

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Alaska Educational Radio System, Inc.)	NAL/Acct. No. MB-201841410015
)	FRN: 0008610982
Applications for Renewal and Assignment of)	Facility ID No. 93588
License, KABN-FM, Kasilof, Alaska)	BRED-20130930BSV, BALED-
)	20140121AAZ

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

Adopted: July 18, 2018

Released: July 18, 2018

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Renewal Application) filed by Alaska Educational Radio System, Inc. (AERS) to renew the license for KABN-FM, Kasilof, Alaska (Station),¹ and an application (Assignment Application) to assign the Station's license from AERS to Kenai Cares, Inc. (Kenai Cares).² Turquoise Broadcasting Co., LLC (Turquoise) filed informal objections (Objections) to both of these applications.³ For the reasons discussed below, we grant in part and otherwise deny the Objections. We find that AERS apparently willfully and repeatedly violated Section 73.1745(a) of the Commission's rules (Rules)⁴ on four separate occasions by operating the Station at a variance from its licensed parameters without authority to do so, and willfully and repeatedly violated Section 73.561(d) of the Rules on five separate occasions by discontinuing the Station's operations without authority to do so.⁵ Based upon our review of the record before us, we find AERS apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000). Upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude such action, we will renew the Station's license for a period of two years. Finally, we dismiss the Assignment Application as defective.⁶

II. BACKGROUND

2. On September 30, 2013, AERS timely filed the Renewal Application. Subsequently, on January 21, 2014, AERS and Kenai Cares filed the Assignment Application. Turquoise then filed the Objections. Therein, Turquoise argues: (1) the Commission's "red light" rules require dismissal of the

¹ File No. BRED-20130930BSV (Renewal Application).

² File No. BALED-20140121AAZ (Assignment Application).

³ Turquoise Objection to License Renewal of KABN-FM (May 27, 2014) (Renewal Objection); Turquoise Objection to Assignment of KABN-FM (May 26, 2014) (Assignment Objection). Turquoise actually filed an earlier informal objection to the Assignment Application on April 16, 2014. Except for its caption, this objection is identical in all respects to the later-filed one. Accordingly, we refer only to the later-filed one herein.

⁴ See 47 CFR §§ 73.1745(a), 73.1635.

⁵ See 47 CFR § 73.561(d).

⁶ See *infra* at note 24 and para. 19.

applications; (2) the Station has been silent for extended periods of time; (3) the Station's license expired by operation of law; (4) there has been an unauthorized transfer of control of the Station; (5) the Station has failed to comply with the FCC's rules and policies regarding the emergency alert system (EAS) and main studios; (6) the Station has failed to serve its community of license; and (7) AERS lacks the character qualifications to hold the Station's license.

3. AERS opposed the Assignment Objection.⁷ It asserts that Turquoise failed to serve its pleading on AERS or Kenai Cares. It also denies that there has been an unauthorized transfer of control of the Station, and denies that there are any character qualifications issues related to it. Charles Dunham (Dunham), an officer and director of Kenai Cares, filed two separate pleadings in response to the Objections.⁸ Dunham argues that many of Turquoise's allegations are irrelevant, denies that there has been an unauthorized transfer of control, denies that there are any character qualifications issues related to AERS, and asserts that various Turquoise pleadings should be dismissed because Turquoise's "service was faulty."

III. DISCUSSION

A. Procedural Issues

4. We reject the arguments made by AERS and Dunham regarding Turquoise's service—or lack thereof—of various pleadings.⁹ Failure to serve or failure to properly serve a pleading does not constitute a procedural defect here because Turquoise filed its pleadings as informal objections. Unlike petitions to deny, informal objections are not subject to the service requirements set forth in Section 1.47 of the Rules.¹⁰

5. We further find no merit to Turquoise's claim that, because AERS has not paid a forfeiture proposed by the Media Bureau's Audio Division in a Notice of Apparent Liability for Forfeiture (2009 NAL) released in 2009,¹¹ the Commission's "red light" rules require us to halt processing all AERS applications.¹² While it is true that AERS has not paid the proposed forfeiture (either in part or in full), the "red light" rules do not apply. The Commission does "not treat monetary forfeitures imposed after issuance of a notice of apparent liability as debts owed to the United States until the forfeiture ha[s] been partially paid or a court of competent jurisdiction has ordered payment of the forfeiture and such order is final." In any event, the 2009 NAL relates to violations at another AERS station, DKWMD-FM, Kasilof, Alaska. That station's license was cancelled in 2014.¹³ Accordingly, we hereby cancel the 2009 NAL.

⁷ AERS Response to Informal Objection (May 5, 2014) (AERS Assignment Opposition).

⁸ Dunham Response to Informal Objection of Turquoise Broadcasting Company LLC Described As "Objection to License Renewal of KABN-FM" (June 9, 2014) (Renewal Opposition); Dunham Response to Informal Objection of Turquoise Broadcasting Company LLC Described As "Objection to Assignment of KABN-FM" (June 9, 2014) (Assignment Opposition).

⁹ AERS Assignment Opposition; Renewal Opposition; Assignment Opposition.

¹⁰ See *License Renewal Applications of Certain Broadcast Stations Licensed for and Serving the State of Mississippi*, Memorandum Opinion and Order, 59 FCC2d 1335, 1337 para. 6 (1976). See also, e.g., *WFRM(AM), Coudersport, Pennsylvania*, Letter Order, 24 FCC Rcd 11814, 11815 (MB 2009) (noting that pleading was defective as a petition to deny due to lack of service (and another unrelated defect) but treating pleading as informal objection).

¹¹ *Alaska Educ. Radio Sys., Inc.*, Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14657 (MB 2009) (2009 NAL).

¹² Renewal Objection; Assignment Objection.

¹³ *Alaska Educ. Radio Sys., Inc.*, Letter Order (MB Feb. 5, 2014); *Broadcast Actions*, Public Notice, Report No. 48173 (MB Feb. 10, 2014).

B. Substantive Issues**1. Operational History**

6. We reject Turquoise's argument that the Station's license "has to be revoked as a matter of law due to being silent ... for greater than one year."¹⁴ While it is true that the Station has been silent for extended periods of time since its license was last renewed,¹⁵ FCC records do not indicate that the Station has been silent for a continuous twelve month period. Accordingly, the provisions of Section 312(g) of the Communications Act of 1934, as amended (Act), do not apply.¹⁶ We also reject Turquoise's allegation that the Station may not provide a "listenable service" to its community of license and thus fails to comply with Section 73.515 of the Rules.¹⁷ While we do consider the amount of time the Station has broadcast during the license term and whether its broadcasts have reached its community of license in the renewal context, Turquoise fails to allege or show a rule violation on the part of AERS.

7. In reviewing the Station's service history, we have identified violations of Sections 73.1745(a) and Section 73.1740 of the Rules. These violations occurred when the Station was silent or operating at reduced power.¹⁸ For most of the time that AERS has operated the Station at reduced power, it has done so without authorization.¹⁹ Further, AERS failed to obtain authorization for some of the Station's silences.²⁰ These unauthorized reduced power operations contravened Section 73.1745(a) of the Rules, while the unauthorized silences contravened Section 73.1740 of the Rules. Below, we propose a forfeiture of twenty thousand dollars (\$20,000) for these violations and announce our intention to grant only a short-term renewal of the Station's license.

2. Unauthorized Transfer of Control

8. We reject Turquoise's claim that there has been an unauthorized transfer of control of the Station in violation of Section 310(d) of the Act.²¹ In determining whether there has been an

¹⁴ Renewal Objection; Assignment Objection.

¹⁵ Specifically, KABN-FM was silent from January 31, 2010, to January 30, 2011; from March 26, 2012, to March 22, 2013; and from March 26, 2013, to March 23, 2014. See Renewal Application at Exh. 13. AERS obtained STAs to cover some but not all of the dates on which the Station was silent.

¹⁶ 47 U.S.C. § 312(g) ("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").

¹⁷ Renewal Objection; Assignment Objection. See also 47 CFR § 73.515 (NCE FM city-grade coverage rule). Turquoise cites the fact that the Kasilof post office is outside the Station's 60 dBμ contour. *Id.*

¹⁸ Except for three days in March 2013, when the Station operated during its most recent license term, it did so at reduced power. We note that the Station's last special temporary authority (STA) to operate at reduced power expired on January 18, 2016. Because we have received no requests for STA to remain silent, we conclude that the Station has continued to operate at reduced power but without authorization to do so.

¹⁹ There have been four separate periods of unauthorized reduced power operations: (1) February 26, 2005, to January 30, 2010; (2) July 29, 2011, to March 25, 2012; (3) March 17, 2015, to May 17, 2015; and (4) January 19, 2016 to present. Turquoise asserts that there may have been a fifth period of unauthorized reduced power operations. Renewal Objection; Assignment Objection. Specifically, Turquoise questions whether, as AERS indicated to the FCC, AERS Resumption of Operations (filed March 25, 2013), KABN-FM resumed operation for three days in March 2013 with its licensed facilities. Turquoise, however, fails to submit any evidence contradicting AERS's statement.

²⁰ There have been five separate periods of unauthorized KABN-FM silence: (1) March 3, 2010, to April 13, 2010; (2) October 31, 2010, to January 30, 2011; (3) April 26, 2012, to May 29, 2012; (4) December 23, 2012, to March 22, 2013; and (5) January 8, 2014, to March 23, 2014.

²¹ Renewal Objection; Assignment Objection. Section 310(d) prohibits the transfer of control of a station permit or license, or any rights thereunder, without prior Commission consent. 47 U.S.C. § 310(d).

unauthorized transfer of control, the Commission employs a tripartite, fact-based test.²² Specifically, the Commission looks to whether a licensee continues to have ultimate control over the station, including its programming, personnel, and finances.²³ While Turquoise makes allegations to support its assertion that there has been an unauthorized transfer of control of the Station, we find these allegations either are not probative of whether an unauthorized transfer of control has occurred,²⁴ are unsubstantiated,²⁵ or have been rebutted by AERS.²⁶

3. Other Alleged Violations

9. We reject as speculative and unsupported Turquoise's allegations that the Station has failed to comply with certain FCC rules and policies. While Turquoise suggests that the Station lacks an operational EAS system and may not conduct its weekly EAS tests, and that the Station may not have "an operational studio or meaningful staff or management presence,"²⁷ it does not submit any evidence to support its speculation or elaborate further on these allegations.

4. Character Qualifications

10. We find Turquoise has not made a *prima facie* case that AERS lacks the character qualifications necessary to be a Commission licensee. Specifically, we conclude that Turquoise has failed

²² See *Ingles*, Memorandum Opinion and Order, 23 FCC Rcd 8815, 8820 n.32 (2008). See also *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8141, para. 9 (1995) (*WGPR*), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broad. Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39, para. 11 (1997).

²³ See, e.g., *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 2430 (2002).

²⁴ Turquoise alleges that Kurtz is indebted to Dunham. Renewal Objection; Assignment Objection. Assuming for the sake of argument that this is true, it alone does not demonstrate that there has been an unauthorized transfer of control of the Station. Likewise, the fact that Dunham signed both portions of the Assignment Application is not probative of whether AERS has ceded control of the Station to Dunham. *Id.* It does, however, render the Assignment Application defective. Application to Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314, General Instructions, Item K ("Both parties to the transaction must sign the application.") (emphasis omitted). As noted, *infra* at para. 19, we are dismissing the Assignment Application due to this defect.

²⁵ Turquoise questions who is paying the Station's operating costs. Renewal Objection; Assignment Objection. Turquoise points out that Kurtz previously admitted that "he had no funds to operate KABN." *Id.* Turquoise implies that Dunham is paying these costs and that this amounts to an unauthorized transfer of control. While control of a Station's finances is a factor in determining whether an unauthorized transfer of control has occurred, Turquoise has not substantiated its claim that Dunham is paying the Station's operating costs. Accordingly, we do not consider it further.

²⁶ Turquoise notes that it was Dunham who returned the Station to the air on March 23, 2014, and Dunham who notified the FCC that the Station had resumed operations. Renewal Objection; Assignment Objection. While this arguably raises a question about whether AERS retained control of the Station, AERS has explained that Dunham took "steps to place Station KABN back on the air ... as an engineer under the direction of the President of the licensee, Mr. Kurtz." AERS Assignment Opposition at 2. Accordingly, we find that Dunham's involvement in returning the Station to the air does not establish that an unauthorized transfer of control of the Station took place.

²⁷ Renewal Objection; Assignment Objection.

to make a *prima facie* case that AERS made misrepresentations²⁸ in the form of false statements to the Commission regarding the Station's operational status. All of Turquoise's allegations are speculative, grounded in potential inconsistencies in AERS filings and what Turquoise believes is suspicious timing.²⁹ We do not consider them further.

11. We also conclude that Turquoise has not made a *prima facie* case that that AERS made a false certification regarding "character issues"³⁰ in its amendment to the Assignment Application when it indicated that it was not a party to a broadcast application "where character issues were left unresolved or were resolved adversely against the applicant."³¹ In support of its claim, Turquoise cites the 2009 NAL.³² The 2009 NAL, however, does not involve character issues, does not conclude that AERS lacks the character qualifications to be a Commission licensee, and does not leave any character qualifications issues unresolved.³³ Accordingly, AERS did not need to disclose the 2009 NAL in its responses to the character-related items in the Assignment Application.

12. We do find, though, that AERS should not have certified in its amended Assignment Application that it was not a party to a "pending broadcast application in which character issues have

²⁸ A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 nn.40-41 (2004) (subsequent history omitted). Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *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). In a case where all of the allegations are a matter of public record on file with the Commission, there is no logical basis to infer a motive to deceive unless there is other probative evidence of intent to deceive. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 and n.69 (2017) (*KAXT*).

²⁹ Turquoise questions whether it was possible for KABN-FM to have resumed operations with its licensed facilities on March 25, 2013, when, less than a month later, AERS indicated KABN-FM "would not be able to continue operations from the licensed location." Renewal Objection; Assignment Objection. Turquoise speculates that KABN-FM did not resume operations and that the information provided to the FCC was "simply a scam by AERS to save the license from automatic expiration with no regard for the actual truth regarding the operation." *Id.* Turquoise further notes that the notice of resumed operations was submitted by Dunham, who holds no ownership interest in AERS and is not an officer or director of that company, and was submitted only 3 days after AERS requested STA to remain silent. *Id.* Turquoise speculates that Dunham was making a last ditch attempt to save the Station's license "without any regard for the consequences of making false certification to the Commission." *Id.*

³⁰ See Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314, Section II, Item 5 ("Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with: (a) any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or any party to the application; or (b) any pending broadcast application in which character issues have been raised.").

³¹ Renewal Objection; Assignment Objection. AERS also amended the Renewal Application to indicate that it was not a party to a broadcast application "where character issues were left unresolved or were resolved adversely against the applicant." Our finding that Turquoise fails to make a *prima facie* case that this certification was false applies equally with respect to the Renewal Application.

³² *Alaska Educ. Radio Sys., Inc.*, Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14657 (MB 2009) (2009 NAL). The 2009 NAL relates to AERS's operation of DKWMD(FM) at a variance from its license.

³³ Turquoise does not dispute this. Instead, it appears to argue that the mere existence of the NAL creates an unresolved character issue. That is not the case. *KAXT*, 32 FCC Rcd at 9645, para. 16 (unresolved character issues are those designated in a hearing designation order and not resolved in a final order).

been raised.”³⁴ As Turquoise notes, it filed petitions to deny against applications for new FM translators filed by AERS in 2013.³⁵ The petitions to deny make allegations related to AERS’ character qualifications.³⁶ Because the petitions were pending at the time AERS amended the Assignment Application, AERS should not have certified in that amended application that there were no outstanding character allegations.³⁷ Turquoise, however, has not made a *prima facie* case that AERS possessed the intent to deceive necessary for a false certification finding.³⁸ In any event, we find that the allegations set forth in these petitions do not make a *prima facie* case that AERS lacks the character qualifications needed to be a Commission licensee.³⁹

13. Finally, we note that Turquoise made other character-related allegations in objections to applications to renew the licenses of other AERS stations and in an objection to an application to assign the license of one of those stations. In a decision being released concurrently with this NAL,⁴⁰ we consider the allegations and find that none of them make a *prima facie* case regarding AERS’ character qualifications.

C. Proposed Forfeiture

14. This Notice of Apparent Liability for Forfeiture is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have 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.⁴¹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act,

³⁴ See Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314, Section II, Item 5 (“Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with: (a) any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or any party to the application; or (b) any pending broadcast application in which character issues have been raised.”). This finding applies with respect to the Renewal Application too. AERS amended it in a similar manner.

³⁵ Renewal Objection; Assignment Objection.

³⁶ Turquoise filed a single petition to deny against 16 applications that AERS had filed for new FM translators, File Nos. BNPFT-20130328AAP, -20130328AAN, -20130328AAM, -20130328AAI, -20130328AAF, -20130327AOS, -20130327AOQ, -20130327AON, -20130327AOI, -20130327AOG, -20130327AOE, -20130327ANX, -20130327ANW, -20130327ANR, -20130327ANQ, and -20130327ANM, and filed individual petitions to deny against an additional six applications. File Nos. BNPFT-20130328AAL, -20130328AAD, -20130328AAC, -20130328AAB, -20130327ANO, and -20130327AND. As discussed, we find this argument lacks merit.

³⁷ Assignment Objection.

³⁸ See *supra* note 28.

³⁹ The petitions cite the 2009 NAL. As discussed, we find this argument lacks merit. See *supra* para. 11. The petitions also allege that AERS made misrepresentations regarding “severe windstorm damage” in STA requests for DKRAW(FM), Kasilof, Alaska; DKWMD(FM); KKNi-FM, Sterling, Alaska; and KABN-FM, Kasilof, Alaska. See File Nos. BLSTA-20120529AAP (DKRAW(FM)); BLSTA-20120529AAO (DKWMD(FM)); BLSTA-20120611ABG (KKNi-FM); BLSTA-2010529AAQ (KABN-FM). These STA requests stated: “On January 9th, 2012, our joint control point structure was blown over in a windstorm.” The petitions include a print out from the National Climatic Data Center that indicates that the Kenai Peninsula experienced no storms between January 1, 2012, and June 8, 2012. The petitions, however, do not contain any evidence specifically disproving AERS’s claims of damage to its facilities, nor do they include any evidence regarding intent to deceive. See *Fox River Broad., Inc.*, *supra*, 93 FCC 2d at 129 (1983) (a misrepresentation is a false statement of fact ... made with intent to deceive the Commission); *San Francisco Unified Sch. Dist.*, *supra*, 19 FCC Rcd at 13334 nn.40-41 (2004).

⁴⁰ *Alaska Educ. Radio Sys., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 18-838 (MB July 18, 2018).

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

irrespective of any intent to violate” the law.⁴² 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,⁴³ and the Commission has so interpreted the term in the Section 503(b) context.⁴⁴ 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.”⁴⁵

15. We find that AERS apparently willfully and repeatedly failed to comply with Sections 73.1745(a) and 73.561(d) of the Rules. Section 73.1745(a) of the Rules requires licensees to operate pursuant to the terms contained in their authorizations.⁴⁶ In order for a station to operate at a variance from such terms, the licensee must file and have been granted either an application to modify its station authorization or a request for STA.⁴⁷ Here, AERS operated the Station at a variance from its licensed parameters and without STA to do so on four different occasions. Section 73.561(d) requires NCE licensees to request permission to remain off the air for more than 30 days. On five different occasions, the Station was silent for more than thirty days but did not seek STA to remain so or did not maintain its STA to remain so. Based on the record before us and taking into account of our decision to renew the Station’s license for a two-year term,⁴⁸ we propose a total forfeiture of twenty thousand dollars (\$20,000).

D. Renewal Application

16. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.⁴⁹ 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.⁵⁰ 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.”⁵¹

17. In this case, AERS’s conduct has fallen short of that which would warrant routine license renewal. Its 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. Specifically, the Station was silent for a significant portion of the license term,⁵² and operated with reduced power on all but three of the days when it did operate.⁵³ Moreover, as discussed above, AERS failed to seek or maintain Commission authorization for many of the Station’s silences and much of the time it has operated at reduced power. We find that these violations constitute a “pattern of abuse.” We also find that, given the Station’s

⁴² 47 U.S.C. § 312(f)(1).

⁴³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴⁴ See *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991)

⁴⁵ 47 U.S.C. § 312(f)(2).

⁴⁶ 47 CFR § 73.1745(a).

⁴⁷ See 47 CFR § 73.1635.

⁴⁸ See *infra* para. 18.

⁴⁹ 47 U.S.C. § 309(k).

⁵⁰ 47 U.S.C. § 309(k)(1).

⁵¹ 47 U.S.C. § 309(k)(2), (k)(3).

⁵² See *supra* note 15.

⁵³ See *supra* notes 18, 19.

extended periods of non-operation or reduced power operation, it failed to serve “the public interest, convenience, and necessity” during its most recent license term.

18. Based on these findings, we do not conclude that designation for evidentiary hearing is warranted here, particularly in light of our notice of apparent liability for the apparent rule violations.⁵⁴ Rather, we put in place additional measures to ensure that the Station complies with the Act and the Rules in the future. Specifically, pursuant to Section 309(k)(2) of the Act, upon resolution of the forfeiture proceeding commenced herein and so long as there are no other issues that would preclude grant, we will renew the Station’s license for a term of two years.⁵⁵ This short-term renewal will afford the Commission an opportunity to review the Station’s compliance with the Act and the FCC’s rules and to take whatever corrective actions, if any, that may be warranted at that time.

E. Assignment Application

19. We find that the Assignment Application is defective. Specifically, as noted,⁵⁶ the assignor’s portion of the application is not signed by an officer or director of AERS. We therefore dismiss the Assignment Application as defective.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that the application to assign the license for KABN-FM, Kasilof, Alaska (File No. BALED-20140121AAZ) IS DISMISSED.

21. IT IS ORDERED that the informal objections filed by Turquoise Broadcasting Co., LLC, on May 26, and May 27, 2014, ARE GRANTED IN PART AND OTHERWISE DENIED.

22. IT IS FURTHER ORDERED that the Notice of Apparent Liability (MB-200941410030) issued to Alaska Educational Radio System, Inc., on December 23, 2009, is HEREBY CANCELLED.

23. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules, that Alaska Educational Radio System, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of Sections 73.1745(a), 73.1635 and 73.561(d) of the Rules.

24. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Rules, that, within thirty (30) days of the release date of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, Alaska Educational Radio System, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

25. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number

⁵⁴ For example, we do not find here that AERS’s operation of the Station “was conducted in an exceedingly careless, inept and negligent manner and that the Licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (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.” *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

⁵⁵ *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 CFR § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 CFR § 73.1740 by leaving the station silent without the proper authorization).

⁵⁶ *See supra* note 24.

and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁵⁷ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

26. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Albert Shuldiner, and MUST INCLUDE the NAL/Acct. No. referenced above.

27. The Bureau 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.

28. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Rules, that Alaska Educational Radio System, Inc., shall place a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the public inspection file of Station KABN-FM.

29. IT IS FURTHER ORDERED that copies of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Alaska Educational Radio System, Inc., 12415 Merlin Drive, Seward, AK 99664, and its counsel, David Tillotson, 4606 Charleston Terrace, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁵⁷ See 47 CFR § 1.1914.