

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

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

FORFEITURE ORDER

Adopted: May 10, 2023

Released: May 10, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$15,000 against Plymouth Gathering, Inc. (Plymouth), licensee of low power FM (LPFM) station KELS-LP (Station), Greeley, Colorado, for broadcasting promotional announcements on behalf of for-profit entities in exchange for consideration, in violation of the Federal Communications Commission’s (FCC or Commission) Underwriting Laws. We previously issued a Notice of Apparent Liability, in which we found that Plymouth broadcast on the Station over 1,600 commercial advertisements over a three-month period in 2018, in apparent violation of the Underwriting Laws. In response, Plymouth does not contest our findings, but seeks an unspecified reduction or elimination of the proposed forfeiture. After reviewing Plymouth’s response, we find no reason to cancel, withdraw or reduce the proposed penalty, and we therefore assess the \$15,000 forfeiture we proposed.

II. BACKGROUND

2. LPFM radio broadcasters are licensed to provide noncommercial, locally oriented programming for their communities. LPFM licensees benefit from being exempt from regulatory fees and from having fewer regulatory requirements than those imposed on commercial entities, in recognition of their noncommercial and non-profit nature. The Underwriting Laws have long prohibited noncommercial educational (NCE) stations, which include all LPFM stations, from airing commercial advertisements. Although NCE stations can identify contributors who provide financial support, they

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

2 See 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801 (applying underwriting requirements to LPFM stations as NCE stations) (collectively the Underwriting Laws).

3 See In the Matter of Plymouth Gathering, Inc., Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6260, para. 1 (EB 2020) (NAL); see, e.g., In the Matter of Maricopa Community College District, Request for Experimental Authority to Relax Standards for Public Radio Underwriting Announcements of KJZZ(FM) and KBAQ(FM), Phoenix, Arizona, Memorandum Opinion and Order, 29 FCC Rcd 15042, 15034, para. 2 (2014) (“These limits [on NCEs] are intended to remove NCE stations from the market pressures under which commercial broadcasters operate, and to retain their essential character, free from extraneous influence and control.”); see also Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations, Second Report and Order, 86 FCC 2d 141, 142 (1981) (subsequent history omitted).

4 See 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801 (applying the Underwriting Laws to LPFM stations as NCE stations); see also NAL, 35 FCC Rcd 6260 at para 2; In the Matter of National Farmworkers Service Center, Inc.,

cannot go further and promote a contributor's products, services, or businesses.⁵ These restrictions preserve the unique nature of LPFM stations by keeping them commercial-free.⁶ They also provide 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.⁷

3. Plymouth is a Colorado nonprofit corporation and is the licensee of LPFM station KELS-LP, which is licensed to, and serves, the community of Greeley, Colorado. Since 2015, the Commission has received multiple complaints alleging that Plymouth has been airing advertisements on the Station, essentially operating the noncommercial Station as a commercial station.⁸ Following a review of the complaints, we investigated and monitored the Station.⁹ We inquired about the complained-of matters on December 12, 2018,¹⁰ to which Plymouth responded on February 8, 2019.¹¹ Through our investigation, we concluded that over a period of three months in 2018, Plymouth aired a total of more than 1,600 commercial announcements, promoting the products, services or business of at least 14 financial contributors.¹²

4. On July 2, 2020, we issued the *NAL* proposing a \$15,000 forfeiture against Plymouth for its apparent willful and repeated violation of section 399B of the Act and sections 73.503(d) and 73.801 of the Commission's rules.¹³

(Continued from previous page) _____

Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7486, 7488, para. 5 (EB 2010) ("The pertinent statute specifically provides that noncommercial educational stations may not broadcast advertisements.").

⁵ See *NAL*, 35 FCC Rcd 6260 at para 2; *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992).

⁶ See *NAL*, 35 FCC Rcd 6260 at para 2; *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Second Report and Order, 86 FCC 2d 141, 142, para. 3 (1981) ("The Commission's interest in creating a 'noncommercial' service has been to remove the programming decisions of public broadcasters from the normal kinds of commercial market pressures under which broadcasters in the unreserved spectrum usually operate.") (subsequent history omitted).

⁷ See 47 U.S.C. § 159(e)(1); 47 CFR § 1.1162(e); *NAL*, 35 FCC Rcd 6260, para 2; *see also Syner Foundation, Inc.*, Order and Consent Decree, 30 FCC Rcd 1780, 1780, para. 1 (EB 2015); *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, Second Report and Order, 86 FCC 2d 141, 142, para. 3 (1981).

⁸ 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) (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).

⁹ See *NAL*, 35 FCC Rcd at 6261-6262, para. 6.

¹⁰ 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).

¹¹ 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).

¹² See *NAL*, 35 FCC Rcd at 6265, para. 11.

¹³ See *id.* at para. 13; *see also Underwriting Laws, supra* n.2.

5. On July 31, 2020, Plymouth filed a response to the *NAL*.¹⁴ Plymouth does not contest our findings, but seeks an unspecified reduction or elimination of the proposed forfeiture based on its inability to pay the proposed forfeiture.¹⁵ Plymouth makes a number of arguments as to why the *NAL* should be eliminated or reduced due to Plymouth's "limited financial abilities."¹⁶ Plymouth submitted financial information in connection with its inability to pay claim, including IRS Forms 990 filed for tax years 2017 and 2018.¹⁷ Plymouth also submitted a financial statement for tax year 2019, as well as a copy of its filed IRS request for an extension of time to file the 2019 IRS Form 990.¹⁸ In addition, Plymouth included a financial statement for the first half of 2020, reflecting approximately six months of gross revenues,¹⁹ noting that it has seen fundraising hindered by the "economic dislocations associated with the current COVID-19 pandemic-induced health emergency."²⁰ Plymouth initially claimed to have run a deficit in the first half of 2020 and subsequently submitted its updated 2020 tax return, which reflects total gross revenues of \$205,803.²¹ Plymouth also asserted that its "compliant regulatory record as a licensee" is a significant factor to be considered with respect to a reduction of a proposed forfeiture.²² In 2023, Plymouth submitted Updated Financial Information, e.g., IRS Forms 990 for 2019 and 2020.²³

III. DISCUSSION

6. We proposed a forfeiture in this case in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),²⁴ section 1.80 of the Commission's rules,²⁵ and the Commission's *1997 Forfeiture Policy Statement*.²⁶ When we assess forfeitures, section 503(b)(2)(E) 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."²⁷ We have fully considered the arguments and accompanying financial information set forth in Plymouth's *NAL Response*, as well as the Updated Financial Information but we find none of them persuasive. We therefore affirm the \$15,000 forfeiture proposed in the *NAL*.

¹⁴ See *Plymouth Gathering, Inc.*, Response to Notice of Apparent Liability for Forfeiture and Request for Forfeiture Reduction (Jul. 31, 2020) (on file in EB-IHD-16-00022970) (*NAL Response*).

¹⁵ See *NAL Response* at 1-3, paras. 2, 4-5, 7.

¹⁶ See *id.* at 1, para. 2.

¹⁷ See *id.* at Attach. A, Declaration of Brett Reese (Reese Declaration) & Exh. 1.

¹⁸ See *id.* at 1, para. 3 & Exh. 1. Plymouth provided financial statements in lieu of the IRS Form 990 for tax year 2019 because it had not filed the IRS Form 990 form for 2019 at the time it submitted its *NAL Response*.

¹⁹ See Reese Declaration.

²⁰ See *NAL Response* at 2, paras. 3-4 & Reese Declaration.

²¹ See *id.* at 2, para. 4; see also Letter from Aaron P. Shainis, Counsel for Plymouth Gathering, Inc. to Jennifer Lewis, Frederick Giroux and Pamela Gallant, Federal Communications Commission (Feb. 3, 2023) (on file in EB-IHD-16-00022970) (providing Plymouth's 2018, 2019 and 2020 income tax returns) (Updated Financial Information).

²² See *NAL Response* at 2, paras. 5-6.

²³ See Updated Financial Information.

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 CFR § 1.80.

²⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*1997 Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁷ 47 U.S.C. § 503(b)(2)(E) (Section 503 Factors).

A. Plymouth Broadcast Prohibited Commercial Announcements Promoting For-Profit Entities in Exchange for Consideration.

7. In its *NAL Response*, Plymouth does not dispute or contest the *NAL*'s findings that Plymouth apparently violated the Underwriting Laws by repeatedly airing noncompliant promotional announcements on behalf of for-profit entities in exchange for consideration. Therefore, we adopt and affirm the *NAL*'s conclusion that during a three-month period in 2018, Plymouth broadcast a total of more than 1,600 announcements on behalf of 14 for-profit entities that violated section 399B of the Act and sections 73.503(d) and 73.801 of the Commission's rules.²⁸

B. The Proposed \$15,000 Forfeiture Is Appropriate

8. After considering the relevant statutory factors and the Commission's *1997 Forfeiture Policy Statement*, we find that Plymouth is liable for a forfeiture of \$15,000. As set forth in the *NAL*, this total results from applying the base forfeiture of \$2,000 for violations of the enhanced underwriting requirements and then considering and weighing the nature, circumstances, extent, and gravity of the violations, as well as Plymouth's culpability, history of violations, and ability to pay. We upwardly adjusted the forfeiture based upon the protracted period of time over which the prohibited announcements were aired, the number of announcements at issue, as well as forfeiture actions in other underwriting cases.²⁹

9. We reject Plymouth's request for an elimination or reduction of the proposed forfeiture due to its alleged inability to pay and its purported history of compliance with the Act and the Commission's rules.³⁰ These arguments do not have merit, and we find no basis to reduce or cancel the forfeiture.

1. Plymouth Has Not Demonstrated an Inability to Pay

10. The Commission will not consider reducing or cancelling a forfeiture in response to a claimed inability to pay unless the licensee 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 a company's current financial status.³¹ To assess a claim of inability to pay, the Commission reviews a licensee's gross revenues to determine if it is able to pay the assessed forfeiture.³² The Commission has found that "[i]n general, gross revenues are the best indicator of [a company's] ability to pay a forfeiture."³³ Moreover, the Commission has concluded that if "gross revenues are sufficiently great ... the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture."³⁴

11. We have reviewed the financial information submitted by Plymouth and find that it does not provide a basis for cancellation or reduction of the proposed forfeiture. Plymouth's tax returns from 2018-2020 indicate total average gross revenues of \$228,796. A \$15,000 forfeiture represents 6.6% of Plymouth's average gross revenues; therefore, Plymouth's gross revenues are sufficient to sustain the

²⁸ See *NAL*, 35 FCC Rcd at 6265, paras. 11-12; 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801.

²⁹ See *NAL*, 35 FCC Rcd at 6265, para. 11.

³⁰ See *NAL Response*.

³¹ See *In the Matter of Advanced Tel, Inc.*, Forfeiture Order, 32 FCC Rcd 5151, 5153, para. 7 (2017); *In the Matter of PIT Phone Cards, Inc.* Forfeiture Order, 30 FCC Rcd 14701, 14706, para. 16 (2015).

³² See, e.g., *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17106, para.43.

³³ *Unipoint Techs., Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 29 (2014) (citing *PJB Communc'ns of Virginia, Inc.*, 7 FCC Rcd at 2088, para. 8).

³⁴ *PJB Communc'ns. of Virg., Inc.*, 7 FCC Rcd at 2089, para. 8; see also *Sunstar Travel & Tours, Inc.*, Forfeiture Order, 25 FCC Rcd 13804, 13808, para. 14 (2010).

\$15,000 forfeiture and, do not warrant reduction.³⁵ Even factoring in Plymouth's Updated Financial Information, Plymouth's gross revenues do not support its financial hardship claim.³⁶ Although Plymouth speculated that it would "[run] a deficit through the first half of 2020,"³⁷ it subsequently submitted its updated 2020 tax return, which reflects total gross revenues of \$205,803. The total gross revenues of this magnitude alone are sufficient to sustain a \$15,000 forfeiture.³⁸

12. In its *NAL Response*, Plymouth cites several consent decrees as precedent for its inability to pay; however, Plymouth overlooks that these are negotiated settlements of a particular dispute and have no precedential effect on third parties.³⁹ In this regard, Plymouth cites a recent consent decree involving an unlicensed radio station operator in which the Commission agreed to settle a NAL proceeding based upon the violator's documented inability to pay the \$453,015 proposed forfeiture as well as discontinuation of the unlicensed station operation.⁴⁰ In addition, in that settlement, the violator agreed to pay a suspended/additional penalty of \$225,000 in the event of default or future noncompliance.⁴¹ Thus, the cited consent decree is based upon distinguishable facts not at issue here, and contrary to Plymouth's argument, does not support a reduction in the *NAL*'s proposed forfeiture penalty.

13. The Media Bureau consent decrees Plymouth cites are likewise distinguishable and do not support a forfeiture reduction here.⁴² In each of the cited consent decrees, the Media Bureau and the licensee negotiated an agreement, whereby the Media Bureau exercised its prosecutorial discretion to forbear from including a civil penalty in "unique circumstances" due in large part to the "voluntary

³⁵ See, e.g., *Coleman Enterprises, Inc., D/B/A Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 (2000) (*Local Long Distance, Inc.*) (forfeiture not deemed excessive where it represented approximately 7.9% of the violator's gross revenues), *recons. denied*, Order, 16 FCC Rcd 10023 (2001) (*Local Long Distance Reconsideration Order*).

³⁶ Plymouth did not file tax returns in 2021, so we were unable to consider 2021 gross revenues. See, e.g., *Fun Media Group, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 16149, 16152, para. 12 (EB 2005) ("Indeed, the Commission stated that if companies' gross revenues are sufficiently large, the fact that net losses are reported, alone, does not necessarily establish inability to pay"), *review denied*, 22 FCC Rcd 9839 (2007); see also *Alpha Ambulance, Inc.*, Order, 19 FCC Rcd 2547 (2004) (rejecting a target's inability to pay argument due to sufficient gross revenues and noting that net losses, alone, do not substantiate an inability to pay when gross revenues are sufficiently large); *Local Long Distance Reconsideration Order*, 16 FCC Rcd at 10025, para. 6 (2001); *Independent Communications, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 14 FCC Rcd 9605, 9610, paras. 13-14 (1999), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 16060 (2000) (same).

³⁷ *NAL Response* at 2, para. 4.

³⁸ A \$15,000 forfeiture represents 7.2% of Plymouth's 2020 total gross revenues, and is not deemed excessive. See *Local Long Distance, Inc.*, 15 FCC Rcd at 24389, para. 11.

³⁹ See *NAL Response* at 2, para. 3. See, e.g., *Purple Communications, Inc.[,]CSDVRS, LLC*, Order and Consent Decree, 32 FCC Rcd 1608, 1608, para. 3 (2017) ("We make clear that, as the resolution of a particular dispute with the consent of both parties, this consent decree has no precedential effect on third parties.").

⁴⁰ See *NAL Response* at 2, para. 3 & n.4 citing *Gerlens Cesar*, Order and Consent Decree, 35 FCC Rcd 6887 (2020) (*Gerlens Cesar*).

⁴¹ See *Gerlens Cesar*, 35 FCC Rcd at 6887, 6890, 6892-93, paras. 1, 4, 14-15.

⁴² See *NAL Response* at 2, para. 3 & n.5 citing *Cumulus Media New Holdings Inc.*, Order and Consent Decree, 35 FCC Rcd 7313 (MB 2020) (*Cumulus Media*); *Beasley Group Media Licenses, LLC*, Order and Consent Decree, 35 FCC Rcd 7285 (MB 2020) (*Beasley Group*); *iHeartMedia, Inc.*, Order and Consent Decree, 35 FCC Rcd 7264 (MB 2020) (*iHeartMedia*); *Salem Media Group, Inc.*, Order and Consent Decree, 35 FCC Rcd 7240 (MB 2020) (*Salem Media*).

disclosure [of licensee-reported violations of political file recordkeeping requirements] and cooperation.”⁴³ Such circumstances are not applicable here.

2. Plymouth’s Record Does Not Justify Reduction of the Forfeiture

14. Plymouth further asserts in the *NAL Response* that the forfeiture should be reduced or eliminated due to its record of compliance.⁴⁴ Although Commission records confirm that Plymouth has not previously been the subject of an enforcement action, the *NAL* considered and weighed all the factors set forth in section 503 of the Act, including Plymouth’s history of compliance.⁴⁵ A claimed history of compliance is one of several factors that the Commission must consider when determining an appropriate forfeiture under section 503 of the Act. We also must consider “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, ... and such other matters as justice may require.”⁴⁶ In this case, the Commission has received multiple underwriting complaints dating back to 2015 alleging that Plymouth aired advertisements on the Station, essentially operating the noncommercial Station as a commercial station.⁴⁷ Moreover, Plymouth has not denied that it broadcast commercials more than 1,600 times in violation of the Underwriting Laws.⁴⁸ Accordingly, we decline to adjust the monetary forfeiture downward based on Plymouth’s claimed record of compliance.⁴⁹

3. The Forfeiture is Consistent with Precedent, the Section 503 Statutory Factors and the 1997 Forfeiture Policy Statement Guidelines

15. After considering the relevant statutory factors, the Commission’s rules, and the Commission’s *Forfeiture Policy Statement*, we find that Plymouth is liable for a total forfeiture of \$15,000. As explained in the *NAL*, this total results from Plymouth’s willful and repeated broadcast of 14 separate advertisements more than 1,600 times in total, in violation of section 399B of the Act and sections 73.503(d) and 73.801 of the Commission’s rules.⁵⁰ Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$15,000 properly reflects the seriousness, duration, and scope of Plymouth’s violations. We therefore reject Plymouth’s unsupported argument that a downward adjustment of the proposed forfeiture

⁴³ See *Cumulus Media*, 35 FCC Rcd at 7318, para. 5; *Beasley Group*, 35 FCC Rcd at 7289, para. 5; *iHeartMedia*, 35 FCC Rcd at 7269, para. 5; *Salem Media*, 35 FCC Rcd at 72443, para. 5.

⁴⁴ See *NAL Response* at 2, para. 5.

⁴⁵ 47 U.S.C. § 503(b)(2)(E); *NAL*, 35 FCC Rcd at 6264, para. 10.

⁴⁶ 47 U.S.C. § 503(b)(2)(E); *NAL*, 35 FCC Rcd at 6264, para. 10.

⁴⁷ 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) (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 in EB-IHD-16-00022970).

⁴⁸ See LOI Response at 2, Response to Question III. 13; Exh. IV-15.

⁴⁹ See, e.g., *TV Max, Inc. and Broadband Ventures Six, LLC D/B/A Wavedivision et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8660, para. 24 (2014) (totality of circumstances and the egregious, intentional, and repeated nature of the violations, along with licensee’s culpability, outweigh its claimed history of no previous offenses); *Local Long Distance, Inc.*, 15 FCC Rcd at 24388-89, para. 10 (overall record of compliance does not justify a downward forfeiture adjustment when weighed against other Section 503 Factors presented in the case at issue).

⁵⁰ See 47 U.S.C. § 399b; 47 CFR §§ 73.503(d), 73.801.

penalty “comport[s] with the regulatory policy that the Commission must treat similarly situated parties similarly.”⁵¹

IV. CONCLUSION

16. Based on the record before us and in light of the applicable statutory factors, we conclude that Plymouth willfully and repeatedly violated section 399B of the Act,⁵² and sections 73.503(d) and 73.801 of the Commission’s rules by airing commercials.⁵³ We decline to cancel or reduce the \$15,000 forfeiture proposed in the *NAL* for the reasons stated herein.

V. ORDERING CLAUSES

17. 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. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willfully and repeatedly violating section 399B of the Act⁵⁴ and sections 73.503(d) and 73.801 of the Commission’s rules.⁵⁵

18. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s rules within thirty (30) calendar days after the release of this Forfeiture Order.⁵⁶ Plymouth Gathering, Inc. shall send electronic notification of payment to Pamela Gallant at Pamela.Gallant@fcc.gov, Frederick W. Giroux at Frederick.Giroux@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.⁵⁷

19. In order for Plymouth Gathering, Inc. to pay the proposed forfeiture, Plymouth Gathering, Inc. shall notify Pamela Gallant at Pamela.Gallant@fcc.gov, Frederick W. Giroux at Frederick.Giroux@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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:⁵⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters “FORF”. In addition, a completed Form 159⁵⁹ or printed CORES form⁶⁰

⁵¹ *NAL Response* at 3, para. 6, citing *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965). See, e.g., *Greater Boston Radio, Inc.*, Forfeiture Order, 28 FCC Rcd 1951, 1956-57, para. 12 (EB-IHD 2013) (The Commission has broad discretion to determine a forfeiture amount; *Melody Music* does not limit the Commission to previously assessed sanctions where there are factual distinctions that warrant different treatment, and the Commission has adequately explained such distinctions) (citations omitted).

⁵² 47 U.S.C. § 399b.

⁵³ 47 CFR §§ 73.503(d), 73.801.

⁵⁴ 47 U.S.C. § 399b.

⁵⁵ 47 CFR §§ 73.503(d), 73.801.

⁵⁶ *Id.* § 1.80.

⁵⁷ 47 U.S.C. § 504(a).

⁵⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).⁶¹ 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 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. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, 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” 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 number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). 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.

20. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.⁶² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

(Continued from previous page) _____

⁵⁹ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁶⁰ Information completed using the Commission’s Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

⁶¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁶² See 47 CFR § 1.1914.

21. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order 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 Aaron P. Shainis, Esq., Counsel to Plymouth Gathering, Inc., Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau