

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

In re Application of)	
)	NAL/Acct. No. MB-202141410063
Birach Broadcasting Corporation)	FRN: 0003766847
)	
To Renew the Licenses of)	Facility ID Nos. 34988, 202938
KTUV(AM), Little Rock, Arkansas, and)	Application File No. 0000101513
K260DT, Little Rock, Arkansas)	

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

Adopted: December 27, 2021

Released: December 27, 2021

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Birach Broadcasting Corporation (Birach) to renew the licenses of AM station KTUV(AM), Little Rock, Arkansas, and associated FM translator station K260DT, Little Rock, Arkansas (Stations). Also before us are Informal Objections (Objections) to the Application filed by Oscar Reyes (Reyes), and Edward Vega (Vega).² In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,³ we find Birach (1) apparently willfully violated section 73.1740(a)(4) of the Commission's Rules (Rules)⁴ by discontinuing operation of KTUV(AM) without timely requesting special temporary authority (STA); and (2) apparently willfully violated section 74.1263(c) of the Rules⁵ by discontinuing operation of K260DT without timely requesting STA, and (3) apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to upload or failing to timely upload materials to the KTUV(AM) online public inspection file (OPIF). We also find that Birach apparently violated section 1.65 of the Rules by

¹ Application File No. 0000101513.

² See Informal Objection of Oscar Reyes, Pleading No. 0000114089 (filed May 20, 2020) (Reyes Objection); Reply to Opposition to Informal Objection of Oscar Reyes and Edward Vega, Pleading No. 0000116632 (filed June 26, 2020) (Vega Objection). We note that, in addition to allegations regarding the Stations, the Objections include allegations about another AM station (KMTL(AM), Sherwood, Arkansas), and its associated FM translator (K250CF, Sherwood, Arkansas). Because Reyes and Vega also make these allegations in objections to the renewal application for KMTL(AM) and K250CF, we will address them in a separate decision regarding that application. We also note that a petition to deny was filed in the name of Naún Domínguez. Petition to Deny of Naún Domínguez, Pleading No. 0000113754 (filed May 14, 2020). However, Mr. Domínguez subsequently requested to withdraw the objection. See Opposition to Informal Objection and Petition to Deny of Birach Broad. Corp., Pleading No. 0000115960, at Exh. 1 (filed June 10, 2020) (Opposition). We grant this request and dismiss the petition to deny.

³ This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the FCC's rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. See 47 CFR § 0.283.

⁴ See 47 CFR § 73.1740(a)(4).

⁵ See *id.* § 74.1263(c).

failing to update certifications made in the Application.⁶ Based upon our review of the facts and circumstances before us, we grant in part and otherwise deny the Objections, and conclude that Birach is apparently liable for a monetary forfeiture in the amount of seventeen thousand five hundred dollars (\$17,500).

II. BACKGROUND

2. On January 29, 2020, Birach filed the Application. Therein, Birach certified that (1) with respect to the Stations, during the preceding license term, there had been “no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission;” (2) the Stations had “not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days” during the preceding license term; and (3) the Stations were “currently on the air broadcasting programming intended to be received by the public.”⁷

3. On March 6, 2020, KTUV(AM) went silent due to the “catastrophic failure of its transmitter.” Because KTUV(AM) had gone silent, K260DT also went off the air on March 6, 2020. The Stations’ discontinued operations were brought to our attention on May 20, 2020, when Reyes filed the Reyes Objection and alleged that the Stations were both silent.⁸ In response, on May 22, 2020, Birach filed requests for STA for both of the Stations to remain silent (STA Requests).⁹

4. Then, on June 10, 2020, Birach opposed the Reyes Objection. Birach questioned “the validity of the Reyes Objection.”¹⁰ Birach acknowledged that K260DT was silent, and indicated that “requests for silent authority are on file.”¹¹ Shortly thereafter, we granted the STA requests.¹² However, we specifically noted that Birach had “failed to submit a timely request for an STA to permit [the station] to remain silent beyond April 6, 2020,” and that “the action taken herein shall not be construed as authorizing the station to remain silent between April 6, 2020, and May 22, 2020.”¹³

5. On June 26, 2020, Reyes and Vega filed a pleading that serves as Reyes’ reply to the Opposition, and as Vega’s informal objection to the Application. Therein, Reyes and Vega assert the Reyes Objection was submitted with Reyes’ consent and is legitimate.¹⁴ They also state that K260DT had been off the air since March 2020.¹⁵

⁶ *See id.* § 1.65.

⁷ Application File No. 0000101513 at Renewal Certification, FCC Violations During the Preceding License Term Section; and AM/FM/LPFM Certification, Adherence to Minimum Operating Schedule and Silent Station Sections.

⁸ Petition to Deny of Oscar Reyes, Pleading No. 0000114088, at paras. 4, 5.

⁹ BLSTA-20200522AAO (KTUV(AM)), BLSTA-20200522AAP (K260DT).

¹⁰ Opposition at 4.

¹¹ *Id.*

¹² Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, FCC, to John C. Trent, Esq., Counsel for Birach Broad. Corp., Application File No. BLSTA-20200522AAO (dated June 18, 2020) (granting KTUV(AM) STA Request); Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, FCC, to John C. Trent, Esq., Counsel for Birach Broad. Corp., Application File No. BLSTA-20200522AAP (dated June 18, 2020) (granting K260DT STA Request).

¹³ *Id.*

¹⁴ Vega Objection at 3.

¹⁵ *Id.* at 4.

III. DISCUSSION

6. *Legitimacy of Reyes Objection.* At the outset, we consider and reject Birach's assertion that the Reyes Objection is illegitimate.¹⁶ Birach submitted an email that purports to summarize statements made by Reyes indicating he did not file the Reyes Objection,¹⁷ but Reyes and Vega both state that Reyes did file the Reyes Objection.¹⁸ Because there is conflicting evidence in the record, we must exercise our discretion to determine "how much weight to accord disputed facts."¹⁹ Having reviewed the existing record, we conclude that no weight should be accorded to the email submitted by Birach. In reaching this determination, we considered that (1) the email relied upon by Birach was written by an interested party,²⁰ (2) the factual allegations made in the email were not supported by an affidavit (or declaration made under penalty), and (3) the credibility of the email is undermined by statements made under penalty of perjury by Reyes and Vega, which deny Birach's allegations, and indicate the Reyes Objection was filed with Reyes' knowledge and consent.²¹ Accordingly, we find Birach has not raised a substantial and material question of fact regarding the legitimacy of the Reyes Objection.²²

7. *Unauthorized Silence.* The Rules require radio stations to notify the Commission within 10 days of temporarily discontinuing operations, and to obtain Commission authorization if the discontinued operations last beyond 30 days.²³ Here, the record evidence indicates that both KTUV(AM) and K260DT went silent on March 6, 2020. KTUV(AM) resumed operations on July 29, 2020,²⁴ and K260DT went back on the air on September 25, 2020.²⁵ Birach should have notified the FCC of the Stations' discontinued operations no later than March 17, 2020, but did not. Additionally, Birach should have filed requests for special temporary authority for each of the Stations to remain silent on April 5, 2020. Birach did not seek such authority until May 22, 2020, after the Stations' discontinued operations were brought to our attention by Reyes. We find that Birach apparently willfully and repeatedly violated Sections 73.1740(a)(4), and 74.1263(e) of the Rules by failing to notify the Commission that the Stations had gone silent, and by failing to seek STA for the Stations to remain silent for more than 30 consecutive

¹⁶ Opposition at 4.

¹⁷ *Id.* at Exh. 2. The email purports to summarize a telephone conversation between Carlos Morón (a principal of the company that operates KTUV(AM) and K260DT pursuant to a time brokerage agreement with Birach) (Morón) and Reyes. In this email, Morón claims to have had an in-person meeting with Reyes and to have recorded Reyes stating "I received a phone call [Vega] yesterday night [May 20, 2020], he told me that he is the one who is sending these emails to the FCC." *Id.* Morón also indicates that Reyes told him that he "did not create[], sign[], or sen[d] any document." *Id.* Finally, according to Morón, Reyes said Vega would "be sending an email under my name because I am his Radio Station General Manager and because he is paying me a check." *Id.*

¹⁸ Vega Objection at 1, 3.

¹⁹ See *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D. C. Cir. 1987).

²⁰ See *supra* note 17.

²¹ Vega Objection at 1. Vega indicates that Reyes works for him. *Id.* Vega states, under penalty of perjury, that he helped Reyes put the Reyes Objection together because "his English skills are not sufficient to write a formal letter." *Id.* He and Reyes also state under penalty of perjury that they decided to file the Reyes Objection in Reyes' name because Reyes had knowledge of the facts set forth therein and had made the video recordings that supported the allegations made in the Reyes Objection. *Id.* Finally, Reyes states under penalty of perjury that he did not meet with Morón. *Id.* at 3.

²² We note that, even if we were to dismiss the Reyes Objection as illegitimate, we would still need to address the allegation made therein because that same allegation is made in the Vega Objection and Birach has not disputed the legitimacy of that filing.

²³ 47 CFR §§ 73.1740(a)(4), 74.1263(c).

²⁴ Resumption of Operations (dated July 31, 2020).

²⁵ Resumption of Operations (dated Dec. 4, 2020).

days.. Below, we propose a forfeiture in relation to Birach’s apparent violations of sections 73.1740(a)(4) and 74.1263(e) of the Rules.

8. *Online Public Inspection File.* Section 73.3526 of the Rules requires commercial radio station licensees to maintain an OPIF and to upload certain documents to the Commission’s public inspection file database throughout the year.²⁶ It is crucial that stations maintain OPIFs that are complete and up to date because the information in them directly affects, among other things, the public’s ability to be informed about a station’s compliance with its obligations.

9. In reviewing the KTUV(AM) OPIF, we have determined that Birach has failed to properly maintain the KTUV(AM) OPIF. Specifically, Birach did not timely upload its issues/programs lists for 2018,²⁷ and the first and fourth quarters of 2019.²⁸ In addition, the KTUV(AM) OPIF is missing an issues/programs list for the third quarter of 2019, and issues/programs lists for 2020 and the first, second and third quarters of 2021. We propose a forfeiture in relation to Birach’s apparent repeated violations of section 73.3526 of the Rules.

10. *Failure to Maintain Completeness and Accuracy of Pending Application.* Under section 1.65 of the Rules, an applicant is responsible for the continuing accuracy and completeness of the information furnished in a pending application or in Commission proceedings involving a pending application.²⁹ Whenever the information furnished in a pending application is no longer substantially accurate and complete in all significant respects, the applicant must, as promptly as possible and in any event within 30 days, amend the application so as to furnish the additional or correct information.³⁰ For the purposes of section 1.65, an application is “pending” before the Commission from the time it is accepted for filing until a Commission grant (or denial) is no longer subject to reconsideration by the Commission or review by any court.³¹

11. In the instant case, the Application was filed on January 29, 2020, and remains pending. Birach has been (and continues to be) subject to a continuing obligation to ensure the accuracy of the Application, and should have amended the Application when certifications made therein became

²⁶ 47 CFR § 73.3526.

²⁷ Birach uploaded these lists on April 22, 2019—more than a year after the list for the first quarter of 2018 should have been uploaded, and between one month and a year after the lists for the second, third, and fourth quarters of 2018 should have been uploaded.

²⁸ Birach uploaded the list for the first quarter of 2019 on April 22, 2019—almost two weeks late. It uploaded the list for the fourth quarter of 2019 on January 29, 2020—almost three weeks late.

²⁹ *Id.* § 1.65.

³⁰ *Id.*

³¹ *Id.*

inaccurate.³² Birach did not do so.³³ Accordingly, we propose a forfeiture in relation to Birach's apparent willful and repeated violations of section 1.65 of the Rules.

12. *Proposed Forfeiture.* This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act). Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁴ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.³⁵ 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,³⁶ and the Commission has so interpreted the term in the section 503(b) context.³⁷ 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."³⁸

13. The Commission's Forfeiture Policy Statement and section 1.80(b)(10) of the Rules establish a base forfeiture of \$ 5,000 for unauthorized discontinuance of service, a base forfeiture amount of \$3,000 for failure to file required forms or information, and a base forfeiture of \$10,000 for violation of the public file rules.³⁹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁴⁰

³² In the Application, Birach certified that (1) the Stations were "currently on the air broadcasting programming intended to be received by the public;" (2) with respect to the Stations, during the preceding license term, there had been "no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the Commission;" and (3) the Stations had "not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days" during the preceding license term. See Application File No. 0000101513 at Renewal Certification, FCC Violations During the Preceding License Term Section; and AM/FM/LPFM Certification, Adherence to Minimum Operating Schedule and Silent Station Sections. The first certification became inaccurate on March 6, 2020. Because the filing of the Application continued the Stations licenses in effect, see 47 U.S.C. § 307(c)(3), the second certification became inaccurate when Birach failed to notify the Commission that the Stations were off the air on March 16, 2020, as required by section 73.1740(a)(4) and 74.1263(c) of the Rules. It was rendered doubly inaccurate when Birach failed to request STA for the Stations to remain silent on or before April 5, 2020, as required by sections 73.1740(a)(4), and 74.1263(c) of the Rules. The third certification became inaccurate on April 6, 2020, the 31st day that the Stations were silent.

³³ In fact, Birach took no steps to notify the Commission that the certifications had become inaccurate. In any event, even if we treat the STA requests it filed on May 22, 2020, as the notice required by section 1.65 of the Rules, Birach still violated the requirements of section 1.65 because the STA requests were not filed within 30 days of each certification becoming inaccurate.

³⁴ 47 U.S.C. § 503(b)(1)(B).

³⁵ 47 U.S.C. § 312(f)(1).

³⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³⁷ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

³⁸ 47 U.S.C. § 312(f)(2).

³⁹ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table I.

⁴⁰ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 C.F.R. §

14. It is uncontested that the Stations were silent for two and a half months without Commission authorization. It is also uncontested that the Stations' discontinued operations caused certifications made in the Application to be inaccurate, and that Birach failed to update the certifications or otherwise timely notify the Commission that the certifications were no longer accurate. Finally, it is evident that Birach failed to upload (or to timely upload) certain issues/programs lists to the KTUV(AM) OPIF. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we propose a total forfeiture in the amount of seventeen thousand five hundred dollars (\$ 17,500) for Birach's apparent violations of sections 1.65, 73.1740(a)(4), 73.3526, and 74.1263(e) of the Rules.

15. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.⁴¹ 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 with respect to the station; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁴² 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.”⁴³

16. We find that, with respect to each of the Stations, Birach's apparent violations of section 1.65, section 73.3526, section 73.1740(a)(4), and/or section 74.1263(e) do not constitute “serious violations” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations at either of the Stations that, when considered together, constitute a pattern of abuse.⁴⁴ Further, based on our review of the Applications, we find that each of the Stations served the public interest, convenience, and necessity during the preceding license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant. However, given the importance of radio stations' OPIFs, and Birach's issues properly maintaining KTUV(AM)'s OPIF, we will condition our grant of the Application on Birach submitting a report to the Bureau regarding KTUV(AM)'s compliance with the Commission's OPIF requirements.

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that the Request to Withdraw Petition to Deny filed by Naún Domínguez, on June 10, 2020, **IS GRANTED**, and the Petition to Deny filed by Naún Domínguez on May 14, 2020, **IS DISMISSED**.

1.80(b)(10).

⁴¹ 47 U.S.C. § 309(k).

⁴² *Id.* § 309(k)(1).

⁴³ *Id.* §§ 309(k)(2), 309(k)(3).

⁴⁴ For example, we do not find here that the Licensee's operation of the Stations “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, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules.” *Id.* at 200, para. 11. *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).

18. **IT IS FURTHER ORDERED** that the Informal Objection filed by Oscar Reyes on May 20, 2020, and the Informal Objection filed by Edward Vega on June 26, 2020, **ARE GRANTED IN PART AND OTHERWISE DENIED**.

19. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,⁴⁵ that Birach Broadcasting Corporation, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of seventeen thousand five hundred dollars (\$ 17,500) for its apparent willful and repeated violations of sections 1.65, 73.1740(a)(4), 73.3526, and 74.1263(e) of the FCC's rules.

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

21. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),⁴⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:⁴⁷

- 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 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).⁴⁸ 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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. 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 "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill

⁴⁵ 47 U.S.C. § 503(b); 47 CFR § 1.80.

⁴⁶ Payments made using CORES do not require the submission of an FCC Form 159.

⁴⁷ 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.

⁴⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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.

22. Any request for making full payment over time under an installment plan should be sent to: Revenue and Receivables Operations Group—Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or by e-mail, ARINQUIRIES@fcc.gov.⁴⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail, ARINQUIRIES@fcc.gov.

23. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s Rules.⁵⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. Number referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.⁵¹ A courtesy copy emailed to Heather.Dixon@fcc.gov will assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.⁵²

⁴⁹ See 47 CFR § 1.1914.

⁵⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

⁵¹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

⁵² See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

25. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, Birach Broadcasting Corporation, c/o Sima Birach, President, 21700 Northwestern Highway, Tower 14, Suite 1190, Southfield, MI 48075, and its counsel, John C. Trent, Esq., Putbrese Hunsaker & Trent, P.C., 200 S. Church Street, Woodstock, VA 22661.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau