra*.

<sup>28</sup> Petition at 1.

<sup>29</sup> See, e.g., September 26, 2007, Objection at 3.

<sup>30</sup> 2008 Application, Exhibit 1.

<sup>31</sup> See 47 C.F.R. § 1.106(c) and (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966) ("*WWIZ, Inc.*").

<sup>32</sup> See 47 C.F.R. § 1.106(c)(2). See also *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Scranton and Surfside Beach, South Carolina)*, Memorandum Opinion and Order, 4 FCC Rcd 2366 (MB 1989).

11. *Procedural Issue.* The Petition seeks reconsideration of the grant of the Modification Applications and denial of the License Application. Section 405 of the Act, and Section 1.106(f) of the Rules, require petitioners to seek reconsideration no later than 30 days after the public notice announcing the action for which reconsideration is sought.<sup>33</sup> The Modification Applications were granted on November 18, 2005, and February 9, 2006, respectively, and public notice of those grants was issued on November 23, 2005, and February 14, 2006, respectively. Thus, petitions for reconsideration of those grants were due by December 23, 2005 and March 16, 2006.<sup>34</sup> The Petition was not received by the Commission until April 10, 2006. The Petition also seeks denial of the License Application. However, the staff granted the License Application on March 13, 2006, several weeks before the Petition was filed. BRPN did not seek reconsideration of this action. The Petition, treated as an informal objection to the License Application, is untimely. Nevertheless, for the reasons set forth below, we consider those issues here.

12. The Commission has held that it may reopen proceedings that have become final when there has been fraud on the agency's processes or if the result is manifestly unconscionable.<sup>35</sup> Here, Ethics' principals have perpetrated a fraud on the agency by filing a series of unauthorized applications with the intent of taking control of the Station from BRPN. The fraud component of this case is exacerbated by several ministerial errors by the Commission staff, *i.e.*, the inadvertent processing of applications signed only by an engineering consultant rather than a principal of the "applicant," as required by Section 73.3513 of the Rules.<sup>36</sup> The *status quo* in this proceeding, *i.e.*, Ethics having gained control of the Station without prior Commission consent based on unauthorized filings, is manifestly unconscionable. On this basis, we review the grant of the Modification Applications and the License Application.

13. *Substantive Issues. Control of the Authorization.* Section 310(d) of the Act, states: "No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."<sup>37</sup> Section 73.3540(a) of the Rules similarly intones: "Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control."<sup>38</sup> The determination as to whether a licensee has undergone a transfer of control is made on a case-by-case basis.<sup>39</sup> While there is no exact formula for determining *de facto*, control,<sup>40</sup> we look to whether a new person or entity has authority to make decisions

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<sup>33</sup> 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

<sup>34</sup> See 47 C.F.R. § 1.4.

<sup>35</sup> See *Birach Broadcasting Corporation*, 16 FCC Rcd 5015, 5018 (2001), citing *Radio Para La Raza*, 40 FCC 2d 1102, 1104 (1973); citing *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238 (1944), *Greater Boston Television Corporation v. FCC*, 463 F.2d 268 (D.C. Cir. 1971), *KIRO, Inc. v. FCC*, 438 F.2d 141 (D.C. Cir. 1970) and *KRPL, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 2823, 2824 (1990).

<sup>36</sup> 47 C.F.R. § 73.3513.

<sup>37</sup> 47 U.S.C. § 310(d).

<sup>38</sup> 47 C.F.R. § 73.3540(a).

<sup>39</sup> See *Storer Communications, Inc. v. FCC*, 763 F.2d 436, 442 (D.C. Cir. 1985).

<sup>40</sup> See, *e.g.*, *Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 819, 821 (1975), *modified*, Memorandum Opinion and Order, 59 FCC 2d 1002 (1976).

regarding station personnel, programming or finances.<sup>41</sup> A permittee or licensee may delegate certain functions on a day-to-day basis to an agent or employee,<sup>42</sup> but delegations must be guided by policies set by the permittee or licensee.<sup>43</sup>

14. BRPN is the permittee of record. The record indicates that Ethics first attempted to exercise *de facto* control in 2005 when it filed the first of the Modification Applications. This application,<sup>44</sup> granted November 18, 2005, lists the board members of both Ethics and BRPN as parties to the application and proposes a change in the Station's transmitter location and technical facilities. That application was electronically "signed" and certified by Ethics' President Ms. Rougeau.<sup>45</sup> Ethics then applied in February of 2006 in its own name to modify the Station's technical facilities, and then apparently constructed the Station, filed the License Application in its own name, and operated the Station without any input or assistance from BRPN principals. Ethics subsequently applied to modify the Station's authorization when its transmitter site was repossessed by the City of Baton Rouge and took the station silent when its programming, technical, and financial arrangements deteriorated.<sup>46</sup>

15. The address of record for the licensee of the Station is Ethics' office in Baton Rouge, Louisiana; Ethics' consulting engineer has completed technical studies and filed applications for the Station; and there is no evidence that any board member of BRPN or any agents or employees of BRPN had any operational control at any time over the construction or operation of the Station. Thus, the record indicates that Ethics apparently is and has been in control of the personnel, programming, and finances of the Station since approximately November of 2005, in violation of Section 310(d) of the Act and Section 73.3540 of the Rules. Ethics' arguments that BRPN's principals are "not domiciled in the state of Louisiana"<sup>47</sup> and that BRPN had "abandoned" the Station,<sup>48</sup> even if true, do not excuse its failure to seek prior Commission consent as required by Section 310(d) of the Act and Section 73.3540 of the Rules. For the same reason, we find unpersuasive Ethics' claim that BRPN principals "observed all [its] efforts and these transactions and did nothing."<sup>49</sup>

16. *Extension of WHYR-LP Construction Permit.* As indicated above, the original WHYR-LP construction permit was granted on September 14, 2004, and had a construction permit deadline of March 14, 2006. Under Commission policy, LPFM permittees can request an 18-month extension upon

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<sup>41</sup> See *WHDH, Inc.*, Memorandum Opinion and Order, 17 FCC2d 856 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

<sup>42</sup> See, e.g., *Southwest Texas Public Broadcasting Council*, Memorandum Opinion and Order, 85 FCC2d 713, 715 (1981).

<sup>43</sup> See *David A. Davila*, Memorandum Opinion and Order, 6 FCC Rcd 2897, 2899 (1991).

<sup>44</sup> See n.1, *supra*.

<sup>45</sup> There is no evidence in the record that Ms. Rougeau or other Ethics board members were elected or appointed to the BRPN Board.

<sup>46</sup> See 2009 and 2009 Applications.

<sup>47</sup> Opposition at 2.

<sup>48</sup> *Id.* at 5.

<sup>49</sup> *Id.* at 3. Ethics' claim that "[BRPN's] silence and inaction created a tacit contract with . . . Elaine Rougeau, a contract which conducts and takes the place of written or spoken words" (See Opposition at 4), is unsupported in the record and plainly incorrect as a matter of law regarding the necessity to seek Commission consent to Ethics' assumption of control of the Station.

a showing of good cause.<sup>50</sup> BRPN requested such an extension on March 14, 2006, based on a showing that it could not construct the Station by the expiration date due to damage wrought by Hurricane Katrina. Ordinarily, we would have granted that request by adding 18 months to the existing expiration date. However, the exceptional circumstances of this case prevented construction of the Station by BRPN, and these matters have not been resolved until today. Accordingly, we hereby waive the LPFM construction deadline<sup>51</sup> for the period during which those matters have been pending and revise the permit's expiration date to June 26, 2011 (18 months from the date of this Order).

17. *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 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>52</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>53</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>54</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>55</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>56</sup>

18. Section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture of up to \$25,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$250,000 for a single act or failure to act.<sup>57</sup> In determining the appropriate forfeiture amount, we consider 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>58</sup>

19. The Commission's *Forfeiture Policy Statement* and implementing rules prescribe a base forfeiture of \$8,000 for unauthorized substantial transfers of control.<sup>59</sup> However, the adjustment factors we evaluate in considering the actions of the violator that may increase the forfeiture include egregious

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<sup>50</sup> See *Creation of a Low Power Radio Service*, Third Report and Order, 22 FCC Rcd 21912, 21928 (2007).

<sup>51</sup> See 47 C.F.R. S 73.3598(a)

<sup>52</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

<sup>53</sup> 47 U.S.C. § 312(f)(1).

<sup>54</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>55</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>56</sup> 47 U.S.C. § 312(f)(2).

<sup>57</sup> 47 U.S.C. § 503(b)(2)(A); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004). An unauthorized transfer of control is a continuing violation that does not end until the Commission grants a transfer of control application or other authorization. See *Matter of Notice of Apparent Liability for Forfeiture of Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13554, ¶ 10 (2000).

<sup>58</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>59</sup> See 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17113 (1997).

misconduct, intentional violation, and repeated or continuous violations.<sup>60</sup> Ethics apparently assumed control of the Station without Commission authorization in November of 2005, and has continued in such control for more than four years. In consideration of the factors enumerated in Section 503(b)(2)(D) for establishing the forfeiture amount, the evidence before us suggests that the base amount should be adjusted substantially upward. Accordingly, we find that due to the continuing, intentional, and egregious nature of Ethics' conduct, an upward adjusted forfeiture of \$20,000 against Ethics is appropriate for the unauthorized transfer of control of the Station.<sup>61</sup>

20. We note that a monetary forfeiture also would have been warranted for Ethics' violations with respect to its certifications in the 2005 and 2006 Modification Applications. For instance, Ethics certified in the 2005 and 2006 Modification Applications that BRPN's Ava Hernandez, Jason Todd, Lee Abbott and Kyle Sirman were, at the time, Ethics board members, which the record indicates is clearly false. However, because Ethics does not legally hold a covering license for the Station, the statute of limitations for proposing a forfeiture is one year from the date of violation.<sup>62</sup> The Commission has held that a false or misleading statement made at one point in time is not a "continuing violation" for purposes of Section 503(b) simply because it was not corrected.<sup>63</sup> Therefore, because the false certifications here occurred on November 1, 2005, February 8, 2006, and March 20, 2006, we are barred by Section 503(b)(6) of the Act from issuing an *NAL* to Ethics for its false certifications in the Modification Applications.

#### IV. ORDERING CLAUSES

21. 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 Ethics, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful violation of Section 73.3539 of the Commission's Rules and apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules.

22. 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*, Ethics, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

23. 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

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<sup>60</sup> See *id.*; see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 U.S.C. § 503(b)(2)(D).

<sup>61</sup> See *Angel F. Ginorio*, Letter, 9 FCC Rcd 698 (MMB 1994) (issuing \$20,000 forfeiture for continuous violation of unauthorized transfer of control finding willful and repeated violations); *Silver Star Communications*, Memorandum Opinion and Order, 6 FCC Rcd 6905 (1991) (issuing \$20,000 forfeiture for unauthorized transfer of control).

<sup>62</sup> See 47 U.S.C. § 503(b)(6). See also, e.g., *American Family Association*, Order on Reconsideration, 21 FCC Rcd 6880, 6881-82 (EB 2006), *reversed in part*, Order, 21 FCC Rcd 8044 (EB 2006) (Because [American Family Association] was a permittee, rather than a licensee . . . the applicable statute of limitations was one year, pursuant to section 503(b)(6)(B).)

<sup>63</sup> *Lutheran Church-Missouri Synod*, Memorandum Opinion and Order, 12 FCC Rcd 2152, 2167 (1997), *rev'd on other grounds*, *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998).



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).

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

25. 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.

26. 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, D.C. 20554.<sup>64</sup>

27. Accordingly, IT IS ORDERED, pursuant to the authority delegated under Section 0.283 of the Commission's Rules,<sup>65</sup> that the April 10, 2006, "Petition for Reconsideration of Grant of Construction Permit, and Petition to Deny License to Cover and Associated Amendments for 'Ethics, Inc.,'" filed by Baton Rouge Progressive Network IS GRANTED.

28. IT IS FURTHER ORDERED, that the Informal Objection filed on August 17, 2009, by Baton Rouge Progressive Network IS GRANTED.

29. IT IS FURTHER ORDERED, that the Informal Objection filed by Baton Rouge Progressive Network on September 26, 2007, IS DISMISSED as moot.

30. IT IS FURTHER ORDERED, that the grants of Application File Nos. File No. BMPL-20051101AAC, BMPL-20060208AMJ, and BLL-20060313AAE, ARE RESCINDED and those Applications ARE DISMISSED.

31. IT IS FURTHER ORDERED, that Application File Nos. BPL-20081006ABL and BPL-20090803AGN ARE DISMISSED AS INADVERTENTLY ACCEPTED FOR FILING.<sup>66</sup>

32. IT IS FURTHER ORDERED, that Section 73.3598(a) of the Commission's Rules<sup>67</sup> IS WAIVED, and WHYR-LP construction permit BNPL-20000605ACF WILL EXPIRE on June 26, 2011.

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<sup>64</sup> See 47 C.F.R. § 1.1914.

<sup>65</sup> 47 C.F.R. § 0.283.

<sup>66</sup> See 47 C.F.R. § 73.3566(a).

<sup>67</sup> 47 C.F.R. § 73.3598(a).

33. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ms. Elaine Rougeau, Ethics, Inc., 9064 Highland Road, Baton Rouge, Louisiana 70808, and to Baton Rouge Progressive Network, c/o Michael Couzens, Esq., 6536 Telegraph Avenue, Suite B201, Oakland, California 94609.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau