

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

In re Application of)	NAL/Acct. No. MB 201641410001
)	FRN: 0008605750
E-String Wireless, Ltd., Assignor, and Martin Broadcasting, Inc., Assignee)	
)	
For Consent to Assignment of License for FM Translator Station K298CB, Beaumont, Texas)	Facility ID No. 156318
)	File No. BALFT-20150316AAT
)	

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

Adopted: January 13, 2016

Released: January 13, 2016

By the Chief, Audio Division, Media Bureau:

1. We have before us: (1) the captioned application (Assignment Application), as amended, for consent to the assignment of the license for FM Translator K298CB, Beaumont, Texas (Translator) from E-String Wireless, Ltd. (E-String) to Martin Broadcasting, Inc. (Martin), licensee of KZZB(AM), Beaumont, Texas, filed March 16, 2015; (2) a Petition to Deny the Assignment Application (Petition) filed April 22, 2015, by Southeast Texas Telecom, LLC (STT); and (3) various related pleadings.¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that E-String apparently made a false certification regarding construction of the modified facilities of the Translator in contravention of Section 1.17 of the FCC rules³ and operated the Translator with unauthorized facilities in violation of Section 73.1745(a) of those rules.⁴ Based upon our review of the record before us, we conclude that E-String is apparently liable for a monetary forfeiture in the amount of nine thousand dollars (\$9,000) for false certification and unauthorized operation. We also admonish E-String for prior false certifications that are beyond the applicable statute of limitations. Additionally, we dismiss the Petition and instead treat it as an informal objection which we grant in part and deny in part.

2. **Background.** In this transaction, E-String proposes to assign the license of the Translator to Martin, the licensee of Station KZZB(AM), Beaumont, Texas, the primary station being rebroadcast on the Translator. STT's allegations concern a series of applications filed by E-String for the initial construction permit for the Translator and for modification of its facilities and frequency. First, on August 30, 2013, E-String filed a "long-form" application (2013 Application) for a new translator on Channel 246 (97.1 MHz) at Beaumont and specified Antenna Structure Registration (ASRN) 1058484 as

¹ These pleadings include: (1) an Opposition to Petition to Deny filed by E-String on April 30, 2015 (E-String Opposition); (2) an Opposition to Petition to Deny filed by Martin on April 30, 2015 (Martin Opposition); and (3) a Supplement to Opposition to Petition to Deny filed May 6, 2015 by Martin.

² This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the FCC rules. *See* 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of those rules. *See* 47 CFR § 0.283.

³ 47 CFR § 1.17.

⁴ 47 CFR § 73.1745(a).

its transmitter site (Sawyer Road Tower), which was the same proposed transmitter site that E-String had specified in its “short-form” application filed during the 2003 FM translator filing window.⁵ Second, after the 2013 Application was granted, E-String filed an application on March 13, 2014 for modification of its initial construction permit to specify a different tower (ASRN 1060813) at a new site for Channel 246 (KZZB Tower).⁶ Third, E-String filed a further modification application (Second Modification Application) on August 20, 2014, specifying Channel 299 (107.7 MHz) on the KZZB Tower and changing the Translator’s technical facilities.⁷ Fourth, the Translator went silent on February 9, 2015, pursuant to Commission authority,⁸ and E-String submitted an additional modification application, specifying Channel 298 (107.5 MHz) in lieu of Channel 299 at the KZZB Tower and changing its operating parameters.⁹ Each of these applications was uncontested, and their grants, as well as the grant of subsequent covering license applications, are now final.

3. In its Petition, STT argues that E-String willfully made false statements in several of these applications. STT alleges that in the 2013 Application, E-String specified the Sawyer Road Tower as its transmitter site, but the Sawyer Road Tower had been destroyed eight years earlier (in September 2005) by Hurricane Rita. Likewise, STT states that a picture in the 2013 Application that purported to be the Sawyer Road Tower was actually a different tower. Finally, STT argues that E-String operated the Translator with parameters different from those specified in the Second Modification Application and the covering license application filed on January 9, 2015 (Second License Application).¹⁰ STT asserts that these examples of willful false statements call into question E-String’s candor and its qualifications as a licensee, as well as those of Martin, who allegedly participated in this deception. Accordingly, STT urges the Commission to deny the Application, revoke the license for the Translator, and sanction E-String and Martin for making false statements.

4. In its Opposition, E-String acknowledges some “erroneous data” in the applications and “technical deficiencies” in the constructed facility, but notes that corrective action was taken and argues that E-String’s errors do not rise to the level of misrepresentation or lack of candor that would be disqualifying misconduct.¹¹ With respect to the 2013 Application, E-String contends that it was not aware that the Sawyer Road Tower no longer existed until STT filed its Petition. On the contrary, E-String

⁵ See File No. BNPFT-20130830ASR, granted on January 16, 2014.

⁶ See File No. BMPFT-20140313ADN (First Modification Application), granted on April 21, 2014. The staff granted a covering license application, BLFT-20140707ABZ, on October 24, 2014. Martin owns the KZZB Tower.

⁷ See File No. BPFT-20140820ACW. The authorization here required E-String to file a covering license application before program test authority would be issued. That application was filed on January 9, 2015, and granted on February 5, 2015. See File No. BLFT-20150109AAB

⁸ See File No. BLSTA-20150218AAD indicating that the station had gone silent “while [the] site is prepared to rebroadcast KZZB(AM).” *Id.* at Exh. 1. The staff granted a request for special temporary authority on March 26, 2015, to permit the Translator to remain silent for 180 days. E-String subsequently indicated that the Translator had resumed operation on May 18, 2015.

⁹ See File No. BPFT-20150113ABY (Third Modification Application), granted on February 18, 2015. The staff granted a covering license application on June 2, 2015. See File No. BLFT-20150518AFF. On May 18, 2015, the Translator resumed operation on Channel 298.

¹⁰ STT also contends that in the covering license applications for the First and Second Modification Applications, E-String stated that the Translator was constructed and ready for operation when there actually was no constructed facility. Petition at 2 and Attachment 6, Declaration of Mary Robinson. However, STT’s showing on this issue is internally inconsistent. Although the affidavit of Mary Robinson submitted by STT states that she had never seen an antenna for the Translator on Channel 246 (97.1 MHz) at the KZZB Tower, the Petition acknowledges that there is an antenna “that is left from the K246CF 97.1 construction.” Petition at 2. In view of this inconsistency, we need not discuss this allegation further.

¹¹ E-String Opposition at 4.

submits documentation that it had reasonable assurance of availability of the Sawyer Road Tower when it filed its short-form application in 2003 and argues that it was reasonable to have relied on this arrangement and the Commission's ASRN records in certifying site availability in the 2013 Application. E-String indicates that those records were not updated to reflect that the Sawyer Road Tower had been destroyed until December 3, 2013, three months after the 2013 Application was filed.¹² E-String also contends that the inclusion of an incorrect photograph of the Sawyer Road Tower in the 2013 Application was simply a mistake made by E-String's consulting engineer. It states that the engineer included a photograph of the only tower in the immediate vicinity of the specified tower, having failed to realize that the specified tower (the Sawyer Road Tower) no longer existed and mistakenly assuming that the photographed tower was that tower.¹³ With respect to STT's allegation that the equipment installed on the KBZZ Tower was different from that specified in the Second Modification Application and the Second License Application, E-String submits an affidavit from one of its principals to support its claim that "this was an inadvertent error caused by [the principal's] attention being spread among multiple translator construction projects for E-String."¹⁴ Finally, E-String contends that there was no motive to deceive the Commission about the Translator's operational status because the Translator went off the air, pursuant to Commission authority, in order to re-construct the facilities as specified in the Third Modification Application. Accordingly, E-String requests that the Petition be denied and the Assignment Application be granted.

5. In its Opposition, Martin argues that STT has not offered any facts to support its contention that Martin engaged in wrongdoing and failed to support its allegations concerning Martin with a sworn declaration. Martin states that, beyond entering into an asset purchase agreement and tower license agreement with E-String for the Translator, Martin had no involvement in E-String's applications or submissions to the Commission. Accordingly, Martin contends that STT's arguments regarding Martin's qualifications are without merit and that the Petition should be denied.¹⁵

6. **Discussion.** Section 310(d) of the Act requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest.¹⁶ Pursuant to Section 309(e) of the Act, petitions to deny or informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁷ STT has not met this burden.¹⁸

7. *Procedural Issue. Standing.* Under Section 309(d)(1) of the Act, a petition to deny "shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest."¹⁹ In an

¹² E-String Opposition at 2 and Exh. 2 (showing the Commission's ASRN database page for the Sawyer Road Tower).

¹³ *Id.* at 2 and Exh. 3.

¹⁴ *Id.* at 3.

¹⁵ Martin Opposition at 2-4.

¹⁶ 47 U.S.C. § 310(d).

¹⁷ 47 U.S.C. § 309(e). *See also WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁸ We agree with Martin that STT's allegations involving Martin are speculative and unsupported by a sworn declaration or by any evidence subject to official notice. *See* 47 U.S.C. § 309(d). We need not address those allegations further.

¹⁹ 47 U.S.C. § 309(d)(1). *See also* 47 CFR § 73.3584(a).

assignment of license proceeding, these allegations must show that: (1) the petitioner has suffered or will suffer a direct injury; (2) there is a causal link between the proposed assignment and the injury-in fact; and (3) the relief sought will likely be remedied with the Commission's denial of the pending application. STT has not established how grant of the Assignment Application would result in a direct injury to it or how denial of that application would redress that injury.²⁰ Accordingly, we find that STT does not have standing to file its Petition, and we will dismiss it and treat the pleading as an informal objection under Section 73.3587 of the Rules.²¹

8. *Substantive Issues. Misrepresentation/Lack of Candor.* The trait of truthfulness is a key element of character qualifications necessary to operate a broadcast station in the public interest.²² Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.²³ Misrepresentation is a false statement of fact made with intent to deceive.²⁴ Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by intent to deceive.²⁵ Intent can be shown in many ways. If a licensee knowingly makes a false statement, that is sufficient proof of intent to deceive.²⁶ Intent to deceive can also be inferred when one has a clear motive to deceive.²⁷ Moreover, intent can be found when the surrounding circumstances clearly show the existence of intent to deceive, even if there is no direct evidence of a motive to deceive.²⁸

9. STT's misrepresentation and lack of candor allegations arise principally from E-String's filing of three sets of construction permit, modification, and covering license applications for the Translator.²⁹ However, STT raised these issues after the grant of these applications had become final. It is well settled that we do not re-open proceedings that are final unless there has been fraud on our processes or the challenged result is unconscionable.³⁰ STT has not presented evidence to show that either of these exceptions to the finality doctrine applies here.

10. Notwithstanding the fact that the staff grants of the applications in question are now final and will not be revisited, the staff retains the authority under Section 503(b)(6) of the Act to impose a forfeiture on E-String for falsely certifying a material fact in those applications, subject to the statute of

²⁰ *WOXL-FM, Biltmore Forest, North Carolina*, Letter, 20 FCC Rcd 11987, 11920 n.22 (MB 2007).

²¹ 47 CFR § 73.3587. Additionally, we find that the Petition is not properly verified pursuant to Section 1.52 because it was not signed by counsel. See 47 CFR § 1.52 (requiring that all pleadings submitted to the Commission be signed by an attorney or, if not signed by an attorney, verified by the party submitting it to the Commission).

²² See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210-11, paras. 58-62 (1986) (subsequent history omitted).

²³ *Id.*

²⁴ See *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129, para. 6 (1983).

²⁵ *Id.*

²⁶ See *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980) (“[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent”).

²⁷ See, e.g., *RKO Gen., Inc.*, Decision, 4 FCC Rcd 4679, 4684, para. 29 (Rev. Bd. 1989).

²⁸ See *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983) (stating that “the absence of direct evidence of motive is not significant where the record otherwise clearly establishes that deceptive conduct has occurred”).

²⁹ Specifically, the three sets of applications are: (1) the 2013 Application; (2) the First Modification Application and covering license application; and (3) the Second Modification Application and Second License Application.

³⁰ See *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5018, para. 8 (2001), citing *Radio Para La Raza*, Memorandum Opinion and Order, 40 FCC 2d 1102, 110, para. 6 (1973).

limitations imposed on forfeitures by Section 503(b)(6) of the Act.³¹ Accordingly, because E-String was issued a license for the Station on October 24, 2014, we may impose a forfeiture for false certifications made in applications – such as the Second Modification and Second License Applications here – filed after that date and within the station’s current license term, which in this case will end on August 1, 2021.³² As described below, we believe that STT has shown that the Second License Application violated Section 1.17 of our rules because it contained a false certification, but has not shown misrepresentation or lack of candor by E-String because it has not established the key element of intent to deceive.

11. We agree with STT that the Second License Application contained incorrect information. E-String certified that the Translator was constructed pursuant to the facilities specified in the Second Modification Application, but now has admitted that the Translator was constructed with a different antenna orientation than specified.³³ However, we find no motive to deceive the Commission about the Translator’s construction or operational status. Permittees have 36 months to complete construction of their facilities.³⁴ E-String had already received its license for the Translator’s operation at the KZZB Tower and was under no deadline pressure when it made the certification in the Second License Application.³⁵ Further, on February 9, 2015, four days after grant of the Second License Application and before STT filed its Petition, E-String took the Translator off the air.³⁶ E-String subsequently reconstructed the Translator’s facilities in conformity with the facilities specified in the Third Modification Application. In light of the absence of any material benefit to E-String from either the filing

³¹ 47 U.S.C. § 503(b)(6). *See, e.g., Riverside Youth and Rehabilitation d/b/a Riverside Ministries*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360, 10364, para. 12 (MB 2008).

³² *See* 47 U.S.C. § 503(b)(6)(A)(ii) (no forfeiture may be “determined or imposed” against any person if the person holds a broadcast station license and the violation charged occurred: (1) more than one year prior to the date of issuance; or (2) prior to the date of commencement of the current license term, whichever is earlier). We find it troubling that those aspects of the 2013 Application cited by STT also involved apparent violations of Section 1.17 of our rules. Petition at 2 (noting E-String’s specification of the Sawyer Road Tower, even though it had been destroyed years earlier, and submission of a claimed photograph of that tower); *see* 47 CFR § 1.17. However, when E-String submitted that application, it had not been issued a license for the proposed facility. In that situation, the statute of limitations for proposing a forfeiture is one year from the date of violation. *See* 47 U.S.C. § 503(b)(6)(B); *American Family Ass’n*, Order on Reconsideration, 21 FCC Rcd 6880, 6881-82, para. 7 (EB 2006), *reversed on other grounds*, Order, 21 FCC Rcd 8044 (EB 2006) (“Because AFA was a permittee, rather than a licensee . . . the applicable statute of limitations was one year, pursuant to section 503(b)(6)(B).”). 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. *Lutheran Church-Missouri Synod*, Memorandum Opinion and Order, 12 FCC Rcd 2152, 2167, para. 26 (1997), *rev’d on other grounds sub nom. Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344 (D.C. Cir. 1998). Therefore, because the 2013 Application was filed on August 30, 2013, we are barred by Section 503(b)(6) of the Act from issuing a Notice of Apparent Liability to E-String for those erroneous submissions. Based on our review of the record, we will accept E-String’s explanation of the errors in the 2013 Application as mistakes rather than intentional deception, because we have no reason to believe that E-String wished to have a construction permit or license specifying that the Translator’s antenna would be mounted on a non-existent tower. However, we will admonish E-String for specifying and identifying the Sawyer Road Tower in the 2013 Application without confirming that it had reasonable assurance to operate from that tower. *See, e.g., White Park Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 3549, 3568, para. 29 (MB 2009) (applicant admonished for false certification when Commission was time-barred from issuing a Notice of Apparent Liability).

³³ *See* E-String Opposition at 3.

³⁴ *See* 47 CFR §73.3598(a).

³⁵ *Compare, e.g., Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588 (2008), *aff’d sub nom. Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009) (licensee’s premature and nonconforming modification of station facilities was a futile attempt to circumvent the statutory deadline in 47 U.S.C. § 312(g)).

³⁶ *See* File No. BLSTA-20150218AAD.

of the Second License Application or the brief operation of the Translator with the unapproved antenna orientation, we conclude that E-String's apparent violation involved a false certification, but not misrepresentation or lack of candor.

12. False Certification. Section 1.17(a)(2) of the FCC rules provides that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."³⁷ Even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.³⁸ E-String certified in the Second License Application that it had completed construction of the facility as proposed in the Second Modification Application. After STT challenged this certification in this proceeding,³⁹ E-String acknowledged in its Opposition that this certification was wrong. Notwithstanding that E-String claims that the "inadvertent error" was caused by its principal's "attention being spread among multiple projects for E-String,"⁴⁰ we find that E-String apparently lacked a reasonable basis for this certification because it failed to verify that the antenna was mounted correctly prior to filing the Second License Application. We accordingly issue this *NAL* to E-String for this apparent violation of Section 1.17(a)(2) of the FCC rules.

13. Unauthorized Operation. Section 73.1745(a) of the FCC rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license.⁴¹ E-String acknowledges in its pleadings that it operated the Translator from January 5, 2015, until February 9, 2015, with an antenna that was not oriented in the direction set forth in the Translator's authorization.⁴² We find that this constitutes a violation of Section 73.1745(a).

14. Proposed Forfeiture Assessment. Under Section 503(b)(1)(B) 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.⁴³ 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.⁴⁴ 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,⁴⁵ and the Commission has so interpreted the term in the Section 503(b) context.⁴⁶ 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."⁴⁷

³⁷ See 47 CFR § 1.17(a)(2).

³⁸ See *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4017, para. 5 (2003) (subsequent history omitted).

³⁹ See Petition at 2.

⁴⁰ E-String Opposition at 3.

⁴¹ See 47 CFR § 73.1745(a).

⁴² See E-String Opposition at 3.

⁴³ 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

⁴⁴ 47 U.S.C. § 312(f)(1).

⁴⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴⁶ See *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

⁴⁷ 47 U.S.C. § 312(f)(2).

15. The Commission's *Forfeiture Policy Statement*, Section 1.80(b)(4) of the FCC rules, and Section 503(b)(2)(A) of the Act establish Commission guidelines for assessing forfeitures.⁴⁸ However, these guidelines do not enumerate a base forfeiture amount for a false certification. Under these circumstances, we must assess the forfeiture amount taking into account the relevant statutory factors 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."⁴⁹

16. Considering all of the enumerated factors and the particular circumstances of this case, we find that E-String apparently willfully violated Section 1.17(a)(2) by certifying in the Second License Application that it had built the facilities in conformity with the underlying construction permit when it had not. Although E-String subsequently corrected this situation by filing a construction permit application reflecting the actual operating parameters of the Station, it nevertheless willfully filed an admittedly incorrect certification with the Commission and did not exercise due diligence before submitting that certification. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D), we propose a forfeiture of \$5,000 for the false certification.⁵⁰

17. We also find that E-String apparently willfully and repeatedly violated Section 73.1745(a) by operating the Translator in a manner that was not in accord with its construction permit or license for 34 days.⁵¹ Although E-String voluntarily ceased operation with those unauthorized facilities, corrective action taken to come into compliance with the FCC rules is expected and does not nullify or mitigate any prior violations.⁵² We propose a forfeiture in the base amount of \$4,000 for this technical violation.⁵³

18. We also admonish E-String for specifying and photographically identifying the Sawyer Road Tower in the 2013 Application without having a reasonable basis for believing that information to be correct. This conduct is unacceptable, particularly for an experienced licensee such as E-String. Additionally, we will require E-String to submit a copy of this *NAL* with every facility application—FCC Form 301, 302 (any version), 349, or 350—filed by E-String or its attributable owners (Bret Huggins and

⁴⁸ 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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(1), Section I.

⁴⁹ 47 U.S.C. § 503(b)(2)(D).

⁵⁰ See *Iglesia Jesucristo Es Mi Refugio*, Letter Notice of Apparent Liability, 24 FCC Rcd 10618, 10620 (MB 2009) (issuing a \$5,000 forfeiture to a low power television station for falsely certifying in a license application that the station was constructed and operating consistently with the terms of its construction permit); *Tuck Properties, Inc.*, Letter Order, 24 FCC Rcd 10700 (MB 2009) (issuing a \$5,000 forfeiture to a low power television station for false certification that the station had been constructed and had been operating in accordance with its construction permit). We note that we have applied significantly larger penalties for false certifications in applications involving full-service stations, as opposed to secondary stations such as the FM translator in this case. See, e.g., *Univ. of San Francisco*, Memorandum Opinion and Order, 30 FCC Rcd 10530 (2015) (upholding a \$50,000 consent decree for false certification in an application for consent to assign the license of a noncommercial educational FM radio station).

⁵¹ This period of unauthorized operation was from January 5, 2015, to February 9, 2015.

⁵² See *Pittman Broad., LLC*, Forfeiture Order, 23 FCC Rcd 2742, 2744, para. 10 (EB 2008). See also *Padre Serra Commc'ns, Inc.*, Letter Order, 14 FCC Rcd 9709 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broad., Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913, para. 4 (1970), and *Eleven Ten Broad. Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

⁵³ 47 CFR § 1.80, Note to Paragraph (b)(8), Section I.

John Barger), or any entity in which any of them holds an interest that would be within the disclosure standards of our auction rules,⁵⁴ for the next five years from the date of this *Order*.

19. *Assignment Application.* We find that E-String's apparent false certification does not raise a substantial and material question of fact calling for further inquiry in an evidentiary hearing and that the proposed forfeiture constitutes a sufficient penalty for these apparent violations. Moreover, we have evaluated the Assignment Application and find that E-String is qualified to assign the license for the Translator and Martin is qualified to hold that license. We will therefore grant the Assignment Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of that application.

20. **Conclusion/Actions.** We find that STT has not raised a substantial and material question of fact warranting further inquiry. We further find that the applicants are qualified and that grant of the Assignment Application is consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Petition to Deny filed by Southwest Texas Telecom, LLC IS DISMISSED, and when treated as an informal objection, IT IS GRANTED to the extent indicated above and IS DENIED IN ALL OTHER RESPECTS.

21. IT IS FURTHER ORDERED, pursuant to 47 U.S.C. § 503(b) and 47 CFR § 1.80, that E-String Wireless, Ltd., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of nine thousand dollars (\$9,000) for its apparent willful violations of 47 CFR §§ 1.17 and 73.1745(a).

22. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release of this *NAL*, E-String Wireless, Ltd. 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 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Michael.Wagner@fcc.gov. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

⁵⁴ See 47 CFR § 1.2112.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing, and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088 SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101

24. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 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 general 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, DC 20554.⁵⁵

27. IT IS FURTHER ORDERED, that E-String Wireless, Ltd., IS ADMONISHED for providing false information in its long-form construction permit application (BNPFT-20130830ASR) without a reasonable basis for believing such information to be correct, and that E-String Wireless, Ltd. (and its principals, Bret Huggins and John Barger, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112) SHALL SUBMIT a copy of this *NAL* with every facilities application–FCC Form 301, 302 (any version), 349, or 350–it files with the Commission for a period of five years from the date of this *Order*.

28. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt requested to E-String Wireless, Ltd., 24018 Middle Fork, San Antonio, TX 78258 and to its counsel, Harry C. Martin, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁵⁵ See 47 CFR § 1.1914.