

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

In the Matter of )
Plymouth Gathering, Inc. ) EB-IHD-16-00022970
Licensee of Low Power FM Station ) Facility ID No. 131356
KELS-LP, Greeley, Colorado ) NAL/Account No. 202032080021
) FRN 0009678228

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 2, 2020

Released: July 2, 2020

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Noncommercial educational (NCE) stations, which include all low power FM (LPFM) stations, provide a unique service to the public. LPFM stations in particular allow the public to enjoy a radio service that is both commercial free and distinctly oriented to the local communities of the stations' listeners. Because of their unique and non-profit nature, the Federal Communications Commission (FCC) has given special regulatory consideration to NCE and LPFM stations, reserving spectrum for NCE stations, imposing fewer regulatory requirements, and exempting them from annual regulatory fees.

2. Accordingly, the Communications Act and FCC rules have long prohibited NCE stations from airing commercial advertisements. Although such stations can identify contributors who provide financial support, they cannot go further and promote a contributor's products, services, or businesses. Strong enforcement of these restrictions preserves the unique nature of low power FM stations by keeping them commercial-free. It also provides a level playing field for noncommercial broadcasters who obey the rules, and for commercial broadcasters that assume higher levels of regulatory and financial burdens in exchange for being permitted to sell commercial advertising on their stations.

3. In this case, Plymouth Gathering, Inc. (Plymouth or Licensee),<sup>1</sup> licensee of LPFM station KELS-LP (Station or KELS-LP), Greeley, Colorado, apparently violated the Commission's rules for NCE stations on multiple occasions. Specifically, over a three-month period in 2018, Plymouth apparently aired over 1,600 advertisements on KELS-LP promoting the products, services or businesses of at least 14 financial contributors. Therefore, we propose a penalty of \$15,000 against Plymouth for its apparent violation of statutory provisions and the Commission's rules prohibiting commercial advertisements on NCE stations.

<sup>1</sup> 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.

## II. BACKGROUND

4. *Legal Background.* Section 399B of the Communications Act of 1934, as amended (Act),<sup>2</sup> and section 73.503(d) of the Commission's rules<sup>3</sup> (collectively, Underwriting Laws) define an advertisement as programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.<sup>4</sup> Section 399B(b)(2) of the Act specifically provides that NCE stations may not broadcast advertisements.<sup>5</sup> In the *Report and Order* establishing the LPFM service, the Commission identified LPFM stations as noncommercial entities.<sup>6</sup> Although contributors of funds to such stations may receive on-air acknowledgements of their support, the Commission has held that such acknowledgements are for identification purposes only and must not promote the contributors' products, services, or businesses.<sup>7</sup> In addition, such announcements may not contain comparative or qualitative descriptions; price information (sales or discounts); calls to action; inducements to buy, sell, rent, or lease; and excessively detailed "menu listings" of services offered by the entity.<sup>8</sup>

5. The Commission has found that the longer the announcement, the more likely it is to contain material that is inconsistent with its "identification only" purpose.<sup>9</sup> The Commission expects that licensees exercise reasonable "good faith" judgment in this area and affords some latitude to the judgments of licensees who do so.<sup>10</sup>

6. *Factual Background.* Plymouth Gathering, Inc. is a Colorado nonprofit corporation and is the licensee of LPFM station KELS-LP. The Station is licensed to, and serves, the community of Greeley, Colorado. The Commission has received multiple complaints since 2015 alleging that the Licensee is airing advertisements on the Station, essentially operating the noncommercial Station as a commercial station.<sup>11</sup> Following a review of the complaints, Commission staff, including the Bureau's

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<sup>2</sup> 47 U.S.C. § 399b.

<sup>3</sup> 47 CFR § 73.503(d); 47 CFR § 73.801 (applying the Underwriting Laws to LPFM stations as NCE stations).

<sup>4</sup> 47 U.S.C. § 399b(a).

<sup>5</sup> 47 U.S.C. § 399b(b)(2).

<sup>6</sup> *Creation of Low Power Radio Service*, MM Docket No. 99-25, Report and Order, 15 FCC Rcd 2205, 2213, para. 17 (2000) ("While we have considered the entrepreneurial opportunities that low power radio stations might create, we nonetheless conclude that a noncommercial service would best serve the Commission's goals of bringing additional diversity to radio broadcasting and serving local community needs in a focused manner.") (subsequent history omitted).

<sup>7</sup> Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992) (*Enhanced Underwriting Policy*); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, BC Docket No. 21136, Memorandum Opinion and Order, 90 FCC 2d 895 (1982) (*1982 Policy Statement*), *recons. granted in part*, 97 FCC 2d 255 (1984).

<sup>8</sup> *See Hispanic Broadcast System, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2411, 2413-15, paras. 4-9 (EB 2005) (*Hispanic Broadcast NAL*), *aff'd with reduced forfeiture*, Forfeiture Order, 20 FCC Rcd 12008 (EB 2005); *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4920-21, paras. 3, 6 (1990) (*Xavier*); *Enhanced Underwriting Policy*, 7 FCC Rcd at 827-28.

<sup>9</sup> *Power Radio Corp.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2572, 2575, para. 7 (EB 2009), *aff'd with reduced forfeiture*, Forfeiture Order, 24 FCC Rcd 9265 (EB 2009) (*Power Radio*).

<sup>10</sup> *Xavier*, 5 FCC Rcd at 4921, para. 6 (citing *1982 Policy Statement*, 90 FCC 2d at 911 (subsequent history omitted)).

<sup>11</sup> *See* Complaint No. 318601 (June 2, 2015) (on file in EB-IHD-16-00022970); Complaint No. 601072 (Oct. 20, 2015) (on file in EB-IHD-16-00022970); Complaint No. 1406233 (Jan. 19, 2017) (on file in EB-IHD-16-00022970); Complaint No. 1440853 (Feb. 7, 2017) (on file in EB-IHD-16-00022970); Complaint No. 1751200 (July 2, 2017)

(continued....)

Colorado Field Office (CO Field Office), investigated and monitored the Station.<sup>12</sup> On September 5, 2018, the CO Field Office conducted an additional inspection of the Station and recorded a segment of Station programming that appeared to include commercial announcements for 14 underwriters, which are excerpted in Exhibit 1. The Bureau inquired about these matters on December 12, 2018,<sup>13</sup> to which the Licensee responded on February 8, 2019.<sup>14</sup>

7. Licensee acknowledges in its LOI Response that it broadcast 13 different announcements more than 1,600 times over a three-month period in late 2018, but asserts that it does not maintain records concerning the broadcast dates, times or text of the announcements.<sup>15</sup> The Licensee also acknowledges that it executed contracts with the following 13 for-profit entities to air announcements for monetary remuneration:<sup>16</sup> Cattleman's Steakhouse, Scott's Imports, Gourmet Grub, Realty One Group, Weld County Garage, Not Your Average Nerds, Christian Brothers Automotive, Grizzly Garage Door, Roma Restaurant, Western Computer Support Services, Florio's Shoes, True Abundance Property Management, and Weiss Jewelers. The Licensee does not dispute the accuracy of the Bureau's transcripts of these announcements.<sup>17</sup> Further review of the CO Field Office recordings reveals a 14<sup>th</sup> apparent commercial announcement for The Dog Pawlour, also broadcast by the Station.

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(on file in EB-IHD-16-00022970); Complaint No. 2011917 (Oct. 27, 2017) (on file in EB-IHD-16-00022970); Complaint No. 2056653 (Nov. 18, 2017) (on file EB-IHD-16-00022970).

<sup>12</sup> See FCC Denver Field Office, Summary of Investigations and Explanation of Evidence Reese-related Stations (Oct. 2016) (including Field Office records dated Oct. 25, 2016, and Oct. 26, 2015) (on file in EB-IHD-16-00022970); KELS-LP Pirate Radio 104.7, Ye Mighty Sponsors, <http://www.pirate1047.com/sponsors.html> (last visited June 29, 2020); K228EZ Pirate Radio 93.5, Ye Mighty Sponsors, <http://www.pirate935.com/sponsors.html> (last visited June 29, 2020).

<sup>13</sup> See Letter of Inquiry from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Mr. Brett Reese, Plymouth Gathering Inc., (Dec. 12, 2018) (on file in EB-IHD-16-00022970) (LOI).

<sup>14</sup> See Response to Letter of Inquiry from Michael W. Richards, Esq., Attorney for Plymouth Gathering Inc., to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 8, 2019) (on file in EB-IHD-16-00022970) (LOI Response); Request for Confidential Treatment from Michael W. Richards Esq., Attorney for Plymouth Gathering Inc., to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 8, 2019) (on file in EB-IHD-16-00022970); Amended Request for Confidential Treatment from Michael W. Richards Esq., Attorney for Plymouth Gathering Inc., to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 20, 2020) (on file in EB-IHD-16-00022970) (Superseding Confidentiality Request). Licensee requested confidential treatment of certain portions of its LOI Response, including the amount of each donor contribution. See Superseding Confidentiality Request at 2. The NAL does not include information for which the Licensee has requested confidentiality, but does include information, such as the names of certain underwriters for whom announcements were aired, because such information was publicly disseminated when Licensee broadcast it. See *Entercom Portland License, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 25484, 25486, para. 5, n. 20 (2003) ("A recording of material broadcast over the air does not qualify for confidential treatment under the Commission's rules because it has already been openly disseminated to the public."). We defer ruling on the Superseding Confidentiality Request unless and until necessary. See 47 CFR § 0.459(d)(3) (providing that the Commission may defer acting on requests for confidential treatment of materials submitted to the Commission until a request for inspection has been made pursuant to § 0.460 or § 0.461). See, e.g., *Radio License Holding CBC, LLC*, Order and Consent Decree, 31 FCC Rcd 3, 8, para. 5 & n.16 (EB 2016).

<sup>15</sup> See LOI Response at 2, Response to Question III. 13; Exh. IV-15.

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

### III. DISCUSSION

8. There are numerous ways in which underwriting announcements can violate section 399B of the Act and section 503(d) of the Commission's rules.<sup>18</sup> In this case, the announcements at issue are replete with prohibited promotional references that violate Underwriting Laws. We find that the 14 announcements set forth in the attached Exhibit I and made on behalf of 14 for-profit entities apparently exceed the bounds of what the Underwriting Laws permit, notwithstanding the "good faith" discretion afforded the Licensee under *Xavier*.<sup>19</sup>

- Eleven announcements make prohibited promotional references by employing comparative and/or qualitative language to describe products or services: Scott's Imports Announcement, Realty One Group Fourpoints Announcement, Weld County Garage Announcement, Not Your Average Nerds Announcement, Christian Brothers Automotive Announcement, Grizzly Garage Door Services Announcement, The Dog Pawlor Announcement, Roma Restaurant Announcement, Florio's Shoes Announcement, True Abundance Property Management Announcement, and Weiss Jewelers Announcement.<sup>20</sup>
- Nine announcements make prohibited promotional references by using pricing language and/or offering inducements to do business: Scott's Imports Announcement, Realty One Group Fourpoints Announcement, Weld County Garage Announcement, Not Your Average Nerds Announcement, Christian Brothers Automotive Announcement, Roma Restaurant Announcement, Florio's Shoes Announcement, True Abundance Property Management Announcement, and Weiss Jewelers Announcement.<sup>21</sup>
- Six announcements make prohibited promotional references by employing "menu listings" (e.g., excessive arrayal) of products or services: Cattlemen's Steak House & Saloon Announcement, Gourmet Grub Announcement, The Dog Pawlour Announcement, Western Computer and Support Services Announcement, True Abundance Property Management Announcement, and Roma Restaurant.<sup>22</sup>
- At least six announcements are greater than 30 seconds in length; some are close to or exceeding 60 seconds in length: Realty One Group Fourpoints Announcement, Christian Brothers Automotive Announcement, Roma Restaurant Announcement, Western Computer and Support Services, Florio's Shoes Announcement, and True Abundance Property Management Announcement.<sup>23</sup>

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<sup>18</sup> See *Enhanced Underwriting Policy*, 7 FCC Rcd 827, 828 (providing examples of violative announcements); cf. *1982 Policy Statement*, 90 FCC 2d at 900 n.16 (noting that underwriters which qualify under IRS guidelines as not-for-profit organizations are not subject to the prohibition).

<sup>19</sup> See *supra* para. 5.

<sup>20</sup> See *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Minority Television Project, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15646 (EB 2002) (*Minority TV NAL*), *aff'd*, 18 FCC Rcd 26611, Forfeiture Order (EB 2003), *aff'd*, 19 FCC Rcd 25116, Order on Review (2004), *recons. dismissed and denied*, 20 FCC Rcd 16923, Memorandum Opinion and Order (2005), *aff'd sub nom. Minority Television Project, Inc. v. FCC*, 2007 WL 781974 (N.D. Cal. 2007), *rehearing en banc granted*, 704 F.3d 1009 (9<sup>th</sup> Cir. 2012), *decision on rehearing en banc*, 736 F.3d 1192 (9<sup>th</sup> Cir. 2013), *cert. denied*, 134 S. Ct. 2874 (2014); *Hispanic Broadcast NAL*, 20 FCC Rcd at 2415, para. 9; see also Exh. 1.

<sup>21</sup> See *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Minority TV NAL*, 17 FCC Rcd at 15647, para 4.; *Hispanic Broadcast NAL*, 20 FCC Rcd at 2415, para. 9; *Xavier*, 5 FCC Rcd at 4920-21, paras. 3, 6; see also Exh.1.

<sup>22</sup> See *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Minority TV NAL*, 17 FCC Rcd at 15647, para 4.; *Hispanic Broadcast NAL*, 20 FCC Rcd at 2415, para. 9; *Xavier*, 5 FCC Rcd at 4920-21, paras. 3, 6; see also Exh.1.

<sup>23</sup> See *Enhanced Underwriting Policy*, 7 FCC Rcd at 827; *Minority TV NAL*, 17 FCC Rcd at 15647, para 4.; *Hispanic Broadcast NAL*, 20 FCC Rcd at 2415, para. 9; *Xavier*, 5 FCC Rcd at 4920-21, paras. 3, 6; see also Exh.1.

9. None of the foregoing announcements are permissible under *Xavier* because each in the context presented is “clearly promotional.”<sup>24</sup> Each announcement refers either to specific qualities or attributes of the respective underwriters and their products, and seeks to distinguish them from competitors or contains language of inducement. Although the Licensee contends that it cannot confirm the specific text of the announcements, it does not dispute the accuracy of the transcripts of the announcements included in Exhibit 1.<sup>25</sup> The Commission may rely on such un rebutted evidence in spite of the Licensee’s demurrers.<sup>26</sup>

#### IV. PROPOSED FORFEITURE

10. Section 503(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.”<sup>27</sup> Section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture against the Licensee of up to \$51,222 per violation or for each day of a continuing violation, up to a statutory maximum of \$512,228 for a single act or failure to act.<sup>28</sup> In exercising our forfeiture authority, we 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, and such other matters as justice may require.”<sup>29</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>30</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>31</sup>

<sup>24</sup> See *Xavier*, 5 FCC Rcd at 4920, para. 6.

<sup>25</sup> See LOI Response at 2, Response to Question III. 13; Exh.IV-15.

<sup>26</sup> See *Community Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 28, 35, para. 18 (1975) (“Each licensee is responsible for material broadcast over its station and for compliance with the Communications Act and all Commission rules, and a licensee may not avoid liability for any violation merely by claiming that he doesn’t know what did or did not go out over his station.”), *recons. denied*, 56 FCC 2d 851 (1975); *Proactive Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9079, 9082, para. 7 (EB 2008); *Independence Public Media of Philadelphia, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 857, 860, para. 6 (EB/IHD 2009) (forfeiture paid); *Spanish Broadcasting System Holding Company, Inc.*, Forfeiture Order, 27 FCC Rcd 11956, 11960, para. 10 (EB 2012).

<sup>27</sup> 47 U.S.C. § 503(b).

<sup>28</sup> 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 2020 annual adjustment on December 27, 2019. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 19-1325 (EB Dec. 27, 2019), 2019 WL 7370226. See also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 85 Fed. Reg. 2318 (Jan. 15, 2020) (setting January 15, 2020, 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.

<sup>29</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>30</sup> 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

<sup>31</sup> *Id.*

11. Section 1.80 of the Commission's rules sets a base forfeiture of \$2,000 for violations of the enhanced underwriting requirements.<sup>32</sup> We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.<sup>33</sup> In this case, it appears that, over a three-month period in late 2018,<sup>34</sup> the Licensee willfully and repeatedly broadcast 14 separate advertisements more than 1,600 times in total, in violation of section 399B of the Act and section 73.503(d) of the Commission's rules. We have considered the protracted period of time over which the prohibited announcements were aired and the number of announcements at issue, as well as the forfeiture actions in other underwriting cases to determine the forfeiture appropriate for this matter. Applying the *1997 Forfeiture Policy Statement* statutory factors to this case,<sup>35</sup> we conclude that the Licensee is apparently liable for a forfeiture in the amount of \$15,000 for willfully and repeatedly violating the Underwriting Laws.

## V. CONCLUSION

12. We have determined that Plymouth apparently willfully and repeatedly violated section 399B of the Communications Act of 1934, as amended (the Act),<sup>36</sup> and section 73.503(d) of the Commission's rules.<sup>37</sup> As such, Plymouth is apparently liable for a forfeiture in the amount of \$15,000.

## VI. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311 and 1.80 of the Commission's rules, Plymouth Gathering Inc., licensee of noncommercial LPFM Station KELS-LP, Greeley, Colorado, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willfully and repeatedly broadcasting advertisements in violation of section 399B of the Act,<sup>38</sup> section 73.801, and section 73.503(d) of the Commission's rules.<sup>39</sup>

14. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,<sup>40</sup> that within 30 calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Licensee, **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 paragraphs 16 and 17 below.

15. Plymouth Gathering, Inc. shall send electronic notification of payment to Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Christopher Sova at [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), Frederick W. Giroux at

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<sup>32</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087 (1997 *Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b).

<sup>33</sup> *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (1997) (“[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure 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.”).

<sup>34</sup> The Field Office recorded the 14 announcements on September 5, 2018. Although the Licensee did not keep records of the exact dates and times of the broadcasts, the Licensee explains that each of the announcements aired at least twice per day, over a three-month period. *See* LOI Response at 2-3, Response to Questions 13-15 & Exhibit IV-15.

<sup>35</sup> *See 1997 Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100-01, para. 27.

<sup>36</sup> 47 U.S.C. § 399b(a).

<sup>37</sup> 47 CFR § 73.503(d); 47 CFR § 73.801.

<sup>38</sup> 47 U.S.C. § 399b.

<sup>39</sup> 47 CFR §§ 73.801; 503(d).

<sup>40</sup> 47 CFR § 1.80.

[Frederick.Giroux@fcc.gov](mailto:Frederick.Giroux@fcc.gov), and Jennifer A. Lewis at [Jennifer.Lewis@fcc.gov](mailto:Jennifer.Lewis@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>41</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>42</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>43</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. Any request for full payment over time 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.<sup>44</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk, by phone at (877) 480-3201, or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

17. 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 1.16 and 1.80(f)(3) of the Rules.<sup>45</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN:

<sup>41</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>42</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>43</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>44</sup> See 47 CFR § 1.1914.

<sup>45</sup> *Id.* §§ 1.16, 1.80(f)(3).

Enforcement Bureau – Investigations & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Christopher Sova at [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), Frederick W. Giroux at [Frederick.Giroux@fcc.gov](mailto:Frederick.Giroux@fcc.gov), and Jennifer A. Lewis at [Jennifer.Lewis@fcc.gov](mailto:Jennifer.Lewis@fcc.gov).

18. 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; or (3) some other reliable and objective 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.

19. **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 Mr. Brett Reese, Plymouth Gathering Inc., 21491 WCR 64, Greeley, Colorado 80631 and to Mr. Michael W. Richards, Esq., Counsel to Plymouth Gathering Inc., 7008 Westmoreland Avenue, Suite E8, Takoma Park, Maryland 20912.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau



## **Exhibit 1**

The following text was transcribed from Enforcement Bureau Colorado Field Office recordings of underwriting announcements broadcast over Station KELS-LP, Greeley, Colorado on September 5, 2018. The announcements include prohibited promotional references that violate section 399B of the Act and section 503(d) of the Commission's rules.

### **Cattlemen's Steakhouse & Saloon**

Cattlemen's Steakhouse & Saloon serving up angus beef like a nine-ounce large filet mignon or the Cattlemen's 20oz club steak. They also serve up their basic burger, mushroom burger, bronco burger, and house patty melt. And with any entree, you get combo chicken, shrimp, or rack ribs. Banquet facilities and private rooms available. For more information, you can call 351-7600. Cattlemen's Steakhouse & Saloon located at 2600 11th Street Road in Greeley.

### **Scott's Import Specialists LLC**

Scott's Imports complete auto service. Scott's Imports has specialized in providing personalized, full service automotive repair service in Greeley since 1999. Owner and operator Norm is staffed with automotive technicians who are all ASE certified master technicians. Using state-of-the-art equipment. Whether you need a new headlight or a new engine, Scott's Imports wants to keep your vehicle running smoothly. And when you're ready to sell your vehicle or buy another vehicle, you can take advantage of their complete inspection service so you can buy or sell with confidence. Open Monday through Friday, from 8 a.m. to 5:30 p.m. Located at 2735 9th Avenue in Greeley. Their phone number is 336-1484, that's 336-1484.

### **Gourmet Grub**

Gourmet Grub offering a wide variety menu to include carne asada, spicy coconut red curry lobster, chicken fried ribeye, beef tenderloin scallops, smoked pork chops, a cubano sandwich, a bison burger, a lamb burger, and a variety of soups and salads. This is Justin, owner of Gourmet Grub located at 2118 35th Avenue. Thank you for listening to Pirate radio.

### **Realty One Group Fourpoints**

Got a brand new real estate company right here in Greeley, Realty One Group, one of the fastest growing real estate companies in the country.

Erin Brady here. Ron and I decided to partner up with Duff Knott and Liz Montoya to create Realty One in Northern Colorado. We did this to further our involvement in the community and to help our friends and family sell their home and find their dream home.

Hi, this is Liz Montoya. I'm really excited to introduce Realty One Group to Northern Colorado. We have over 23 agents and a combined experience of over 300 years.

Hi, this is Duff Knott with Realty One Group. Realty One Group, we're a national company with a local flair. We are heavily involved in the Greeley and Northern Colorado communities, and we have recruited some of the most well-known agents. To learn more about us, phone number (970) 573-5880, website RealtyOneGroup.com. We're also on Facebook.

**Weld County Garage**

Hi, Warren Yoder here from Weld County Garage. Did you know this is our 110th year in business? We are so happy that our community has supported us for all these years. Whether you're in the market for a new or used car, truck, or SUV, our long-term knowledgeable staff are here and ready to serve you. Our service department has gained the trust of our community and offers a comfortable waiting area, rental department if needed, and the quality workmanship that you count on to get you conveniently back on the road. Weld County Garage, highway 34 and 47<sup>th</sup> Avenue in Greeley.

[jingle] I believe in Weld County Garage.

**Not Your Average Nerds**

Hi this is Josh, owner of NYAN or Not Your Average Nerds. Hey, we understand the importance of a well running computer. We also understand that your time is valuable, so don't waste your time when you have a professional nerd to help make your life easier and your computer run better. Here's my business partner Carlos to tell you more about what we can do.

We offer computer repair, computer support, and sales. We work on all types of PCs, mobile devices, and tablets. We're not your average nerds; se habla espanol.

And remember, be nice to nerds; they just may fix your computer someday. For more information, go to [notyouraveragenerds.net](http://notyouraveragenerds.net) or call 460-6926, that's 460-6926.

**Christian Brothers Automotive**

Janet Sloan from Christian Brother's Automotive in Greeley, located near St. Michael's off highway 34. My husband Jeff and I, along with our team, find great satisfaction in serving you in our auto repair shop. In fact, it brings us great joy knowing our service keeps your car safely on the road. This summer, we hope that you can experience the joy of serving others right here in our community of Greeley. At Christian Brothers, our summer of service campaign, provides a simple way for you to give back to our community. Now through August 31<sup>st</sup>, simply donate \$15 dollars cash to the Genesis Project of Northern Colorado and we take \$30 off your repair bill. You will find more information about the Genesis Project on the website [homesforsinglemoms.org](http://homesforsinglemoms.org). For more information, 970-795-CARS, on the web [CBAC.com/Greeley](http://CBAC.com/Greeley). The volunteers at the Genesis Project thank you in advance, and we look forward to serving you and your family soon.

**Grizzly Garage Door Service**

And I know how important it is for a home to have a properly working garage door. Here at Grizzly Garage Door, we also fix or repair windows, storm doors, and entry doors. At Grizzly Garage Door, we are not just sponsoring Pirate radio, we are also fans of the most wonderful music ever recorded. I am Todd Zubia of Grizzly Garage Door, phone number 301-2317, that's 301-2317.

**The Dog Pawlour**

... at 3616 W. 10<sup>th</sup> Street in the Bittersweet Plaza has over 5000 pet products to include food, treats, toys, leashes, and a new state-of-the-art grooming studio, private self-wash suites, and a 4000 square foot daycare center. It was Tail Waggers, now it's The Dog Pawlour, at 3616 West 10<sup>th</sup> Street, in the Bittersweet Plaza.

**Roma Restaurant**

Roma Restaurant, "I wanna make 'em an offer they can't refuse"... Offers like spaghetti Tuesday, bottle of wine Wednesday, and cannolis Thursdays. For details, go to Romarestaurant.com, and remember Roma Restaurant has three locations to serve you – Roma Windsor, Roma West in Greeley, and Roma's Restaurant in Evans at 3625 23rd Avenue. Whether you're in the mood for homemade cannolis, meatballs, or pizza, or just some garlic bread topped with melted provolone cheese, Roma Restaurant has been serving this community for almost 30 years. Sponsoring 104.7 Pirate radio.

**Western Computer Support Services**

Gary Jets, owner and operator of Western Computer Support Services, wants you to know that they can help you with virus removal, hardware, computer repair, software tech support, data recovery, computer service, laptop computer repair, network computer support, and business tech support. Western Computer Services cover any make or model of computer servers, desktops, laptops, notebooks, tablets, smartphones, game devices, personal data assistance, and cameras, printers, and scanners. Western Computer for all your computer needs phone 351-7118, that's 351-7118.

**Florio's Shoes**

Only a small percentage of the population is born with foot problems, yet 75% of Americans will experience foot problems at one time or another in their lives. Studies show that 50% of most foot, ankle, knee, hip, and back discomfort is caused by improper shoe size. Wearing the wrong size shoe causes the body to put undue pressure and stress on joints. Don't put your health in jeopardy with off-the-rack shoes, consider Florio's where they will professionally measure the right length and width of your feet. Mark and Brian Florio are the fourth family generation, and they carry name brands like Wolky, Clarks, Florsheim, Johnson & Murphy, and others. You can find men sizes in six-and-a-half to 15 and women's sizes four-and-a-half to 12, all in narrow, medium, and wide selections. Florio's motto is quality is remembered long after price is forgotten. Florio's, shoes that fit, 820 9th Street downtown Greeley, phone 352-0576.

**True Abundance Property Management**

Looking for a good property manager? You can leave the complexity of managing your investment to True Abundance Property Management. With over 25 years of property management experience, True Abundance Property Management is up on the continuing changes of the fair housing laws and other legislation including lead-based paint and toxic mold policies. Do you know how to interview potential tenants, taking applications, running credit or background checks? Or how about dealing with late payments? And what about bounced checks? True Abundance Property Management can provide you with the latest most innovative solutions concerning all of your property's management needs. And now if you are looking to sell your properties or buy properties, True Abundance Property Management now can help you with your real estate needs. True Abundance Property Management serving Windsor and Greeley and the surrounding areas, phone number 352-5732, website trueabundancecpm.com.

**Weiss Jewelers**

This is Scott from Weiss Jewelers. Have you been storing jewelry with broken clasps, prongs that need repair, or maybe a watch that needs a new battery or crystal replaced? Maybe you're looking to restyle some of your old jewelry or refurbish grandfather's keepsake watch. Make that old piece of jewelry look like new again. Weiss Jewelers, your headquarters for all your jewelry and watch repair needs, 955 52nd Avenue Court in Greeley, or visit us on the web [weissjewelers.com](http://weissjewelers.com).