

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

In the Matter of)	File No.: EB-IHD-19-00028365
)	NAL/Acct. No.: 201932080007
Lexington Coal Company, LLC)	FRN: 0027119049

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2019

Released: February 7, 2019

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Lexington Coal Company, LLC (Lexington),¹ licensee of 23 Private Land Mobile Radio Service stations (PLMRS),² including WPZR865, Madison, West Virginia, for its apparent willful and repeated violation of Section 310(d) of the Communications Act of 1934, as amended (Act),³ and Section 1.948 of the Commission's rules (Rules).⁴ For the reasons set forth below, we find that Lexington engaged in a substantial transfer of control of its stations from Alpha Natural Resources, Inc. (Alpha) on October 23, 2017, without prior Commission consent, in apparent violation of the Act and the Rules. Our action today advances the Commission's longstanding goals of ensuring that the transfer, assignment, and operation of wireless authorizations are limited to instances where there has been a prior determination that such transfer, assignment, and operation are in the public interest, convenience and necessity.⁵

II. BACKGROUND

2. Lexington engages in the reclamation and transfer of coal properties in Kentucky, West Virginia, Tennessee, Illinois, and Indiana. Lexington was incorporated in 2004 in West Virginia and is based in Lexington, Kentucky.⁶ According to publicly available records, Lexington has annual revenues

¹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

² Prior to its sale of assets to Lexington Coal Company, LLC (Lexington), Alpha held 23 Land Mobile licenses identified by Call Signs WPZR865; WQAX875; WQBG378; WQDG684; WQIC371; WQPC500; WQPC501; WQIT955; WQIT956; WQJC612; WPGE398; WPAJ392; WPAK434; WPPD671; WPGP432; KFZ237; WPMD715; WPRL864; WNAN781; WPDI470; WPEX717; WQAX835; and WQBG373 (collectively, the "Licenses"); see <http://appsint.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=2597706>.

³ 47 U.S.C. § 310(d).

⁴ 47 CFR § 1.948.

⁵ 47 U.S.C. § 310(d); 47 CFR § 1.948.

⁶ See Application for Transfer of Control, ULS License No. 0008083827, et al., Public Interest Statement and Request For Rule Waiver (Feb. 22, 2018),

(continued)

of over \$14 million and employs a staff of approximately 72 people, with its principal office in Milton, West Virginia.⁷ Alpha maintains affiliate mining operations in West Virginia and supplies metallurgical coal to the steel industry as well as thermal coal to generate power. Alpha has offices in Kingsport, Tennessee, and Julian, West Virginia, which support approximately 20 active mining operations.⁸

3. On October 23, 2017, Lexington and Alpha completed a transaction whereby Alpha conveyed real and personal properties located in Kentucky, Tennessee, and West Virginia to Lexington. These assets included licensed stations held by the following Alpha subsidiaries: Independence Coal Company, Inc.; Kingwood Mining Company, LLC; Long Fork Coal Company; Martin County Coal Corporation; Performance Coal Company; Rockspring Development, Inc.; and Sidney Coal Company, Inc.⁹

4. On February 1, 2018, nearly four months after the transfer of the station licenses, the parties brought this matter to the attention of the Wireless Telecommunications Bureau (Wireless Bureau) by filing a remedial assignment of authorization application for consent to the transfer of control of the private land mobile licenses to Lexington.¹⁰ The application additionally sought a waiver for failure to obtain prior Commission approval for the transaction; the parties also requested the application be granted *nunc pro tunc*. In an accompanying Public Interest Statement and Request for Waiver, Alpha proffered no explanation for its failure to request Commission consent prior to the transaction. The Wireless Bureau granted consent to the transfer of control on February 12, 2018, subject to the special condition that the grant does not preclude or prejudice any enforcement action related to the unauthorized assignment of authorization.¹¹

III. DISCUSSION

A. Lexington Apparently Violated Section 310(d) of the Act and Section 1.948 of the Rules

5. Section 310(d) of the Act provides, in pertinent part, that:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.¹²

(Continued from previous page) —————
<https://wireless2.fcc.gov/UlsEntry/attachments/attachmentViewRD.jsp?applType=search&fileKey=1115878082&attachmentKey=20296656&attachmentInd=applAttach>. (Remedial Applications and Public Interest Statement).

⁷ Lexington Coal Company, LLC; see <https://www.manta.com/c/mmdyy3s/lexington-coal-company-llc> (last visited Dec. 11, 2018).

⁸ See Remedial Applications and Public Interest Statement at page 1.

⁹ *Id.*; See Alpha Natural Resources Completes Transfer of Idle Assets to Lexington Coal, <https://www.prnewswire.com/news-releases/alpha-natural-resources-completes-transfer-of-idle-assets-to-lexington-coal-300541996.html>.

¹⁰ Remedial Applications and Public Interest Statement at pages 1-2.

¹¹ *Id.*

¹² 47 U.S.C. § 310(d).

Similarly, Section 1.948 of the Rules requires that the transfer and assignment of wireless authorizations is limited to instances where there has been a prior determination by the Commission that such a transfer or assignment is in the public interest, convenience, and necessity.¹³

6. The instant record indicates that Lexington acquired its interest in the wireless radio licenses owned by Alpha as a result of an asset sale between the two companies that constituted a substantial transfer of control.¹⁴ The Commission has held that a substantial transfer of control occurs when there is a transfer of 50 percent or more of a licensee's stock.¹⁵ In this case, we find that Lexington engaged in a substantial transfer of control of its wireless radio licenses when assets and entities belonging to Alpha were transferred to, and became subsidiaries of, Lexington. At that time, 100 percent control of Alpha's wireless radio facilities, as cited herein, passed from Alpha to Lexington. Moreover, Lexington did not apply for or obtain Commission consent prior to the transfer of control of multiple stations from Alpha on October 23, 2017, but only sought such consent months later.¹⁶ Finally, Lexington's having sought *nunc pro tunc* relief in its post-transfer filing does not cure the violation resulting from its lapse.¹⁷ Thus, we find that Lexington apparently willfully and repeatedly violated Section 310(d) of the Act and Section 1.948 of the Rules by transferring 23 radio licenses without prior Commission consent.

B. Proposed Forfeiture

7. Section 503(b)(1)(B) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."¹⁸ 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"

¹³ 47 CFR § 1.948.

¹⁴ See Remedial Applications and Public Interest Statement at pages 1-2; see also Alpha Natural Resources Completes Transfer of Idle Assets to Lexington Coal, <https://www.prnewswire.com/news-releases/alpha-natural-resources-completes-transfer-of-idle-assets-to-lexington-coal-300541996.html>.

¹⁵ A substantial transfer of control is, *inter alia*, a transaction whereby controlling interest in the licensee shifts to a party whose qualifications have not yet been ascertained by the Commission. See *Questions and Answers Regarding Private Wireless Licensees' Obligations Under Section 310(d) of the Communications Act of 1934*, Fact Sheet (Sept. 19, 2000), 2000 WL 1340584, at *2; Lexington's Public Interest Statement and Request for Waiver attachment states, "On October 23, 2017, Alpha closed a deal with LCC [Lexington] wherein Alpha conveyed real and personal properties . . ." which, "included several FCC licenses. . . As a result of the transaction, the Licenses are now held by LCC." See Remedial Applications and Public Interest Statement at page 1.

¹⁶ See Remedial Applications and Public Interest Statement at page 1.

¹⁷ See, e.g., *Notice of Apparent Liability for Forfeiture of Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13555, para. 13 (2000) (licensee's request for *nunc pro tunc* grant of transfer application declined and it was not absolved of liability for unauthorized transfer) (*Enserch Corporation*); *Angel F. Ginorio*, Letter, 9 FCC Rcd 698 (MMB 1994), *forf. reduced*, Forfeiture Order, 12 FCC Rcd 1284 (MMB 1997) (although transferee's participation in unauthorized transfer is not necessarily disqualifying, any subsequent Commission approval of its late-filed transfer application does not negate liability for unauthorized transfer of control); *Domestic Section 214 Applications Filed for the Acquisition of Assets of HBC Telecom, Inc., by Hiawatha Broadband Communications, Inc.*, Public Notice, 22 FCC Rcd 21822, 21822, note 2 (2008) (even where *nunc pro tunc* approval of late-filed transfer application is granted by the Commission, enforcement action for unauthorized transfer of control is not precluded) (subsequent history omitted).

¹⁸ 47 U.S.C. § 503(b)(1)(B).

the law.¹⁹ This definition of willful applies to Section 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context.²⁰

8. Section 503(b)(2)(A) of the Act authorizes us to assess a forfeiture against Lexington of up to \$50,334 per violation or for each day of a continuing violation, up to a statutory maximum of \$503,349 for a single act or failure to act.²¹ In exercising our forfeiture authority, we must consider 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, substantial economic gain, and such other matters as justice may require.²² We have discretion to upwardly or downwardly adjust from the base forfeiture, taking into account the particular facts of each individual case.²³

9. Section 1.80(b) of the Rules and the *1997 Forfeiture Policy Statement* (together, the Guidelines) set a base forfeiture of \$8,000 for unauthorized substantial transfers of control for each violation or each day of a continuing violation.²⁴ As noted above, the instant record indicates that Lexington acquired its interest in the wireless radio licenses owned by Alpha as a result of an asset sale between the two companies that constituted a substantial transfer of control.²⁵ Moreover, Lexington did not apply for or obtain Commission consent prior to the transfer of control of multiple stations from Alpha on October 23, 2017, but only did so months later.²⁶ When setting the final amount for the penalty, Section 503(b)(2)(D) of the Act²⁷ and Section 1.80(b)(4) of the Rules²⁸ require us to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.”²⁹

10. We note that the transfer involved 23 stations. Each of these stations represents a separate violation of the Act and Rules,³⁰ and further, Commission precedent holds that an unauthorized transfer of control is a continuing violation that does not end until the Commission grants a transfer of

¹⁹ 47 U.S.C. § 312(f)(1).

²⁰ See, e.g., *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (“[C]onsistent with congressional intent, recent Commission interpretations of ‘willful’ do not require licensee intent to engage in a violation.”), *recons. denied*, 7 FCC Rcd 3454 (1992).

²¹ 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). These amounts reflect inflation adjustments of the forfeitures specified in Section 503(b)(2)(A). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (Inflation Adjustment Act). The Bureau released the order making the 2019 annual adjustment on December 19, 2018. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-1272 (EB Dec. 19, 2018), 2018 WL 6722625; see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 83 Fed. Reg. 4600 (Feb. 1, 2019) (setting February 1, 2019, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase.” See 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended, § 6.

²² 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note § II (articulating criteria for upward adjustments (egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation) and downward adjustments (minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay)).

²³ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (*1997 Forfeiture Policy Statement*) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure

(continued)

control application.³¹ Although the statute would allow us to propose a separate \$8,000 forfeiture for each station for every day of this continuing violation, we do not find it appropriate, based on the facts of this case, to do so, because such a methodology would result in an excessive forfeiture amount that would be inconsistent with prior enforcement actions.³² Nonetheless, in this case we believe the total forfeiture amount assessed should be above the \$8,000 base forfeiture set forth in the Guidelines for a single violation.

11. In this case, given the totality of the circumstances, and consistent with the *1997 Forfeiture Policy Statement*, we conclude that a forfeiture of \$25,000 is warranted.³³ This amount is justified by multiple statutory factors, beginning with the nature, circumstances, extent, and gravity of the violations.³⁴ Specifically, Lexington transferred 23 individual stations without prior Commission consent, preventing the Commission from fulfilling its obligation under Section 310(d) of the Act and Section 1.948 of the Rules to determine whether the proposed transaction will serve “the public interest, convenience and necessity,” and whether the applicants to the transaction meet the qualification requirements to hold and transfer licenses under Section 310(d) of the Act and Section 1.948 of the Rules.³⁵ Moreover, the number of stations involved (*i.e.*, 23 stations) is significant and thus is treated as an “aggravating factor warranting an increased forfeiture.”³⁶ Additionally, Lexington failed to notify the Commission of the unauthorized transfer of control for nearly four months, with each day constituting a separate continuing violation.³⁷ The matter was only brought to the Commission’s attention when Alpha filed a remedial assignment of authorization application and request for waiver, which contained no explanation for the parties’ failure to request Commission consent prior to the transaction.³⁸

12. Lexington’s ability to pay further confirms that an upward adjustment is warranted in this case.³⁹ Lexington has annual revenues of more than \$14,000,000; employs a staff of approximately 72 people; and, through the instant transaction, obtained real and personal properties located in Kentucky,

(Continued from previous page) _____

of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁴ 47 CFR § 1.80(b)(9); *see 1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appx. A., Section I. (1997).

²⁵ *See Remedial Applications and Public Interest Statement* at pages 1-2; *see also* Alpha Natural Resources Completes Transfer of Idle Assets to Lexington Coal, <https://www.prnewswire.com/news-releases/alpha-natural-resources-completes-transfer-of-idle-assets-to-lexington-coal-300541996.html>.

²⁶ *See Remedial Applications and Public Interest Statement* at page 1.

²⁷ 47 U.S.C. § 503(b)(2)(D).

²⁸ 47 CFR § 1.80(b)(4).

²⁹ 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(4).

³⁰ *Cf. Courtesy Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 4198, 4200-01, paras. 6-7 (1999) (rejecting the target’s argument that it committed only one violation of 47 CFR § 22.142(b) when it simultaneously relocated its base stations without Commission authorization, and explaining that the Commission has “consistently held that each transmitter provides an authorized service, and therefore, notification [regarding the commencement of service] is required for each” and failing to do so constitutes separate violations).

³¹ *Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 10 (2000). *See also Petition for Reconsideration Concerning Liability of Benito Rish, Licensee of Radio Station WREM (AM), Monticello, ME*, Memorandum Opinion and Order, 10 FCC Rcd 2861, para. 4 (1995); *Puget Sound Energy, Inc.*, Notice of Apparent Liability for Forfeiture, *Puget Sound Energy, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd. 12323 (WTB 1998) (*Puget Sound NAL*), *affirmed*, Forfeiture Order, 14 FCC Rcd 9111, 9113, para. 5 (WTB 1999).

Tennessee, and West Virginia.⁴⁰ Given Lexington's size and its ability to pay a forfeiture, an upward adjustment of the base forfeiture amount from \$8,000 to \$25,000 is appropriate. As we have previously noted and "as Congress has stated, for a forfeiture to be an effective deterrent . . . [it] must be issued at a high level . . . to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business."⁴¹

13. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. As a result of Lexington's apparent violations, the Commission was denied the ability to fulfill its statutory responsibility to evaluate whether the transaction served the public interest and the character of the potential licensee prior to the time the transfer was made. Lexington failed to offer any justification for its failure to notify the Commission of the unauthorized transfer.⁴² Moreover, Lexington never affirmatively disclosed its violations to the Enforcement Bureau, but instead attempted to belatedly file the required application without separately disclosing its lapse to the Commission.⁴³ Such belated filings do not constitute voluntary disclosures or corrective actions that warrant a downward forfeiture adjustment.⁴⁴

14. We acknowledge that Lexington does not have a prior history of violating this or other FCC rules.⁴⁵ In this instance, however, that factor alone is insufficient to offset the other factors we are obliged to consider. Lexington's violation was serious, covered multiple licenses, and persisted for a period of several months.

15. Moreover, a \$25,000 forfeiture in this case would be consistent with other forfeitures for similar violations. In *Puget Sound*, for example, the Commission imposed a \$20,000 forfeiture against a licensee who had transferred substantial control of 125 stations, in the context of a single transaction, for approximately two months before informing the Commission and attempting to obtain required

(Continued from previous page)

³² See *Enserch Corporation*, 15 FCC Rcd at 13555, para. 15 (explaining that in *Central Illinois*, the Commission "declined to engage in a strict mathematical exercise of multiplying a base forfeiture amount for a violation times the number of stations. . . . Instead, [it] determined that the number of stations involved should be treated as an aggravating factor warranting an increased forfeiture").

³³ *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17093, para. 10.

³⁴ 47 U.S.C. § 503(b)(2)(E).

³⁵ 47 U.S.C. § 310(d), 47 CFR § 1.948. See also *Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589, 17600-01, paras. 27-28 (2011) (explaining that Section 310(d) "obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses," including whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications").

³⁶ *Enserch Corporation*, 15 FCC Rcd at 13555, para. 15.

³⁷ 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1).

³⁸ Remedial Applications and Public Interest Statement at pages 1-2.

³⁹ 47 CFR § 1.80(a)(4).

⁴⁰ Lexington Coal Company, LLC; see <https://www.manta.com/c/mmdyy3s/lexington-coal-company-llc> (last visited Dec. 11, 2018). See also discussion in paras. 3-4, *supra*.

⁴¹ *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, para. 24. See also *Viacom, Inc., ESPN, Inc.*, Forfeiture Order, 30 FCC Rcd 797, 797-98, 805-06, paras. 2, 22 (2015) (noting that an upward adjustment is appropriate in light of Viacom's substantial reported annual revenues and the substantial revenues of ESPN's

(continued)

Commission consent.⁴⁶ In *Central Illinois*, which involved the unauthorized transfer of control of 88 licenses for approximately three and half months before the Wireless Bureau was informed, the Commission based its forfeiture of \$30,000 on the single transaction at issue, and upwardly adjusted for the number of licenses involved.⁴⁷ As in *Central Illinois* and *Puget Sound*, the instant violation involves the unauthorized transfer of control of multiple station licenses lasting over a period of months before the licensee sought to obtain Commission authorization. Here, the duration of the violations lasted approximately four months and involved 23 station licenses. Taking into consideration all of the elements required under Section 503(b)(2)(D) of the Act, the *1997 Forfeiture Policy Statement*, and Section 1.80 of the Rules, we find that Lexington is apparently liable for a forfeiture of \$25,000.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁴⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁴⁹ Lexington Coal Company, LLC **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Twenty-Five Thousand Dollars (\$25,000) for willful and repeated violation of Section 310(d) of the Act⁵⁰ and Section 1.948 of the Rules.⁵¹

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,⁵² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Lexington Coal Company LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 20 below.

(Continued from previous page) _____
parent); *Union Oil Company of California*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13810, para. 10 (2012) (proposing an upward adjustment of the base forfeiture due to substantial revenues of parent company and to ensure that monetary penalty is a meaningful deterrent and not merely a cost of doing business) (forfeiture paid).

⁴² See Remedial Applications and Public Interest Statement at pages 1-2.

⁴³ *Id.*

⁴⁴ See, e.g., *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23858, para. 10 (1998) (forfeiture reduced where carrier voluntarily disclosed violations and promptly cured its deficiency prior to Commission investigation) (subsequent history omitted); cf. *Constellium Rolled Products Ravenswood, LLC, an Indirect, Wholly-Owned Subsidiary of Constellium N.V.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 6277, 6286, para. 17, n. 77 (2014) (a target's express, non-dilatory, and voluntary disclosures can expedite enforcement resolution and may result in appropriate downward forfeiture adjustment), *settled by consent decree*, Order and Consent Decree, 30 FCC Rcd 15643 (EB 2015); *Union Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 18588, 18590, para. 10 (EB 2004) (it is long-settled that corrective action is expected of licensees, and such conduct, even if undertaken, does not, standing alone, nullify or mitigate any prior forfeitures or violations, citing *Seawest Yacht Brokers d/b/a San Juan Marina Friday Harbor, Washington*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994), and cases cited therein).

⁴⁵ See 47 CFR § 1.80(b)(8); *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17116 (including "[p]rior violations of any FCC requirements" as an upward adjustment factor).

⁴⁶ *Puget Sound NAL*, 13 FCC Rcd at 12323, 12325, para. 2, 7.

⁴⁷ *Central Illinois Public Service Company*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 1750 (1999) (imposing upward adjustment for substantial transfer of control of 88 stations) (forfeiture paid) (*Central Illinois*).

⁴⁸ 47 U.S.C. § 503(b).

⁴⁹ 47 CFR §§ 0.111, 0.311, 1.80.

⁵⁰ 47 U.S.C. § 301.

18. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Lexington Coal Company, LLC shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁵³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- 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 e-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 e-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.

19. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554. If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.⁵⁴ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@fcc.gov. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective

(Continued from previous page) _____

⁵¹ 47 CFR § 1.948.

⁵² *Id.* § 1.80.

⁵³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵⁴ 47 CFR §§ 1.80(f)(3), 1.16.

documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

21. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail, return receipt requested to Wes Wright, Esq., Counsel for Lexington Coal Company LLC, Keller and Heckman LLP, 1001 G Street, NW, Suite 500 West, Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau