

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

In the Matter of)	
)	File No. EB-05-IH-2569
Birach Broadcasting Corporation)	NAL Account No. 201032080020
)	FRN No. 0003766847
)	
Licensee of Station WMFN(AM))	Facility ID No. 55089
Zeeland, Michigan)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 18, 2010

Released: March 18, 2010

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that Birach Broadcasting Corporation (“Birach”), licensee of Station WMFN(AM), Zeeland, Michigan (the “Station”), apparently willfully violated Section 310(d) of the Communications Act of 1934, as amended (the “Act”), by engaging in an unauthorized transfer of control of the Station that occurred in the context of a time brokerage agreement.¹ We further find that Birach apparently violated Section 73.1125 of the Commission's rules² by failing to staff the main studio of the Station with a managerial employee and staff level employee of its own while the Station was being operated by a time broker. We conclude, pursuant to Section 503(b) of the Act,³ that Birach is apparently liable for a forfeiture in the amount of \$15,000. We also order Birach, within 60 days of this NAL, to update the Commission on its steps to remedy these apparent violations. We emphasize that Birach is subject to further enforcement action if it fails to come into compliance.

II. BACKGROUND

2. In April 2005, the Enforcement Bureau’s Detroit Field Office inspected Birach station WMFN(AM) and found that no employees of Birach were present at the station’s main studio.⁴ The personnel at Station WMFN(AM) informed the FCC inspector that the Station was being operated for Birach pursuant to a “handshake” time brokerage agreement.⁵

¹ A “time brokerage agreement,” also referred to as a “local marketing agreement,” refers to an agreement for the sale by a licensee of a discrete block of time to a third-party, a “broker,” that supplies programming to fill the time and sells commercial announcements in it. See 47 C.F.R. § 73.3555, Note 2 (j); see also *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8141 ¶ 10 (1995), *vacated in part on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998).

² See 47 C.F.R. § 73.1125.

³ See 47 U.S.C. § 503(b).

⁴ See FCC Broadcast Inspection Summary Report Station WMFN(AM), dated April 11, 2005, at 1. The following day, FCC field agents inspected another Birach station located in a nearby community and found that the station was also being operated by different time brokers. FCC Broadcast Inspection Summary Report Station WMJH(AM), dated April 12, 2005, at 2. The Enforcement Bureau investigated apparent violations at the two stations jointly.

⁵ See *id.*

3. As a result of the concerns raised by the on-site inspection, the Enforcement Bureau directed a letter of inquiry (the “LOI”) to Birach on March 5, 2007.⁶ The LOI requested information about the licensee’s time brokerage agreements with other parties, and specifically requested any written time brokerage agreements into which the station had entered.⁷ In the response to the LOI (the “Response”), dated April 4, 2007, Sima Birach, sole owner and general manager of Station WMFN(AM), states that he is ultimately responsible for the programming, employment, marketing, and finances of Station WMFN(AM), and that he has entered into agreements with time brokers to that end.⁸ According to the Response, Tyrone Bynum is the time broker for Station WMFN(AM).⁹ The Response does not include a copy of a written time brokerage agreements between Birach and Tyrone Bynum. Instead, Birach provides an invoice for the monies owed for use of the Station.¹⁰ The invoice, signed by the broker and Mr. Birach, provides terms for payment, cancellation, and states, “Customer is responsible for any legal problem caused to Station.”¹¹ It also indicates that liability insurance is required, as is proof each month that the tower lease has been paid.¹² The invoice for Station WMFN(AM) is dated April 22, 2005, approximately two weeks after the inspection referenced above.¹³

4. In the Response, Birach states that time brokers were responsible for the operation of station WMFN(AM) and for providing programming for the station.¹⁴ Moreover, the Response states that, while Birach did not have an employee present at the station, Birach has since (as of the date of the Bureau’s LOI) hired a managerial level employee to work at Station WMFN(AM) and another Birach-owned station, WMJH(AM), half-time at each station.¹⁵ The Response states that, up until that date, Sima Birach was responsible for the operation of the Station.¹⁶ According to our licensing records, Birach’s business address is located in Southfield, Michigan, approximately two hours away from Zeeland, Michigan (where Station WMFN(AM) is located). Birach’s counsel asserts that, given the state of technology, it was possible to supervise the operation of the Station remotely.¹⁷

III. DISCUSSION

5. Under Section 503(b)(1) of the Act, 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 Commission shall be liable to the United States for a forfeiture penalty.¹⁸ Section 312(f)(1) of

⁶ See Letter from Jennifer Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (“FCC”), to Birach Broadcasting Corporation, dated March 6, 2007 (the “LOI”).

⁷ See *id.*

⁸ See Letter from Lauren A. Colby, Esq., counsel for Birach Broadcasting Corporation, to Marlene H. Dortch, Secretary, FCC, dated April 4, 2007, at 3-4 (transmitting Answers to Inquiries prepared by Sima Birach, President and Sole shareholder of Birach Broadcasting Corporation).

⁹ See *id.*

¹⁰ See *id.* at attachment to Answers to Inquiries.

¹¹ *Id.*

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.* at 3-4.

¹⁵ See *id.*

¹⁶ See *id.* at 3.

¹⁷ See Letter from Lauren A. Colby, Esq., counsel for Birach Broadcasting Corporation, to Marlene H. Dortch, Secretary, FCC, dated April 5, 2007, at 1.

¹⁸ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁹ 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,²⁰ and the Commission has so interpreted the term in the Section 503(b) context.²¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²² “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²³ In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.²⁴ The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.²⁵ As described in greater detail below, we conclude under this procedure that Birach is apparently liable for a forfeiture in the amount of \$15,000 for its apparent willful and repeated violation of Section 310(d) of the Act by transferring *de facto* control of Station WMFN(AM) to a time broker without prior Commission approval, and of Section 73.1125 of the Commission's rules by failing to maintain a meaningful presence at the Station's main studio.

A. Unauthorized Transfer of Control

6. Section 310(d) of the Act²⁶ prohibits the transfer of control of a station license, and any rights thereunder, without prior Commission consent. There is no exact formula by which control of a broadcast station can be determined. In ascertaining whether a transfer or reversion of control has occurred, the Commission traditionally looks beyond the legal title to whether a new entity or individual has obtained the right to determine the basic operating policies of the station.²⁷ Specifically, the Commission looks to three essential areas of station operation: programming, personnel, and finances.²⁸

7. The Commission has consistently held that a licensee's participation in a time brokerage agreement (“TBA”), also known as a local marketing agreement (“LMA”), does not *per se* constitute an unauthorized transfer of control or a violation of the Act or any Commission rules or policies.²⁹ As with

¹⁹ 47 U.S.C. § 312(f)(1).

²⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²¹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²² See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

²³ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

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

²⁵ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

²⁶ Section 310(d) of the Act, 47 U.S.C. § 310(d), provides in pertinent part:

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.

²⁷ See *WHDH, Inc.*, Memorandum Opinion and Order, 17 FCC 2d 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).

²⁸ See, e.g., *Stereo Broadcasters, Inc.*, Decision, 87 FCC 2d 87 (1981), *recons. denied*, 50 R.R.2d 1346 (1982).

²⁹ See, e.g., *WGPR, Inc.*, 10 FCC Rcd at 8141 ¶ 10; *Roy R. Russo, Esquire*, Letter decision, 5 FCC Rcd 7586 (MMB (continued....))

any allegation of unauthorized transfer or reversion of control, without regard to whether a TBA exists, we look to whether a licensee continues to have ultimate control over the station, including its programming, personnel, and finances. Licensees are permitted under Section 310(d) of the Act to delegate day-to-day operations relating to those three areas, as long as they continue to set the policies guiding those operations.³⁰ Thus, in making a determination, the Commission looks not only to who executes the programming, personnel, and finance responsibilities, but also to who establishes the policies governing those three areas.³¹ The Commission has directed that,

Licensees engaged in [TBAs] . . . must operate . . . as a stand-alone entity discrete from the [TBA operator]. Thus, we require that licensees must maintain their own bank accounts, pay the salaries of their own employees, and remain responsible for their own obligations to programmers, utility companies, and other operational matters. In other words, the licensee should be ready and able to operate independently from the [TBA operator] at any time it believes the arrangement does not fulfill its public interest responsibilities.³²

8. The LOI specifically asked Birach questions relating to who controls the programming aired on Station WMFN(AM), who handles the finances, and who makes personnel decisions.³³ In the Response, Birach admits that, prior to the LOI, the time broker provided the programming aired on the Station, paid the salaries and wages of the personnel who operated the Station, and handled the marketing and finances at the Station, except that Birach was responsible for the maintenance of the physical plant of the Station.³⁴ Birach's Response also makes it clear that the time broker was solely responsible for ensuring compliance with various FCC requirements, such as the maintenance of the Station's public inspection files and performance of Emergency Alert System ("EAS") testing.³⁵ In response to a question regarding whether the EAS tests were performed properly, Birach responded, "I have been assured that the EAS regulations have been fully complied with."³⁶ With respect to public inspection file compliance, Birach stated, ". . . I have been advised that the local public inspection files have been kept and made available to the public if requested."³⁷ This reflects that Birach only has a second-hand understanding from the time broker as to whether the Station licensed to him was in full compliance with the Commission's rules. By his own admissions, we find that Birach effectively abdicated control of the Station.

9. The purported TBA submitted by Birach with its LOI Response consists of an invoice for monies owed, and does not adequately reflect the respective responsibilities of each party. While the Commission allows licensees to broker time on stations, the agreements are required to be in writing and kept in the station's public inspection file.³⁸ In addition, the agreements must include a certification that the

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1990); *Joseph A. Belisle, Esquire*, Letter decision, 5 FCC Rcd 7585 (MMB 1990).

³⁰ See *Southwest Texas Public Broadcasting Council*, Order, 85 FCC 2d 713, 715 (1981); *The Alabama Educational Television Commission*, Memorandum Opinion and Order, 33 FCC 2d 495, 508 (1972).

³¹ See *WGPR, Inc.*, 10 FCC Rcd at 8142.

³² *Id.* at 8145.

³³ See LOI at 4-5.

³⁴ See Response at 3-4.

³⁵ See *id.*

³⁶ See *id.* at 4.

³⁷ See *id.*

³⁸ See *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interest*, 14 FCC Rcd 12559, 12601 (1999) (reviewing the requirements relating to time brokerage agreements and amending Section 73.3613(d) relating to the filing of agreements with the Commission).

licensee has ultimate authority over the operation of the station.³⁹ Birach's failure to execute, and maintain in its public file, a written TBA undercuts any assertions that Birach has made to demonstrate that there was not a *de facto* transfer of control of the Station without Commission consent. The Commission requires that there not be ambiguity as to who ultimately controls the station; the licensee is required to maintain a written record explicitly delineating that it has retained ultimate control over station operations. Following receipt of the LOI, Birach attempted to exert licensee control of the station by hiring a managerial employee to oversee operations half-time at WMFN(AM) and half-time at WMJH(AM) which Birach contends is sufficient to address any concerns the Commission might have about the lack of any licensee presence at the station.⁴⁰ We agree that this is a necessary step toward reasserting control over the stations, but as discussed below in Paragraph 11, it is a subsequent remedial measure that will not shield Birach from liability. Also, as discussed in Section III.B, *infra*, because Birach did not hire enough employees, this eleventh hour effort still fails to comport with the Commission's main studio staffing requirements.

10. We conclude that the record in this case, which includes certain concessions from the licensee, demonstrates that an unauthorized transfer of control occurred. We find that Birach improperly abdicated control of the Station to the time broker by failing to retain an independent operating presence at the Station and by failing to exercise the required level of control over programming, personnel, and finances. The record in this case confirms that Birach failed to operate as a stand-alone entity with an operational presence ready to take over operations if necessary.

11. Although it appears that Birach took steps to remedy the situation after receiving our LOI, we have consistently held that subsequent remedial measures do not shield a licensee from liability for violations of the Act or the Commission's rules.⁴¹ Furthermore, Birach must take additional steps, including hiring more employees to establish a meaningful presence at the Station, taking a more active role in the Station's operations, maintaining a written TBA at the Station so that it can be made readily available for public inspection, actively assuring that the Station continues to fulfill its public interest and programming obligations to the community it serves, and confirming, first-hand, continued compliance with the Commission's rules. If Birach fails to fully reassert control over the Station, we may impose further sanctions, including possible license revocation or non-renewal.⁴²

B. Section 73.1125 - Main Studio Rule

12. The Commission has interpreted Section 73.1125 (also known as the "Main Studio Rule") to require, among other things, that a licensee maintain a "meaningful management and staff presence" at its main studio.⁴³ Specifically, the Commission has found that a main studio "must, at a minimum, maintain full-time managerial and full-time staff personnel."⁴⁴ Prior to the LOI, Birach had no employees who worked at

³⁹ See *id.* at 12636-38 (amending Section 73.3555 to include Note 2(j), which explains that time brokerage agreements "shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming . . ."); 47 C.F.R. § 73.3555.

⁴⁰ See Response at 3.

⁴¹ See, e.g., *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-871 (2002) (finding that remedial actions to correct the violation at issue were not a mitigating factor when assessing the forfeiture amount); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099 (1994) (finding that a downward adjustment of a forfeiture was not warranted where a public coast station operator discontinued unauthorized operations after the *NAL* was issued).

⁴² See *Radio Moultrie, Inc.*, Order of Revocation, 18 FCC Rcd 22950, 22957 (Enf. Bur. 2003) (revoking license for violating Section 310(d) by engaging in an unauthorized transfer of control and failure to comply with Commission directives).

⁴³ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 F.C.C.R. 5024, 5026 (1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

⁴⁴ See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991)

the Station. Following the LOI, Birach hired a single managerial employee to work at Station WMFN(AM) and another Birach-owned station, WMJH(AM), half-time at each station. Thus, Birach needs to hire three more employees to come into compliance with the rule.⁴⁵ We find that Birach was in flagrant violation of the Main Studio Rule both prior to the LOI and following the LOI.

13. In a letter submitted the day after Birach's Response, Birach's counsel asserts that the "meaningful presence" requirement is outdated, and that, given today's technology, Birach can meaningfully supervise both stations' activities from Southfield, Michigan.⁴⁶ We disagree. As discussed above, while the Commission allows licensees to delegate day-to-day operations, the Commission requires that licensees retain a presence capable of taking over station operation if necessary. The remote supervision described in the Response is insufficient to meet Birach's obligations as a Commission licensee. It is also readily apparent from Birach's Response, that Birach had only secondhand knowledge of whether the Station was complying with the Commission's rules. In this regard, Birach can only relay assurances he has received from the time broker that the Station's EAS tests were performed regularly and that the Station's public inspection files were properly maintained and provided to the public upon request.

C. Forfeiture Amount

14. Pursuant to the *Forfeiture Policy Statement* and Section 1.80 of the Commission's Rules, the base forfeiture amount for an unauthorized transfer of control is \$8,000.⁴⁷ The Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act⁴⁸ and Section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁴⁹ Here, considering the circumstances of this case, we find that there was an unauthorized transfer of control at Station WMFN(AM) and that the base forfeiture is an appropriate penalty for the violation in this case. Therefore, we find that Birach is apparently liable in the amount of \$8,000 for violating Section 310(d) of the Act.⁵⁰

15. In addition to the unauthorized transfer of control, as discussed above, we find that Birach also violated Section 73.1125 of the Commission's rules (the main studio rule) by failing to staff the main

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("Jones Eastern") (noting that, "This is not to say that the same staff person and manager must be assigned full-time to the main studio. Rather, there must be management and staff presence on a full-time basis during normal business hours to be considered 'meaningful.'"), *clarified*, 7 FCC Rcd 6800 (1992) ("Jones Eastern II").

⁴⁵ See *Turro*, Decision, 15 FCC Rcd 14649, 14668 (2000) (finding that meaningful presence of the licensee at the station is necessary to identify community needs and meet public interest obligations); see also *Salem Broadcasting*, Letter, 6 FCC Rcd 4172 (Media Bur. 1991) (notice of apparent liability proposing a forfeiture for an apparent violation of Section 310(d) and the Main Studio rule).

⁴⁶ See Letter from Lauren A. Colby, Esq., counsel for Birach Broadcasting Corporation, to Marlene H. Dortch, Secretary, FCC dated April 5, 2007, at 1.

⁴⁷ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement"); 47 C.F.R. § 1.80.

⁴⁸ 47 U.S.C. § 503(b)(2)(E).

⁴⁹ 47 C.F.R. § 1.80(a)(4).

⁵⁰ See *Edwards*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22251 (2001) *reh'g denied sub. nom. Rainbow Push Coalition v. FCC*, 330 F.3d 339 (2003) (assessing a \$40,000 forfeiture for violating Section 310(d) with respect to five stations over more than one day); see also *Danville Television Partnership*, Memorandum Opinion and Order, 16 FCC Rcd 9314 (Media Bur. 2001) (assessing a \$10,000 forfeiture for engaging in an unauthorized transfer of control).

studio of the Station with a managerial employee and staff level employee of its own while the Station was being operated by time brokers. Pursuant to the *Forfeiture Policy Statement* and Section 1.80 of the Commission's Rules, the base forfeiture amount for violations of the main studio rule is \$7,000.⁵¹ Having considered the factors described above, we find that the base forfeiture is an appropriate penalty for the violation in this case, and therefore, we find that Birach is apparently liable for a forfeiture in the amount of \$7,000 for a violation of Section 73.1125 of the Commission's rules.⁵²

IV. ORDERING CLAUSES

16. **Accordingly, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314, and 1.80 of the Commission's Rules, Birach Broadcasting Corporation is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Section 310(d) of the Act and Section 73.1125 of the Commission's Rules.⁵³

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, that within thirty (30) days of the release date of this Notice, Birach 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.

18. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Birach will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh @fcc.gov and William.Knowles-Kellett@fcc.gov.

19. The response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington D.C. 20554, and **SHALL INCLUDE** the NAL/Acct. No. referenced above. The licensee shall also, to the extent practicable, transmit a copy of the response via email to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh @fcc.gov and William.Knowles-Kellett@fcc.gov.

20. The Commission shall not consider reducing or canceling a forfeiture in response to a claim

⁵¹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), *recons. denied* 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. §1.80 (2005).

⁵² See *WJZD, Inc., Golden Gulf Coast Broadcasting, Inc., Capstar TX Ltd. Partnership and Mr. Douglas A. Hutcheson*, Letter decision, 20 FCC Rcd 9941, 9947-48 (Media Bur. 2005), *recons. denied*, *Mr. Lawrence E. Steelman, Capstar TX Ltd. Partnership, Mr. Stanley Daniels*, Letter decision, 22 FCC Rcd 4866 (Media Bur. 2007).

⁵³ See 47 U.S.C. §§ 310(d), 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1125.

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.

21. **IT IS FURTHER ORDERED** that within sixty days of the release of this *NAL* that Birach Broadcasting Corporation **SHALL FILE** a written statement concerning the steps that it has taken to reassert control over Station WMFN(AM) Zeeland, Michigan, and to comply with the FCC staffing requirements for Station WMFN(AM)’s main studio. Such statement must be submitted in the form of an affidavit or declaration in accordance with Section 1.16 of the Commission’s rules,⁵⁴ must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, to the attention of: Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, and must include the File number and NAL/Acct. No. referenced above. Birach Broadcasting Corporation shall also transmit a copy of the statement via email to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Anjali.Singh @fcc.gov and William.Knowles-Kellett@fcc.gov.

22. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Birach Broadcasting Corporation at its address of record; and to Lauren A. Colby, Esq., 10 East 4th Street, Frederick, MD 21705-0113.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁵⁴ See 47 C.F.R. § 1.16.