

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

In the Matter of	)	
	)	
<b>ROY E. HENDERSON</b>	)	NAL/Acct. No. MB-201841410001
	)	FRN: 0006187835
Licensee of Station WBNZ(FM)	)	Facility ID No. 57414
Frankfort, Michigan	)	File Nos. BRH-20120530ABD, BLSTA-
	)	20150206AAO

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

**Adopted: May 30, 2018**

**Released: May 30, 2018**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us the following applications for Station WBNZ(FM), Frankfort, Michigan (Station), filed by Roy E. Henderson (Henderson or Licensee): 1) an application for renewal of license (Renewal Application), filed on May 30, 2012;<sup>1</sup> and 2) an application for Special Temporary Authority for the Station to remain silent (Silent STA Application), filed on February 6, 2015.<sup>2</sup> Also before us is an Informal Objection (Objection) to the Renewal Application and the Silent STA Application filed on March 27, 2015, by New Beginnings Houston DBA Far Eastern Telecasters, Inc. (New Beginnings).

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,<sup>3</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>4</sup> and Section 73.1745(a)<sup>5</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>6</sup> of the Rules; and willfully failed to disclose material information regarding the unauthorized operations in violation of Section 1.17<sup>7</sup> of the Rules. Based on our review of the record before us, we conclude that Henderson is apparently liable for a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) for these violations. In addition, we will deny the Objection and, upon the conclusion of this

<sup>1</sup> File No. BRH-20120530ABD.

<sup>2</sup> File No. BLSTA-20150206AAO. The Silent STA Application was inadvertently granted, but the grant was rescinded on March 27, 2015, due to the Informal Objection referenced herein.

<sup>3</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>4</sup> 47 U.S.C. § 301.

<sup>5</sup> 47 CFR § 73.1745(a).

<sup>6</sup> 47 CFR § 73.1635(a)(1).

<sup>7</sup> 47 CFR § 1.17.

enforcement proceeding, grant the Renewal Application.

## II. BACKGROUND

3. On May 30, 2012, Henderson filed the Station's Renewal Application. Thereafter, on February 6, 2015, he filed the Silent STA Application stating that the Station went silent on January 21, 2015, due to a flooding incident.<sup>8</sup> Henderson requested permission to remain silent while he addressed the Station's plumbing issue.

4. On March 27, 2015, New Beginnings filed an Objection to the Renewal Application, alleging that "the submissions of this broadcaster are untruthful."<sup>9</sup> It declares that Henderson seeks "silent authorizations for some of his stations, but not others, that operate from the same building, based on an alleged leak that damaged carpet in studio."<sup>10</sup> New Beginnings also claims that an STA for station "KEMA . . . was temporarily revoked when it was demonstrated he [Henderson] lied about the reasons for requesting the STA."<sup>11</sup> New Beginnings further asserts that Henderson "attempted to extort money"<sup>12</sup> from one Texas broadcaster; failed to pay monies owed to another broadcaster; and "renege[d] a contractual agreement with this ministry."<sup>13</sup>

5. On May 26, 2016, the Bureau sent Henderson an operational status inquiry because Commission records indicated that the Station had been silent since January 21, 2015.<sup>14</sup> The Bureau afforded Henderson an opportunity to submit certain documented evidence demonstrating that the Station returned to the air with authorized facilities before 12:01 a.m. on January 21, 2016.<sup>15</sup>

6. On July 25, 2016, Licensee filed a response stating that the Station returned to air on February 19, 2015, but "[d]ue to a clerical error it appears that Henderson did not notify the FCC of the

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<sup>8</sup> Licensee stated that:

WBNZ was forced off the air on Wednesday, January 21, 2015, with serious damage and interior flooding from a broken, frozen water main and will remain off the air until assessments and repair needs can be determined. While the Licensee hopes to have the Station back on the air in the next 20 days, out an abundance of caution we respectfully request 60 days to remain silent.

Silent STA Application, Exhibit 1.

<sup>9</sup> Objection, Exhibit 1.

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Letter to Roy E. Henderson from Peter H. Doyle, Chief, Audio Division, Media Bureau, Ref. 1800B3-VM (May 25, 2016) (First OSI Letter).*

<sup>15</sup> The Bureau defined acceptable evidence of the Station's operational status as:

[T]he dates broadcasts ceased and resumed, and the transmitter site location, effective radiated power and antenna height above ground level for all periods of operation. This evidence includes copies of leases, personnel records, engineering records, station logs, quarterly issues/programs lists, invoices, bills, checks written or received, credit card charges, wire transfers or deposits of funds relating to the station's operation from January 21, 2015, to the present. Also, include pictures of the station's facilities during this timeframe, and provide exact transmitter site coordinates.

*Id.* at 1 note 2.

WBNZ on air status. An ‘on-air’ notice has now been filed electronically to reflect that proper date.”<sup>16</sup> In support, Licensee included sworn declarations from: Henderson, Station manager, Tina Langley (Langley), contract engineer, Dan Hills (Hills), contract engineer, and former Station manager, Brenda Culbertson (Culbertson); all attesting that the Station had not been silent for more than one year.<sup>17</sup> Langley also reported that the Station operates with WLDR-FM, Traverse City, Michigan, licensed to Great Northern Broadcasting, Inc. (Great Northern), an entity wholly-owned by Henderson,<sup>18</sup> and WARD(AM), Petoskey, Michigan, licensed to Henderson, which are simulcast under the slogan “101.9 the Bay.”<sup>19</sup> As documentary evidence, Licensee submitted EAS logs for Station WLDR-FM;<sup>20</sup> “Radio Issues/Programs Lists for WLDR/WARD/WBNZ/WCUZ/WMTE/WOUF Traverse City” for 2015;<sup>21</sup> an April 29, 2015, email exchange and agreement between the Benzie County Road Commission and Henderson regarding power charges at “1532 Forrester;”<sup>22</sup> utility bills, covering service from February 17, 2015, through January 21, 2016, for Station WLDR-FM at 13999 S. West Bayshore Drive, Traverse City, Michigan;<sup>23</sup> for the year 2015, a sampling of advertising orders, and copies of check payments made out to Station WLDR-FM; “WARD Radio”; Great Northern Broadcasting, Inc., and Brenda Culbertson;<sup>24</sup> and Station WLDR-FM programming logs for the period April 1, 2015, to April 26, 2015.<sup>25</sup> Hills further reported that since April 2015, the Station’s transmissions have been at a reduced power level because the Station’s transmitter “was badly damaged by a lightning-related power surge that occurred during the month of April 2015. WBNZ has been forced since then to utilize a lower-powered transmitter, capable of being powered by . . . the Benzie County Road Commission at the tower site.”<sup>26</sup>

7. On August 24, 2016, the Bureau sent Henderson a second letter stating that the July 2016 Response was insufficient to establish the continued operation of the Station.<sup>27</sup> The Bureau noted that the bulk of the evidence in the July 2016 Response concerned the simulcast station, WLDR-FM.<sup>28</sup> The Bureau further opined that “[o]ne submission that putatively relates to Station WBNZ, gives an address, ‘1532 Forrester,’ but does not identify it as the Station WBNZ’s location . . . .”<sup>29</sup> The Bureau also observed that the July 2016 Response did not include certain technical specifics, as requested, to support that the Station was operating with authorized facilities.<sup>30</sup> Therefore, the Bureau again requested evidence, as detailed in the *First OSI Letter*, that the Station returned with authorized facilities before

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<sup>16</sup> WBNZ(FM) Response at 1, dated July 22, 2016, and received July 25, 2016, (July 2016 Response). *See also* “Resumption of Operations” filed July 20, 2016.

<sup>17</sup> July 2016 Response at 1-3, and Exhibits 1–2.

<sup>18</sup> *See* File No. BOA-20131210ABU.

<sup>19</sup> July 2016 Response at 1.

<sup>20</sup> *Id.*, Exhibit 3.

<sup>21</sup> *Id.*, Exhibit 4

<sup>22</sup> *Id.*, Exhibit 5.

<sup>23</sup> *Id.*, Exhibit 6.

<sup>24</sup> *Id.*, Exhibit 7.

<sup>25</sup> *Id.*, Exhibit 8.

<sup>26</sup> *Id.*, Exhibit 1, Declaration of Dan Hills (Contract Engineer, dB Technical Services, LLC), (dated Jul. 13, 2016) (First Hills Declaration), para. 4.

<sup>27</sup> *Letter to John C. Trent, Esq. from Peter H. Doyle, Chief, Audio Division, Media Bureau*, Ref. 1800B3-VM (Aug. 24, 2016) (*Second OSI Letter*).

<sup>28</sup> *Id.* at 2.

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

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

12:01 a.m., January 21, 2016.

8. On September 12, 2016, Henderson filed a supplemental response reaffirming “that the Station has at no time been silent for more than one year.”<sup>31</sup> Licensee included new declarations from Henderson, Langley, Hills, and four purported Station listeners; all attesting that the Station has not been silent for more than one year.<sup>32</sup> Langley declared that the Station’s transmitter site is located on the tower owned by Henderson at 1532 Forrester Road, Frankfort, Michigan and “is powered by tower tenant, Benzie County Road Commission, . . . [but it] does not receive a power bill.”<sup>33</sup> Licensee also submitted a “Westwood One Affidavit regarding spots that specifically ran on WBNZ . . . from June 15, 2015 thru June 28, 2015 . . . [and] a sampling [of] advertising orders and payments from advertisers . . . for periods in June and July 2015.”<sup>34</sup> Regarding technical operations, engineer Hills reported that while the Station is operating with its authorized equipment at the proper height, as authorized by its license,<sup>35</sup> it is not operating at its authorized power. Hill opined that “although the Station is currently authorized at 50 kW, but due to power and transmitter issues, WBNZ is temporarily operating at approximately 1.4 kW ERP. I have advised Mr. Henderson to promptly notify the Commission of this reduced power and request a formal Special Temporary Authority.”<sup>36</sup>

9. On September 12, 2016, Henderson filed a request for special temporary authorization seeking permission to operate the Station with reduced power.<sup>37</sup> Specifically, Licensee stated that “due to transmitter and power issues, WBNZ is currently operating at the reduced power of 1.4 kW. Licensee requests . . . to operate at this reduced power level for the next 180 days.”<sup>38</sup> The staff granted the Engineering STA Application on February 26, 2018.<sup>39</sup>

### III. DISCUSSION

10. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>40</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>41</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

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<sup>31</sup> WBNZ(FM) Response at 1 (September 2016 Response).

<sup>32</sup> *Id.* at 1-2, and Exhibits 1, 5.

<sup>33</sup> *Id.*, at 1, para. 3, Declaration of Tina Langley (dated Sep. 12, 2016) (Second Langley Declaration).

<sup>34</sup> *Id.*

<sup>35</sup> Hills noted that “[t]he Lat/Long is 44-36-38N x 86-09-38W. . . . The Station is operating from its tower and is using its authorized 3 bay ERI MP-3E-DA antenna at its proper height pursuant to BLH-2011022AAK.” *Id.*, Exhibit 5, Declaration of Dan Hills (dated Sep. 12, 2016) (Second Hills Declaration), paras. 3-4.

<sup>36</sup> *Id.*, at para. 3.

<sup>37</sup> BSTA-20160912AAZ (Engineering STA Application).

<sup>38</sup> Engineering STA Application, Exhibit 4. Henderson also indicated that he “hopes to have the Station back up to full power within that 180 day time frame.”

<sup>39</sup> See E-mail to Licensee’s counsel from Dale Bickel, Senior Electronics Engineer, Audio Division, Media Bureau (Feb. 26, 2018, 12:26 p.m.).

<sup>40</sup> 47 U.S.C. § 309(k).

<sup>41</sup> 47 U.S.C. § 309(k)(1).

permitted.”<sup>42</sup>

11. *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>43</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>44</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>45</sup>

12. As an initial matter, we find that Licensee has submitted documented evidence that, after going silent on January 21, 2015, the Station resumed operations with authorized facilities on February 19, 2015. Engineer Hills and Station manager Langley have provided sworn statements that the Station’s transmitter site is located at 1532 Forrester Road, Frankfort, Michigan.<sup>46</sup> Hills further detailed technical specifics regarding the Station’s operations that, apart from the subsequent reduction in power discussed below, comport with the Station’s licensed facilities.<sup>47</sup> Licensee also submitted a contemporaneous agreement, dated April 29, 2015, with the Benzie County Road Commission for electrical power at “1532 Forrester . . . for the period of April 29, 2015 through May 31, 2015.”<sup>48</sup> This agreement was extended through December 31, 2016.<sup>49</sup> In addition, Licensee included a “sampling [of] advertising orders and payments from advertisers which have been written with advertisers for periods in June and July 2015.”<sup>50</sup> Furthermore, Licensee submitted a “Westwood One Affidavit regarding spots that specifically ran on WBNZ. . . . from June 15, 2015 and July 2015.”<sup>51</sup> This affidavit lists numerous dates, times, and advertisements that were broadcast on WBNZ-FM for June 15, 2015-June 28, 2015; and was certified on November 17, 2015, by former Station manager Brenda Culbertson.<sup>52</sup> Therefore, based on the evidence of record, we find that the Station resumed operations prior to 12:01 a.m., January 21, 2016, and, hence, its license did not expire pursuant to Section 312(g) of the Act.

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<sup>42</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>43</sup> 47 U.S.C. § 312(g).

<sup>44</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>45</sup> *Id.*

<sup>46</sup> September 2016 Response, Second Langley Declaration at 1, and Exhibit 5, Second Hills Declaration.

<sup>47</sup> See *supra* note 35.

<sup>48</sup> July 2016 Response, Exhibit 5 at 1.

<sup>49</sup> See September 2016 Response, Exhibit 2.

<sup>50</sup> *Id.*, Second Langley Declaration at 1, paras. 4-5. Specifically, Licensee attached: 1) a June 15, 2015, check payable to “WBNZ FM;” 2) an invoice for an “Anti-Drug Abuse” advertisement to run twice from March 16, 2015 – March 20, 2015, at 8:00 am – 9am, on “WBNZ FM 92.3 Radio;” 3) a June 15, 2015, invoice for nine advertising “spots” to be run on “WBNZ/FM;” 4) a June 18, 2015, invoice for two advertising spots to be run on “WBNZ/FM 92.3 Radio;” 5) an invoice for a “Family Values/Time” advertisement to run twice from July 6, 2015 – July 10, 2015, at 5:00 pm – 6 pm, on “WBNZ FM 92.3 Radio;” 6) an invoice for a “Salute to the Troops” advertisement to run once on July 10, 2015, at 5:00 pm – 6 pm, on “WBNZ FM 92.3 Radio;” and 7) an invoice for “Anti-Drug Abuse” advertisements to run six times from July 6, 2015 – July 17, 2015, at 7:00 am – 9am, on “WBNZ FM 92.3 Radio.” See *Id.*, Exhibit 4.

<sup>51</sup> *Id.*, Second Langley Declaration at 1, para. 5.

<sup>52</sup> See *Id.*, Exhibit 3, “Westwood One Information.”

13. *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>53</sup> Section 73.1745(a)<sup>54</sup> further prohibits the operation of a broadcast station at variance from the terms of the Station's authorization. Pursuant to Section 73.1765,<sup>55</sup> a licensee may request special temporary authority to operate for a limited time at variance from the terms of its authorization. However, the licensee must request STA ten days prior to beginning operation at variance from the terms of its authorization.<sup>56</sup>

14. 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>57</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>58</sup>

15. We find that the Station has been engaged in unauthorized operations with non-conforming facilities at its authorized site since April 29, 2015, and made no attempt to address this issue until September 12, 2016, when Henderson filed the Engineering STA Application. On April 29, 2015, Henderson executed an agreement the Benzie County Road Commission "to utilize the Benzie County Road Commission's power source at the radio tower at 1532 Forrester [the tower site] . . . ."<sup>59</sup> Engineer Hills reported that in April 2015 the Station sustained electrical damage and, "has been forced since then to utilize a lower powered transmitter capable of being powered by . . . the Benzie County Road Commission . . . ."<sup>60</sup> Subsequently, Henderson detailed that the Station has since been operating at 1.4 kW, in variance from its authorized 50 kW.<sup>61</sup> We also find that Henderson failed to timely request STA to operate with said reduced power, as he waited nearly 17 months after the Station began broadcasting at reduced power levels, until September 12, 2016, to file the Engineering STA Application requesting permission to reduce the Station's authorized power. We further find that Licensee failed to disclose a material fact in the Engineering STA Application.<sup>62</sup> Specifically, Licensee merely stated that "WBNZ is

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<sup>53</sup> See 47 U.S.C. 301; 47 CFR § 73.1350.

<sup>54</sup> 47 CFR § 73.1745(a).

<sup>55</sup> 47 CFR § 73.1765.

<sup>56</sup> See *South Seas Broad. Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 6474, para 2. (MB 2008).

<sup>57</sup> See 47 CFR § 1.17(a)(2).

<sup>58</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."

<sup>59</sup> July 2016 Response, Exhibit 5.

<sup>60</sup> *Id.*, Exhibit 1, First Hills Declaration, para. 4.

<sup>61</sup> September 2016 Response, Exhibit 5, Second Hills Declaration, para. 4.

<sup>62</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

currently operating at the reduced power of 1.4 kW,”<sup>63</sup> but failed to state that, in fact, the station had been operated with that unauthorized power reduction for nearly 17 months before filing the Engineering STA Application. This omission renders Henderson’s explanatory statement in the Engineering STA Application that he “hopes to have the station back up to full power within [180 days]” at best misleading. In view of our findings, we believe that a forfeiture for violation of Section 1.17 of the Rules is appropriate.<sup>64</sup>

16. *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 April 2015 to the present time. We also find that Henderson apparently willfully violated Section 73.1635(a)(1) of the Rules by failing to timely file the Engineering STA Application, and we further find that Licensee apparently willfully violated Section 1.17 of the Rules by failing to disclose a material fact in the Engineering STA Application. 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>65</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>66</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>67</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>68</sup> Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”<sup>69</sup>

17. 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>70</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

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which it seeks approval is “material” in determining the applicant’s compliance with the Act and the Rules. We do not, however, find Licensee’s omission of factually material information to be misrepresentation.

<sup>63</sup> Engineering STA Application, Exhibit 4.

<sup>64</sup> We note that Henderson 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>65</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

<sup>66</sup> 47 U.S.C. § 312(f)(1).

<sup>67</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>68</sup> See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

<sup>69</sup> 47 U.S.C. § 312(f)(2).

<sup>70</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.

such other matters as justice may require.”<sup>71</sup>

18. Here, Licensee has apparently been operating at variance from the terms of its authorization since April 29, 2015. Licensee has since taken corrective action to come into compliance with the Act and our Rules, by filing the Engineering STA Application on September 12, 2016. However, this corrective action is expected and does not nullify or mitigate the violations.<sup>72</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>73</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>74</sup> Concerning Licensee’s failure disclose a material fact in the Engineering STA, we propose a \$5,000 forfeiture.<sup>75</sup> Considering the record as a whole, we propose a total forfeiture of \$18,000.

19. *Objection.* We find the arguments raised in the Objection filed by New Beginnings to be vague, unsupported, and non-actionable. New Beginnings declares, without meaningful evidence, that “[t]he submissions of this broadcaster are untruthful.”<sup>76</sup> It contends that Henderson “seeks silent authorizations for some of his stations, but not others that operate from the studio . . . [Licensee] is clearly capable of programming from other rooms, or the transmitter . . . .”<sup>77</sup> We will not consider these unsupported allegations further.

20. With respect to New Beginnings’ allegation that an unidentified STA application for Station KEMA was purportedly temporarily revoked when it was demonstrated Henderson lied about the reasons for requesting the STA,<sup>78</sup> we note that Section 309(k)(1) of the Act limits the scope of our review to the station for which license renewal is being considered.<sup>79</sup> Thus, Licensee’s purported behavior at other stations is not germane to our consideration of the Renewal Application. Additionally, with respect to New Beginnings’ claims that Licensee has “attempted to extort” money from another broadcaster,<sup>80</sup> New Beginnings provides no evidence that Henderson has been charged with, let alone convicted, of a crime

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<sup>71</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>72</sup> *See e.g. AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (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>73</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>74</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>75</sup> *See e.g., WRKL Rockland Radio, LLC*, 14 FCC Rcd 1042, 1045, para. 9 (\$5,000 forfeiture proposed for willfully omitting material facts in a Commission filing), citing *Abacus Broadcasting Corp.*, 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>76</sup> Objection, Exhibit 1.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *See* 47 U.S.C. § 309(k)(1) (“If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license . . .”) (emphasis added). *See also Entercom Licenses, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196, 12208, para. 28 (2016) (“for renewal purposes, Section 309(k)(1) limits the scope of our review to the station for which license renewal is being considered.”).

<sup>80</sup> New Beginnings claims that Licensee “attempted to extort money from the owner of KVST in Texas.” Objection, Exhibit 1.



related to this allegation. It is well established that “[t]he Commission normally will not act on mere allegations of non-FCC misconduct prior to adjudication by a tribunal of competent jurisdiction.”<sup>81</sup> Finally, with respect to New Beginnings’ claims that that Licensee has failed to honor contractual agreements involving the Objector as well as another broadcaster,<sup>82</sup> the Commission has consistently held that it does not adjudicate private contractual disputes.<sup>83</sup> We will therefore deny the Objection below.

21. In conclusion, considering the entire record in this proceeding, we find that Henderson’s apparent violations the Act and the Rules do not constitute “serious violations,”<sup>84</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>85</sup> Further, we find that the Station served the public interest, convenience and necessity during the license term. 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

22. 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 Roy E. Henderson, is hereby NOTIFIED of his 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.

23. 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 Roy E. Henderson, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

24. 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

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<sup>81</sup> See *Mayor Maurice A. Brown*, Letter Order, 24 FCC Rcd 7632, 7636 (MB 2009) (holding that unsupported allegations provide no basis for denying or designating for evidentiary hearing an assignment application).

<sup>82</sup> Specifically, New Beginnings claims that Licensee “attempted to extort money from the owner of KVST in Texas . . . . In re: KROY . . . he has refused to pay money owed to another Texas broadcaster . . . . [In] DKVDO-LP, he reneged a contractual agreement with this ministry.” Objection, Exhibit 1.

<sup>83</sup> See e.g. *Birach Broad. Corp.*, Letter, 23 FCC Rcd 478, 4781 (MB 2008) (the Commission is not the appropriate forum to resolve the contractual, property, and bankruptcy issues raised by petitioner), citing *John F. Runner, Receiver*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976) (local court of competent jurisdiction, not the FCC, is the proper forum to resolve private disputes).

<sup>84</sup> See 47 U.S.C. § 309(k)(1)(c).

<sup>85</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 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).

date said payment is made to Karen Workeman at Karen.Workeman@fcc.gov and to Kim Varner at Kim.Varner@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.

25. 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.

26. 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.

27. 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>86</sup>

28. IT IS FURTHER ORDERED, that the INFORMAL OBJECTION filed on March 27, 2015, by New Beginnings Houston DBA Far Eastern Telecasters, Inc. IS DENIED.

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<sup>86</sup> See 47 CFR § 1.1914.

29. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Roy E. Henderson, 13999 S. West Bayshore Drive, P. O. Box 709, Traverse City, MI 49685, and to his counsel, John C. Trent, Esq., Putbrese, Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, VA 22664, and to Michael Grega, New Beginnings Houston DBA Far Eastern Telecasters, Inc., P.O. Box 310841, Houston. TX 77231.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau