

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

In the Matter of	)	
	)	
<b>BIRACH BROADCASTING CORPORATION</b>	)	NAL/Acct. No. MB-201841410020
	)	FRN: 0003766847
Licensee of Station WPON(AM)	)	Facility ID No. 22045
Walled Lake, Michigan	)	File No. BR-20120426ABI
	)	

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

**Adopted: December 21, 2018**

**Released: December 21, 2018**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us an application for renewal of license (Renewal Application), filed on April 26, 2012,<sup>1</sup> for Station WPON(AM), Walled Lake, Michigan (Station), by Birach Broadcasting Corporation (BBC or Licensee).

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,<sup>2</sup> we find, as discussed below, that Licensee apparently has willfully and repeatedly operated the Station at variance from its license without Commission authorization in violation of Section 301 of the Act<sup>3</sup> and Section 73.1745(a)<sup>4</sup> of the Rules; willfully failed to timely file for special temporary authorization to operate with its nonconforming technical facilities in violation of Section 73.1635(a)(1)<sup>5</sup> of the Rules; and willfully failed to disclose material information regarding the unauthorized operations in violation of Section 1.17<sup>6</sup> of the Rules. Based on our review of the record before us, we conclude that BBC is apparently liable for a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) for these violations. Upon the conclusion of this enforcement proceeding, we will grant the Renewal Application for a period of one year.

<sup>1</sup> File No. BR-20120426ABI.

<sup>2</sup> 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's rules (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 the Rules. See 47 CFR § 0.283.

<sup>3</sup> 47 U.S.C. § 301.

<sup>4</sup> 47 CFR § 73.1745(a).

<sup>5</sup> 47 CFR § 73.1635(a)(1).

<sup>6</sup> 47 CFR § 1.17.

## II. BACKGROUND

3. The Station is licensed to operate at 1000 watts during the day, and 760 watts at night.<sup>7</sup> On April 26, 2012, BBC filed the Station's Renewal Application. In that application, Licensee certified that the Station had not adhered to its minimum operating schedule for a period exceeding 30 days during the license term, indicating the following in response to Section III, question 4 of the renewal application: "Station WPON has been silent and/or resumed operations on separate occasions under the following: BLESTA-20110516ABM, BLSTA-20101004ABH, BSTA-20100603ACN and BSTA-20050401COU."<sup>8</sup>

4. On February 13, 2018, the Bureau sent BBC an operational status inquiry because Commission records indicated that the Station had been silent or operating with unauthorized facilities for over one year during the license term.<sup>9</sup> The letter stated that our records showed that in 2005, Licensee filed a request for Special Temporary Authority (STA) to operate the Station from its licensed site with a single tower, at a reduced power of .25 kW daytime and .19 kW nighttime.<sup>10</sup> At that time, Licensee stated that the site owner had started redeveloping the land for housing and had, over Licensee's objections, destroyed some of the Station's transmission equipment. Licensee noted that it had a construction permit for a new transmitter site, but it had not obtained approval from local authorities to construct at that site.<sup>11</sup> The Commission's staff approved that STA for the period from April 25, 2005 to October 25, 2005. Licensee did not seek approval to extend that STA until 2010, when it requested that the 2005 STA be reinstated and extended.<sup>12</sup> That was granted as a new request and not an extension, with the specific qualification that the authority extended only to the period of time starting on the grant date of June 23, 2010, and did not confer retroactive authority to operate.<sup>13</sup>

5. The Bureau afforded BBC an opportunity to submit certain documented evidence demonstrating the Station's operation starting on October 26, 2005, through February 13, 2018, the date of the letter.<sup>14</sup>

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<sup>7</sup> See File No. BL-891117AB (granted May 7, 1992).

<sup>8</sup> See File No. BR-20120426ABI, Ex. 13.

<sup>9</sup> *Letter to Birch Broadcasting Corporation from Albert Shuldiner, Chief, Audio Division, Media Bureau, Ref. 1800B3-VM* (Feb. 13, 2018) (*BBC OSI*).

<sup>10</sup> See File No. BSTA-20050401COU (2005 STA).

<sup>11</sup> *Id.*

<sup>12</sup> See File No. BSTA-20100603ACN (2010 STA). Licensee noted that it had obtained a construction permit for a different transmitter site in File No. BP-20080229AAI. *Id.* That permit was cancelled on January 24, 2012 at BBC's request. It was replaced by File No. BP-20120111AAG (expired on March 30, 2015), which was replaced by File No. BP-20150330AAI (expired on May 15, 2018) which was replaced by File No. BP-20180516AAA (granted on October 10, 2018 for a three-year term).

<sup>13</sup> See *Letter from Charles N. Miller, Engineer, Audio Division, Media Bureau to Lauren A. Colby, Esq.* (MB June 23, 2010) (granting the 2010 STA and noting the lapse of time between the expiration of the prior STA in 2005 and the filing of the instant request in 2010 and stating specifically that the authority to operate granted in the letter did not cover the period during that lapse of time).

<sup>14</sup> The Bureau defined acceptable evidence of the Station's operational status as:

[T]he location, effective radiated power and antenna height above ground level for **all periods of operation** from October 26, 2005 to the present. Also include copies of all leases and correspondence relating to leases, personnel records, engineering records, station logs, invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds relating to the Station's operation. You **must also include pictures** of the Station's studio facilities and transmission facilities during this timeframe and provide exact Station coordinates.

6. On April 16, 2018, BBC filed a response stating that the Station was never off the air for over one year.<sup>15</sup> In support, Licensee included copies of: 1) utility bills for years 2005-2010; 2) engineering reports from 2005, 2007-2011; 3) emails from the public from 2006; 4) advertising and sales agreements from 2006-2009; 5) issues/programs lists from 2010; 6) canceled checks showing various payments, including lease payments; 7) declaration of BBC's owner, Sima Birach, that the Station was not silent for over a year; and 8) declaration of engineer Terry Suggs attesting to the veracity of the resumption of operation notices, also attached.

### III. DISCUSSION

7. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>16</sup> That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>17</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>18</sup>

8. *Station License.* Section 312(g) of the Act provides that “if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary....”<sup>19</sup> Well-established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.<sup>20</sup> Thus, a station is subject to Section 312(g)'s license forfeiture provision if: (a) the station fails to operate for twelve consecutive months or longer; (b) the station operates with unauthorized facilities for such a period; or (c) a combination of the prior two situations occurs for such a period.<sup>21</sup>

9. Based on our review of the Response and our own records, we find that that the Station was operating at its licensed site at reduced power starting in 2005, continuing until September 18, 2013, when it resumed operation using an authorized temporary site.<sup>22</sup> Therefore, based on the evidence of record, we find that the Station's license did not expire pursuant to Section 312(g) of the Act.<sup>23</sup>

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*BBC OSI* at 2.

<sup>15</sup> WPON Response to FCC Inquiry (Apr. 16, 2018) (Response).

<sup>16</sup> 47 U.S.C. § 309(k).

<sup>17</sup> 47 U.S.C. § 309(k)(1).

<sup>18</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>19</sup> 47 U.S.C. § 312(g).

<sup>20</sup> See *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 553 (D.C. Cir. 2009) (“Under the statute, unauthorized and unlicensed transmissions are no better than silence”); see also *James McCluskey, Ph.D.*, Letter Order, 27 FCC Rcd 6252, 6254-55 (MB 2012) (“an unauthorized transmission counts for nothing”).

<sup>21</sup> *Id.*

<sup>22</sup> See File No. BSTA-20130912ABE.

<sup>23</sup> Since 2012, when it filed the Renewal Application, the Station has requested authority to remain silent or operate pursuant to technical STA at reduced power. See File Nos. BLSTA-20101004ABH (gr. Nov. 23, 2010, exp. May 22, 2011); BLESTA-20110516ABM (gr. July 28, 2011, exp. Sept. 28, 2011); BSTA-20110920ACL (gr. Sept. 21,

10. *Unauthorized Operations and Material Factual Information.* Section 301 of the Act and Section 73.1350 of the Rules prohibit the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization.<sup>24</sup> Section 73.1745(a)<sup>25</sup> further prohibits the operation of a broadcast station at variance from the terms of the Station's authorization. Pursuant to Section 73.1635,<sup>26</sup> a licensee may request special temporary authority to operate for a limited time at variance from the terms of its authorization ten days prior to beginning operation at variance from the terms of its authorization.<sup>27</sup> STA may be granted for an initial period not to exceed 180 days.<sup>28</sup> A limited number of extensions of such authorizations may be granted for additional periods not exceeding 180 days per extension.<sup>29</sup> In addition, the permittee or licensee must demonstrate that any further extensions requested are necessary and that all steps to resume normal operation are being undertaken in an expeditious and timely fashion.<sup>30</sup>

11. In addition, Section 1.17(a)(2) of the 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."<sup>31</sup> Thus, even absent an intent to deceive, a false statement of fact or false certification may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement or certification is correct and not misleading.<sup>32</sup>

12. We find that the Station engaged in unauthorized operations with non-conforming facilities at its licensed site from October 25, 2005 to June 23, 2010. We also find that it violated Section 73.1635(a) when it failed to request extension of STA and made no attempt to address this issue until June 3, 2010,

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2011, exp. Mar. 21, 2012); BLSTA-20111007ABS (gr. Mar. 1, 2012, exp. Aug. 28, 2012); BLESTA-20120827ABC (dismissed Sept. 26, 2012); BSTA-20120928ARQ (gr. Oct. 1, 2012, exp. Apr.1, 2013); BLSTA-20121009ABY (gr. Jan. 25, 2013, exp. July 24, 2013); BSTA-20130912ABE (gr. Sept. 17, 2013, esp. Mar 16, 2014); BLSTA-20130924AAC (dismissed Sept. 12, 2014); BSTA-20140908ADK (gr. Sept. 9, 2014, exp. Dec. 8, 2014); BLSTA-20140917AAI (gr. Oct. 15, 2014, exp. Apr. 13, 2015); BLESTA-20150408AAH (gr. May 4, 2015, exp. Sept. 15, 2015); BSTA-20150810AAT (gr. Aug. 20, 2015, exp. Nov. 11, 2015); BLSTA-20150917AAB (gr. Oct. 7, 2015, exp. Apr. 4, 2016); BLESTA-20160331AAI (gr. Apr 27, 2016, exp. Sept. 15, 2016); BSTA-20160908AAF (gr. Sept. 8, 2016, exp. Dec. 8, 2016); BLSTA- 20160914AAD (gr. Oct. 13, 2016, exp. Apr. 11, 2017); BLESTA-20170411ABQ, gr. May 3, 2017, exp. Sept. 14, 2017); BSTA-20170830AAF (gr. Aug. 17, 2017, exp. Nov. 30, 2017); BLSTA-20170919AAI (gr. Oct. 17, 2017, exp. Apr. 15, 2018); BESTA-20171107AAF (dismissed May 4, 2018); BLESTA-20180413AAF (gr. Apr. 28, 2018, exp. Sept. 12, 2018); BSTA-20180823AAG (gr. Aug. 30, 2018, exp. Feb. 26, 2019).

<sup>24</sup> See 47 U.S.C. 301; 47 CFR § 73.1350.

<sup>25</sup> 47 CFR § 73.1745(a).

<sup>26</sup> 47 CFR § 73.1635.

<sup>27</sup> See *South Seas Broad. Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 6474, para 2. (MB 2008).

<sup>28</sup> 47 CFR § 73.1635 (a)(4).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See 47 CFR § 1.17(a)(2).

<sup>32</sup> 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). See also 47 CFR § 73.1015, which states in pertinent part that "No applicant . . . shall . . . in any application, pleading, or report or any other written statement submitted to the Commission, make any . . . willful material omission bearing on any matter within the jurisdiction of the Commission."

when BBC filed the 2010 STA application. We further find that BBC failed to disclose a material fact in the 2010 STA application.<sup>33</sup> In the 2010 STA, BBC requested that the 2005 STA be “reinstated and extended” to keep the Station on the air.<sup>34</sup> However, after referencing the Station’s 2005 approved STA, BBC omitted the fact that the Station had been on the air at reduced power without authority for the intervening 4-plus years.<sup>35</sup> We find BBC’s omission in the 2010 STA application to be a misleading omission of material information. In view of our findings, we believe that a forfeiture for violation of Section 1.17 of the Rules is appropriate.<sup>36</sup>

13. *Proposed Forfeiture.* We find that Licensee has apparently willfully and repeatedly violated Section 301 of the Act and Section 73.1745 of the Rules by engaging in unauthorized operation of the Station from October 25, 2005 to June 23, 2010. We also find that BBC apparently willfully violated Section 73.1635(a)(1) of the Rules by failing to timely file the 2010 STA, and we further find that Licensee apparently willfully violated Section 1.17 of the Rules by failing to disclose a material fact in the 2010 STA. Under Section 503(b)(1)(B) of the Act, a person who is found 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.<sup>37</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>38</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>39</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>40</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

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<sup>33</sup> “Material” has been defined as “important,” “more or less necessary,” and “having influence or effect.” Additionally, a “material representation” has been defined as on “relating to matter which is so substantial or important as to influence the party to whom it is made.” *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4020, n. 4 (2003) (citations omitted). Whether the STA applicant has already commenced operation with the technical facilities for which it seeks approval is “material” in determining the applicant’s compliance with the Act and the Rules. In this case, BBC’s omission required the staff to undertake an investigation of the Station’s status during the relevant period. *See* para. 4 *supra*. We do not, however, find BBC’s omission of material information to be misrepresentation.

<sup>34</sup> 2010 STA, Exh. 34.

<sup>35</sup> BBC repeatedly based its need for STA on its intention to build new transmission facilities pursuant to an issued or requested construction permit, starting in 2005, without ever constructing. As noted in para. 4 *supra*, BBC stated in the 2005 STA and the 2010 STA that it intended to build and operate from its recently granted construction permit facility as justification for STA. In fact, BBC never constructed either facility, and requested that BP-20041104ALD be dismissed on February 29, 2008, and that File No. BP-20080229AAI be dismissed on January 24, 2012. *See* File Nos. BP-20041104ALD; BP-20080229AAI. BBC has subsequently obtained three new unconstructed permits in the intervening 6 years, the last of which was granted on October 10, 2018. *See* File Nos. BP-20120111AAG (expired Mar. 30, 2015), BP-20150330AAI (expired May 15, 2018) BP-20180516AAA (the pendency of which was the basis for the current STA under which the Station is operating).

<sup>36</sup> We note that BBC has at all times operated the Station from its authorized site. *See John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12543, para. 7 (MB 2009) (*White*) (proposing monetary forfeiture, not license cancellation, for unauthorized operations at variance from Station license where, *inter alia*, licensee remained at its authorized site).

<sup>37</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

<sup>38</sup> 47 U.S.C. § 312(f)(1).

<sup>39</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>40</sup> *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

day.”<sup>41</sup>

14. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$10,000 for operation without an instrument of authorization for the service and a base forfeiture of \$3,000 for failure to file a required form.<sup>42</sup> The guidelines do not enumerate a base forfeiture amount for omitting material factual information. In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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>43</sup>

15. Here, Licensee apparently operated the Station at variance from the terms of its authorization from October 25, 2005 to June 23, 2010. Licensee took corrective action to come into compliance with the Act and our Rules, by filing the 2010 STA on June 3, 2010. However, this corrective action is expected and does not nullify or mitigate the violations.<sup>44</sup> For the unauthorized operations, because of the extensive period of time and the ongoing nature of the violation we believe a forfeiture in the base amount of \$10,000 is appropriate.<sup>45</sup> Regarding Licensee’s failure to timely file the required STA, we believe that a forfeiture in the base amount of \$3,000 forfeiture is appropriate.<sup>46</sup> Concerning Licensee’s failure to disclose a material fact in the 2010 STA, we propose a \$5,000 forfeiture.<sup>47</sup> Considering the record as a whole, we propose a total forfeiture of \$18,000.

16. In conclusion, considering the entire record in this proceeding, we find that BBC’s apparent violations of the Act and the Rules do not constitute “serious violations,”<sup>48</sup> warranting designation for evidentiary hearing and that the proposed forfeiture constitutes a sufficient penalty for these apparent violations. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>49</sup>

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<sup>41</sup> 47 U.S.C. § 312(f)(2).

<sup>42</sup> 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, 15 FCC Rcd 303 (1999); 47 CFR § 1.80, Note to Paragraph (b)(8), Section I.

<sup>43</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(4).

<sup>44</sup> See e.g. *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (2002) (finding that remedial action to correct violation at issue was not a mitigating factor; licensees are expected to take remedial action when violations are brought to their attention).

<sup>45</sup> Cf. *White*, 24 FCC Rcd at 12544, paras. 11-12 (citing \$10,000 base forfeiture for unauthorized service, but reducing proposed forfeiture to \$4,000, because Licensee delayed in filing an STA for just over nine weeks).

<sup>46</sup> See e.g., *Id.*, 24 FCC Rcd at 12544, para. 12 (\$3,000 forfeiture proposed for late filed applications for modification and STA).

<sup>47</sup> See e.g., *WRKL Rockland Radio, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 14 FCC Rcd 1042, 1045, para. 9 (MB 1999) (\$5,000 forfeiture proposed for willfully omitting material facts in a Commission filing), citing *Abacus Broadcasting Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability, 8 FCC Rcd 5110, 5114-15, para. 16 (Rev. Bd. 1998) (\$5,000 forfeiture proposed for failure to disclose material information about the status of the proposed transmitter site).

<sup>48</sup> See 47 U.S.C. § 309(k)(1)(c).

<sup>49</sup> For example, we do not find that Licensee’s operation of the Station “was conducted in an exceedingly careless, inept and negligent manner and that Licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on

17. With respect to the public interest prong of Section 309(k)(1) of the Act, we find that BBC's conduct has fallen far short of that which would warrant routine license renewal. BBC's stewardship of the Station fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Station was silent<sup>50</sup> for significant portions of its license term (as well as during the pendency of the renewal application).<sup>51</sup>

18. On the facts presented here, we conclude that a short-term license renewal for the Station is the appropriate sanction for BBC's shortcomings during the license term. Although BBC sought Commission authorization for each of the Station's periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended periods of non-operation. Accordingly, pursuant to Section 309(k)(2) of the Act, we will grant the Station a short-term license renewal, limited to a period of one year from the date of this letter.<sup>52</sup> This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time.

19. **Conclusion.** Accordingly, for the reasons set forth above, IT IS ORDERED THAT the license renewal application (File No. BR-20120426ABI), filed by Birach Broadcasting Corporation IS GRANTED pursuant to 47 U.S.C. § 309(k)(2), for a license term of one year from the date of this letter. We will, therefore, grant the Renewal 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.

#### IV. ORDERING CLAUSES

20. 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 Birach Broadcasting Corporation, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for apparent willful and repeated violation of Section 301 of the Act and Sections 73.1745(a), 73.1765, and 1.17 of the FCC's Rules.

21. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the FCC's Rules, that, within thirty (30) days of the release date of this NAL, that Birach Broadcasting Corporation, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation

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the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, para. 10. See also *Center for Study and Application of Black Econ. Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>50</sup> The Station was silent for 2 years during the license term and operated for 9 months by STA at .25 kW daytime and .19 kW nighttime power. For the balance of the license term, the Station operated at reduced power with no authority. Since the expiration of the license term on October 1, 2012, the Station has been silent for 5.7 years and has operated pursuant to the statutory authority described in note 51 for 164 days by STA at .25 kW daytime and .19 kW nighttime power.

<sup>51</sup> Section 307(c)(3) of the Act provides for the Commission to continue broadcast licenses in effect while the license renewal application is pending. 47 U.S.C. § 307(c)(3); see *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n.40 (MB 2014) (Commission considers the licensee's performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

<sup>52</sup> See, e.g., *South Seas Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 6474 (MB 2008) (two-year renewal granted, NAL issued, for willfully and repeatedly violating 47 C.F.R. § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 C.F.R. § 73.1740 by leaving the station silent without the proper authorization).

of the proposed forfeiture.

22. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the NAL/Acct. No. and FRN No. referenced herein. Regardless of the form of payment, a completed FCC Form 159 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). Licensee will also send electronic notification on the date said payment is made to Karen Workeman at Karen.Workeman@fcc.gov and to Victoria McCauley at Victoria.McCauley@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.
- 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.

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

24. 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.

25. 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.<sup>53</sup>

26. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Birach Broadcasting Corporation, 21700 Northwestern Hwy., Suite

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<sup>53</sup> See 47 CFR § 1.1914.



1190, Tower 14, Southfield, MI 48075 - 4923, and to its counsel, John C. Trent, Esq., Putbrese, Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, VA 22664.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau