

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

In the Matter of)	
)	NAL/Acct. No. MB-202341410019
Northwest Rock N Roll Preservation Society)	FRN: 0009515602
)	
Application for License to Cover)	Facility ID No. 150021
K266BM, Olympia, Washington)	Application File No. 115909
)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2023

Released: December 18, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a pleading (Response) filed by Northwest Rock N Roll Preservation Society (NWR), licensee of K266BM, Olympia, Washington (NWR Translator).¹ The Response seeks cancellation of a *Notice of Apparent Liability for a Forfeiture (NAL)* that we issued together with a *Memorandum Opinion and Order* on August 25, 2023.² In the *NAL* portion of the decision, we found NWR had operated the NWR Translator at a variance from its licensed parameters in violation of section 301 of the Communications Act of 1934, as amended (Act),³ and NWR had made false certifications to the Commission in violation of section 1.17(a)(1) of the Commission's Rules (Rules).⁴ We proposed a \$20,000 forfeiture in relation to those violations. By this action, we affirm our finding that the NWR violated section 301 of the Act. We reconsider and reverse our determination that NWR made false certifications to the Commission in violation of section 1.17(a)(1) of the Rules, concluding instead that NWR violated section 1.65 of the Rules by failing to ensure the continued accuracy of a certification it made to the Commission.⁵ Finally, after determining that payment of the \$20,000 forfeiture, or any reduction thereof, would pose a financial hardship, we cancel the *NAL* and instead admonish NWR for its violations of section 301 of the Act, and section 1.65 of the Rules.

II. BACKGROUND

2. Between April 25, 2013, and December 4, 2019, the NWR Translator was authorized to rebroadcast the signal of KGHO-LP, Hoquiam, Washington at an Effective Radiated Power (ERP) of 10 watts.⁶

3. On August 29, 2016, NWR obtained a construction permit (2016 Permit) to increase the NWR Translator's ERP to 70 watts and change its primary station from KGHO-LP to KGTK(AM),

¹ See Pleading File No. 221311 (filed Sept. 25, 2023) (Response).

² *Northwest Rock N Roll Preservation Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-763 (MB Aug. 25, 2023) (*MOO and NAL*).

³ 47 U.S.C. § 301.

⁴ 47 CFR § 1.17(a)(1).

⁵ 47 CFR § 1.65.

⁶ See Application File No. BLFT-20130402ACL (2013 License); *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013).

Olympia, Washington.⁷ In 2017, at NWR's request, we modified the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).⁸ On June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit for a second time.⁹

4. As the 2017 Permit's expiration date of August 29, 2019, approached, and the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities authorized in the 2017 Permit (2019 License Application).¹⁰ We granted the 2019 License Application on December 4, 2019, and issued a license to cover the 2017 Permit (2019 License).¹¹

5. On January 29, 2020, NWR filed a request for special temporary authority (STA) to operate with its previously licensed antenna at an ERP of 10 watts (January STA Request).¹² NWR reported that the directional antenna specified in the 2019 License did not work properly, and also stated that it was waiting for an audio line from KGTK(AM). We dismissed the January STA Request on February 6, 2020, because the 60 dBμ service contour of the facilities proposed therein extended "substantially beyond" the location of the NWR Translator's licensed and directional 60 dBμ service contour.¹³

6. NWR filed a second STA request on February 13, 2020 (February STA Request).¹⁴ Therein, NWR sought authority to operate the NWR Translator with the antenna specified in the 2019 License but with an ERP of 10 watts. NWR also proposed to rebroadcast the signal of the NWR Translator's former primary station (KGHO-LP), noting that it was waiting for audio connection from its new primary station (KGTK(AM)).

7. On the same day as NWR filed the February STA Request, it amended the pending 2019 Modification Application.¹⁵ Shortly thereafter, we granted that application and issued the 2020 Permit.

8. Then, on June 8, 2020, NWR filed the 2020 License Application, which seeks a license to cover the facilities authorized in the 2020 Permit.¹⁶ A few days later, Bustos and Bicoastal filed informal

⁷ See Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

⁸ See Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

⁹ See Application File No. BMPFT-20190618ABI (2019 Modification Application).

¹⁰ See Application File No. BLFT-20190904ABL (2019 License Application).

¹¹ See *Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

¹² See Application File No. BSTA-20200129AAJ.

¹³ Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Brian Spencer, President, Northwest Rock N Roll Preservation Society (dated Feb. 6, 2020) (*STA Dismissal Letter*).

¹⁴ See Application File No. BSTA-20200213ABI.

¹⁵ The 2019 Modification Application originally sought to modify the 2017 Permit. See *supra* para. 2. However, grant of the license to cover the 2017 Permit on December 4, 2019, converted that application from a request to modify the 2017 Permit to a request to modify the 2019 License.

¹⁶ See Application File No. 115909 (2020 License Application). Having received this application, we dismissed the February STA Request on June 11, 2020. Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Brian Spencer, President, Northwest Rock N Roll Preservation Society (dated June 11, 2020) (noting that NWR's filing of the 2020 License Application signaled that NWR had completed construction of the facilities specified in the 2020 Permit and was able to maintain sustained operations with those facilities, and thus that "the STA is no longer needed").

objections (Objections) to the 2020 License Application.¹⁷ NWR filed oppositions to the Objections (Oppositions).¹⁸

9. After reviewing the Application, the Objections, and the Oppositions, we issued the *MOO and NAL*. NWR timely filed the Response.¹⁹ Bustos opposed it,²⁰ and NWR replied.²¹ We consider their pleadings herein.

III. DISCUSSION

A. Procedural Issue

10. At the outset, we dismiss as untimely an argument made by Bustos in the Opposition. Therein, Bustos reprises its argument that NWR violated section 73.860 of the Rules.²² We considered and rejected this argument in the *Memorandum Opinion and Order* portion of the *MOO and NAL*.²³ Because this portion of that decision was not interlocutory in nature, Bustos needed to file a petition for reconsideration challenging that portion of the *MOO and NAL* no later than September 25, 2023.²⁴ Bustos

¹⁷ Pleading File Nos. 116076 (Bustos Objection), 116061 (Bicoastal Objection)

¹⁸ Pleading File Nos. 118217 (opposing Bicoastal Objection), 121197 (opposing Bustos Objection).

¹⁹ NWR actually captioned the Response—which challenges only the *NAL* portion of the decision—as a Petition for Reconsideration of Notice of Apparent Liability for Forfeiture. However, petitions for reconsideration do not lie against interlocutory actions, such as notices of apparent liability for forfeiture. See 47 CFR § 1.106(a)(1). See also *South Seas Broad., Inc.*, Forfeiture Order, 27 FCC Rcd 4151, 4152 n.7 (MB 2012) (“Because the *NAL* merely proposed rather than imposed a forfeiture, the Media Bureau’s [] action was interlocutory in nature.”), *recon. denied*, Memorandum Opinion and Order, 27 FCC Rcd 15049 (MB 2012). Accordingly, we will treat the pleading as the “written statement seeking reduction or cancellation of the proposed forfeiture” specifically authorized in the *NAL*. See *NAL*, DA 23-763, at para. 26.

²⁰ Pleading File No. 222168 (Opposition). The Opposition is a consolidated opposition filed in response to the Response and a petition for reconsideration filed by NWR on the same day. See Pleading File No. 221441. That petition for reconsideration challenges a decision in which we granted a petition for reconsideration filed by Bustos, dismissed the predicted interference claim that NWR had made in opposition to Bustos’ application for a new FM translator station at Auburn, WA, and reinstated and granted that application. *Bustos Media Holdings, LLC*, Application File No. BNPFT-20180418ABI, Letter Order, (MB Aug. 25, 2023). Because the standing argument raised by Bustos in the Opposition relates only to NWR’s standing to challenge our grant of the Bustos application, we do not address that argument herein. See Opposition at pages 2-5.

²¹ Pleading File No. 222904.

²² Opposition at 3-4, 5 (arguing that NWR holds an attributable interest in KGHO-LP, and that this interest—combined with NWR’s attributable interests in the NWR Translator and other FM translators—violates the LPFM cross-ownership limits set forth in section 73.860 of the Rules).

²³ *MOO and NAL*, DA 23-763, at para. 12 (rejecting as unsubstantiated Bustos’ argument that NWR has violated the LPFM cross-ownership limits set forth in section 73.860 of the Rules because NWR’s President holds attributable interests in the NWR Translator, the other translators licensed to NWR, and KGHO-LP, and noting that, even if there was a violation of section 73.860, it would be KGHO-LP’s licensee, not NWR, that would be sanctioned for the violation”).

²⁴ 47 U.S.C. § 405(a) (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”); 47 CFR § 1.106(f) (“The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules, and shall be served upon parties to the proceeding.”).

filed the Opposition on October 5, 2020. We therefore dismiss Bustos' argument regarding NWR's compliance with section 73.860 of the Rules.²⁵

B. Substantive Issues

1. Unauthorized Operations

11. We affirm our finding that the NWR Translator engaged in unauthorized operations in violation of section 301 of the Act. However, based on the information provided by NWR in the Response,²⁶ we have determined that the unauthorized operations occurred between December 4, 2019, and June 8, 2020, not December 4, 2019, and June 13, 2020, as stated in the *MOO and NAL*.²⁷

12. We reject NWR's assertion that its liability for the unauthorized operations is mitigated by certain factors. For instance, although NWR explains that it was technically unable to operate with the facilities specified in the 2019 License between December 4, 2019, and June 8, 2020, the technical difficulties that NWR experienced did not excuse the unauthorized operations.²⁸ Not only was NWR aware of these difficulties months prior to grant of the 2019 License²⁹ but, as discussed below at paragraph 15, NWR could have acted in ways that would not have violated any provisions of the Act or the Rules.

13. Likewise, the fact that NWR requested STA to operate the NWR Translator at a variance from the 2019 License does not "substantially reduce[]" its culpability.³⁰ It is the grant of an STA—not the request for such STA—that authorizes a station to operate at a variance from its license.³¹ That is the

²⁵ The Commission lacks authority to waive or extend the statutory 30-day filing period for petitions for reconsideration unless the petitioner shows that its failure to file in a timely manner resulted from "extraordinary circumstances." See, e.g., *Gardner v. FCC*, 530 F.2d 1086, 1091-92 (D.C. Cir. 1976). We note that Bustos has not asserted that any such extraordinary circumstances exist.

²⁶ See Response at 4, and n.1. In the Response, NWR clarified that the NWR Translator has been operating with program test authority in accordance with the 2020 License Application since the application was filed on June 8, 2020. *Id.* at n.1. Prior to this clarification, it was unclear whether NWR had done so earlier than June 13, 2020.

²⁷ *MOO and NAL*, DA 23-763, at para. 10.

²⁸ NWR states that, when it commenced program tests after filing the 2019 License Application, it discovered that the facilities specified therein "suffered from [] excess reflective power which threatened to cause significant damage to the transmission facilities. Response at 2. Then, according to NWR, beginning in November 2019, the primary station specified in the 2019 License Application began failing to "broadcast more than a hum." *Id.* Given these issues, NWR chose to "revert[] to operation pursuant to [the still outstanding 2013 License]." *Id.* NWR states that, after grant of the 2019 License, it "again attempted to commence operation with the facilities authorized [therein] but found that the technical issues with the transmission facility and the primary station still existed." *Id.*

²⁹ See Response at 2-3.

³⁰ *Id.* at 5.

³¹ See *Kingdom of God, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 7522, 7525, para. 7 (2016) ("In order for a station to operate at variance from [its authorized] terms, the licensee must file and have granted either an application to modify its station authorization or a request for STA"); *M.C. Allen Prods.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 9505, 9508, para. 8 (EB 2001) (noting station's continued unauthorized operations, emphasizing that "the mere pendency of [a] license application or the filing of a request for program test authority or STA will not suffice to avoid [] enforcement action," and explaining that "the license application or request for program test authority or STA must be granted"). See also *Media Assocs. Inc.*, Forfeiture Order, 26 FCC Rcd 3703, 3705, para. 7 (MB 2011) (noting that, where renewal application was not filed until after station's license expired, station's unauthorized operations continued until grant of an STA request to operate pursuant to expired license); *Iglesia Cristiana Ebenezer, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14642, 14644, para. 7 (EB 2013) (noting that "[a] licensee simply cannot operate in conformity with its license modification application based on the assumption that the application will later be granted" and explaining that "[u]ntil such modification application has been granted, a licensee is expected to operate in strict conformity with its current

(continued....)

case because operation of a broadcast station with facilities that have not been reviewed and approved by Commission staff can result in violation of Commission technical rules, prohibited interference, and/or extension of a station's service beyond its licensed 60 dBμ service contour. Indeed, as noted above, we dismissed the January STA request after determining that the 60 dBμ contour of the facilities requested by NWR would extend "substantially beyond the location of the licensed and directional 60 dBμ service contour."³²

14. Finally, we recognize that, as NWR asserts, the COVID-19 pandemic began impacting the Pacific northwest in early 2020.³³ However, NWR has not shown that the NWR Translator's unauthorized operations were directly attributable to the pandemic or otherwise explained how the pandemic resulted in the unauthorized operations.³⁴ As a result, we cannot conclude that the pandemic affected NWR in a way that mitigates its liability for unauthorized operation of the NWR Translator.

15. It is worth noting that, if NWR had simply updated the 2019 License Application—prior to its grant—to reflect that program tests had revealed the NWR Translator actually was not ready to operate with the facilities specified in the 2019 License Application,³⁵ NWR could have avoided violating section 301 of the Act and, as discussed below, could have avoided violating section 1.65 of the Rules. This is so because the Commission would have withheld action on the 2019 License Application, which would have left the 2013 License in place. NWR could then have reverted to operating with the facilities specified in the still valid 2013 License. Alternatively, once we granted the 2019 License Application and NWR again tried and failed to operate the NWR Translator with the facilities specified therein,³⁶ NWR could have avoided violating section 301 of the Act by advising the Commission—prior to the grant becoming final—that the NWR Translator could not operate with its newly licensed facilities. This would have triggered a rescission of our grant of the 2019 License Application and a return of that application to pending status, which would have resurrected the 2013 License and allowed the NWR Translator to continue to operate with the facilities specified in that license. Having taken neither of these steps, NWR should have taken the NWR Translator off the air until it was able to operate with the facilities specified in the 2019 License, or until it obtained STA to operate the NWR Translator with different facilities.

2. Certifications

16. We reconsider and reverse our finding that NWR made false certifications in the 2019 License Application when it certified that "the station is now in satisfactory operating condition and ready for regular operation." And "[t]he facility was constructed as authorized in the underlying construction

license authorization, unless it has been granted special temporary authority in the interim"); *John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12542, para. 6 (MB 2009) (noting that licensee operated with non-conforming facilities during a period of time, and explaining such operations were not authorized until the date the Commission granted an STA request to operate with those facilities). For this reason, we also reject NWR's assertion that its culpability for unauthorized operations "should be limited to no more than the period between January 3, 2020 (30 days after the 2019 license was granted), and, at most, February 13, 2020, the date on which the long-pending STA request was filed." Response at 5.

³² See *STA Dismissal Letter*.

³³ Response at 5.

³⁴ See *Heritage Media of Ky., Inc.*, Forfeiture Order, 36 FCC Rcd 4716, 4717, n.13 (MB 2021) (finding fact that missed filing deadline for station's renewal application "correlated to the early days of the COVID-19 pandemic" did not constitute a basis for reducing a proposed forfeiture, and noting that station's licensee had not "directly attribute[d] its error to the pandemic or otherwise explain[ed] how the pandemic was responsible for its failure to timely file").

³⁵ This is not a situation where rapid action on the application prevented NWR from doing so. The application was pending from September 4, 2019, until December 4, 2019.

³⁶ Response at 2.

permit.”³⁷ Based on the information provided by NWR in the Response,³⁸ we have determined that NWR actually did construct the facilities authorized in the 2019 License, but was unable to operate the NWR Translator with them due to technical issues. In light of the new information before us, we conclude that NWR did not violate section 1.17(a)(1) of the Rules.

17. We do find, though, that NWR violated section 1.65 of the Rules, which requires applicants to ensure “the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application.”³⁹ When NWR discovered that the NWR Translator “was unready to broadcast in accordance with the [2019 License],”⁴⁰ it should have amended the 2019 License Application to reflect that.⁴¹ We would normally propose a forfeiture for this violation. However, given our determination herein that payment of any forfeiture would impose a financial hardship on NWR, we instead admonish NWR for its willful and repeated violation of section 1.65 of the Rules.

3. Financial Hardship

18. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act, Section 1.80 of the Rules, and the Commission’s *Forfeiture Policy Statement*.⁴² In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account 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.⁴³

19. As noted in the *MOO and NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed 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 respondent’s current financial status.⁴⁴ The Commission has generally looked to gross revenues as the best indicator of whether a licensee is able to pay an assessed forfeiture.⁴⁵ Determining an appropriate forfeiture amount that a licensee is able to pay is not strictly mathematical, but the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the licensee’s gross annual income and have not exceeded eight percent thereof.⁴⁶ Where appropriate, the Commission has also considered other, secondary indicators of the licensee’s financial circumstances including debt, net

³⁷ See 2019 License Application, Section II – Legal, Item 5, and Section III – Engineering, Item 4.

³⁸ See Response at 2-3.

³⁹ 47 CFR § 1.65.

⁴⁰ 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. *Id.*

⁴¹ Specifically, NWR should have changed its certification regarding the station being in “satisfactory operating condition and ready for regular operation” from “Yes” to “No.” 2019 License Application at Legal Certifications, Station Ready for Operation.

⁴² 47 U.S.C. § 503(b); 47 CFR § 1.80; *The Commission’s Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997).

⁴³ 47 U.S.C. § 503(b)(2)(E).

⁴⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (*Discussion Radio*).

⁴⁵ See *Studio 51 Multi Media Prod., Ltd.*, Memorandum Opinion and Order, 30 FCC Rcd 6134, 6134-35, para. 3 (MB 2015).

⁴⁶ See *Zuma Beach FM and Emergency Commc’ns Broad., Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5303-04, n.14 (MB 2019) (*Zuma Beach*), and cases cited therein.

losses, and other potential sources of income.⁴⁷ In cases of egregious violations, the Commission may impose forfeitures despite evidence of the violator's financial difficulties.⁴⁸

20. NWR contends that payment of the proposed forfeiture would cause it financial hardship. In support of its request for cancellation of the forfeiture, NWR submits financial documentation for 2020, 2021, and 2022, and a declaration made under penalty of perjury to support the documentation.⁴⁹ A \$20,000 forfeiture would be more than twenty times NWR's average gross income. Not only are NWR's average gross revenues very small but it has sustained average losses that are over three times those revenues. NWR's existence also depends heavily on loans from its board members.⁵⁰

21. We conclude that NWR's circumstances are comparable to or exceed those in which the Commission has cancelled forfeitures for inability to pay.⁵¹ We believe that payment of the \$20,000 forfeiture, or any reduction thereof, would pose a financial hardship in view of NWR's documented net losses. Accordingly, we cancel the proposed forfeiture.

22. Although we cancel the proposed forfeiture, we find that it is appropriate to admonish NWR for its willful and repeated violation of Section 301 of the Act, and its willful and repeated violation of section 1.65 of the Act. In addition, we take this opportunity to warn NWR that it could face proposed forfeitures in the future—regardless of its financial circumstances—if the forfeiture imposed herein does

⁴⁷ See *Discussion Radio*, 24 FCC Rcd at 2207, n.11 (sustained losses), citing *First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996) (expenses exceeding income, and losses funded by sole shareholder who was receiving no remuneration); *South Bay Aviation, Inc.*, Forfeiture Order, 27 FCC Rcd 3013, 3015, para. 7 (EB 2012) (considering debt and potential sources of income). If gross revenues are sufficiently large, the mere fact that a business is operating at a loss does not by itself demonstrate an inability to pay. See *Texas Educ. Broad. Co-op., Inc.*, Forfeiture Order, 26 FCC Rcd 11249, 11251, para. 6 (MB 2011). However, the Commission has cancelled forfeitures when net losses demonstrate extraordinary circumstances, such as when the losses are a very large percentage of average gross revenue. See, e.g., *Peak Commc'ns, Inc.*, Letter Order, 25 FCC Rcd 16188 (MB 2010) (*Peak*) (losses exceeding revenue by nearly seventy percent); *Valley Air, LLC*, Letter Order, 24 FCC Rcd 5505 (MB 2009) (losses exceeding revenue by nearly 50 percent) (*Valley Air*).

⁴⁸ See, e.g., *Net One Int'l, Inc.*, Forfeiture Order, 31 FCC Rcd 2367, 2380, paras. 38-39 (2016). We find, however, that NWR's violations are not egregious.

⁴⁹ Response at 5. Specifically, the documentation demonstrates that NWR's expenses were more than eleven times its gross revenues in 2020, more than twice its gross revenues in 2021, and more than six times its gross revenues in 2022. Response at 2020 Balance Sheet (showing \$300 in listener donations (gross revenues) and \$3,490.73 in expenses), 2021 Balance Sheet (showing \$1,676.90 in listener donations and \$3,490.73 in expenses), 2022 Balance Sheet (showing \$825 in listener donations and \$5,388.55 in expenses).

⁵⁰ Response at 2020 Balance Sheet (showing loans from board members totaling \$3,190.73), 2021 Balance Sheet (showing loans from board members totaling \$1,813.83), 2022 Balance Sheet (showing loans from board members totaling \$4,563.55).

⁵¹ We have cancelled or reduced forfeitures when the facts involve a compelling combination of modest gross revenues, significant losses, and/or evidence of financial difficulty. *Faith Baptist Church*, Forfeiture Order, 26 FCC Rcd 1391, 1393, n.19 (MB 2011). See also *Zuma Beach*, 34 FCC Rcd at 5305, para. 7 (cancelling forfeiture where forfeiture represented 195 percent of licensee's average gross income, licensee's gross income was "very small," its sustained average losses were "over 200 percent of that income," and its existence "depend[ed] almost entirely upon loans, in-kind donations, and cash infusions from [its] board, which [was] not retaining equity"); *Peak*, 25 FCC Rcd at 16190 (noting that the Bureau ordinarily would have reduced the proposed forfeiture to five percent of licensee's average gross revenue of \$42,781, but instead canceled the forfeiture because licensee's losses exceeded its revenue by nearly seventy percent over a three year period); *Valley Air*, Letter Order, 24 FCC Rcd 5505 (MB 2009) (cancelling forfeiture because, over a four year period, licensee's total losses were four times its average gross revenue of \$ 78,201); *West Mecklenberg Broad.*, Letter Order, 23 FCC Rcd 13935 (MB 2008) (cancelling \$6,000 forfeiture amounting to 83.5 percent of violator's gross revenue); *A-O Broad. Corp.*, Order, 23 FCC Rcd 11296, 11300, paras. 11-12 (EB 2008) (cancelling forfeiture and substituting admonishment where licensee had no revenues and its only significant sources of cash were loans from its shareholder).

not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Rules.

IV. ORDERING CLAUSES

23. Accordingly, **IT IS HEREBY ORDERED** that, pursuant to Section 504(b) of the Communications Act of 1934, as amended,⁵² and Sections 0.61, 0.283, and 1.80(f)(4) of the Commission's rules,⁵³ the *Notice of Apparent Liability for a Forfeiture* (NAL/Acct. No. MB-202341410019) issued to Northwest Rock N Roll Preservation Society **IS CANCELLED**. Northwest Rock N Roll Preservation Society instead **IS ADMONISHED** for violating section 301 of the Communications Act of 1934, as amended,⁵⁴ and section 1.65 of the Commission's rules.⁵⁵

24. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order SHALL BE SENT*, by First Class and Certified Mail, Return Receipt Requested, to Brian Spencer, Northwest Rock N Roll Preservation Society, PO Box 2673, Olympia, WA 98507-2673; counsel for Northwest Rock N Roll Preservation Society, Anne Goodwin Crump, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, Eleventh Floor, Arlington, VA 22209; and counsel for Bustos Media Holdings, LLC, Dennis J. Kelly, Esq., PO Box 41177, Washington, DC 20018.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁵² 47 U.S.C. § 504(b).

⁵³ 47 CFR §§ 0.61, 0.283, 1.80(f)(4).

⁵⁴ 47 U.S.C. § 301.

⁵⁵ 47 CFR § 1.65.