

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

In the Matter of	)	
	)	
<b>ABACUS TELEVISION</b>	)	Facility ID No. 68411
	)	NAL/Acct. No. 202341420018
Low Power Television Station	)	FRN: 0008390981
WIIC-LD, Pittsburgh, Pennsylvania	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 12, 2023**

**Released: May 12, 2023**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. The Video Division (Division) of the Media Bureau (Bureau) has before it Abacus Television (Abacus), licensee of low power television (LPTV) station WIIC-LD, Pittsburgh, Pennsylvania (WIIC or Station). In this *Notice of Apparent Liability for Forfeiture (NAL)*,<sup>1</sup> we find that Abacus apparently willfully and repeatedly violated section 73.1745(a) of the Rules<sup>2</sup> and Section 301 of the Act<sup>3</sup> by engaging in unauthorized operation. Abacus also apparently willfully and repeatedly violated section 73.1635(a) of the Act by failing to file for special temporary authority to operate at variance from the authorized parameters of its license.<sup>4</sup> Based upon our review of the facts and circumstances before us, we conclude that Abacus is apparently liable for a monetary forfeiture in the amount of sixteen thousand dollars (\$16,000).

**II. BACKGROUND**

2. WIIC is a digital LPTV station licensed to operate on channel 31.<sup>5</sup> Following an inquiry regarding the pending status of the Station's displacement application (Displacement App) to move from 31 to channel 10,<sup>6</sup> the Division sent a letter of inquiry requesting that Abacus provide information about the Station's operational status since September 12, 2019, when the Station was displaced.<sup>7</sup> Specifically, Abacus was requested to provide the exact dates of the Station's operation or silence since that date. In addition, for any time during the period in question that the Station was operational, Abacus was asked to

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<sup>1</sup> This *NAL* is issued pursuant to section 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission'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.

<sup>2</sup> 47 CFR § 73.1745.

<sup>3</sup> 47 U.S.C. § 301.

<sup>4</sup> 47 CFR § 73.1635.

<sup>5</sup> See LMS File No. 0000001503.

<sup>6</sup> See LMS File No. 0000089350.

<sup>7</sup> See Letter to Abacus Television from Barbara A. Kreisman, Chief, Video Division to Abacus Television (dated Feb. 22, 2023) (Inquiry Letter), a copy of which is available at LMS File No. 0000089350. See *infra* para. 4.

provide the Station's technical operating parameters, specific evidence of the Station's operation throughout the entire period of operation, and the valid authorization under which the Station operated.<sup>8</sup>

3. On March 24, 2023, Abacus responded to the Inquiry Letter and provided documentary evidence that since September 12, 2019, the Station has been operating from its licensed location, and since October 16, 2019, it has been operating at reduced power.<sup>9</sup> As explained in greater detail below, Abacus explained that it had been operating the Station at reduced power in order to avoid causing interference to full power station WYTV, channel 31, Youngstown, Ohio (WYTV) and while awaiting processing of its Displacement App.<sup>10</sup> Abacus conceded that it operated the Station at reduced power without proper special temporary authority for nearly three and a half years.<sup>11</sup> Abacus further explained that "while no single factor explains or excuses [its] failure... a confluence of misjudgments and distractions resulted in [its] failure to act in accordance with the Rules."<sup>12</sup>

4. *Displacement and History of Unauthorized Operations.* In September 2019, Abacus determined that the Station was causing approximately 5.33 percent interference to full power station WYTV, which had begun operating with a power increase on September 12, 2019.<sup>13</sup> On October 16, 2019, Abacus first attempted to lower the Station's power to 7.5 kW to eliminate the interference.<sup>14</sup> While Abacus informed Division staff via email that it had commenced operation at 7.5 kW,<sup>15</sup> it never formally sought special temporary authority to operate at such a power. On November 8, 2019, Division staff informed Abacus that operation at 7.5 kW would not resolve the interference.<sup>16</sup> As a result, Abacus reduced its power further to 0.0363 kW. While this power level was suggested by Division staff in order to reduce interference to WYTV below the 0.5 percent interference threshold,<sup>17</sup> such operation was not formally approved by the Division and Abacus once again failed to seek special temporary authority for this reduction in power. The Station operated at 0.0363 kW until it went silent on March 16, 2023.<sup>18</sup>

5. In November 2019, Abacus filed the Displacement App seeking to move to channel 8.<sup>19</sup> A day later, Abacus amended the Displacement App to instead specify channel 10. Abacus was then informed by Division staff that the Displacement App was not acceptable because the Station's proposed facilities would cause impermissible interference to other full power Ohio television stations.<sup>20</sup> In

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<sup>8</sup> Inquiry Letter at 3.

<sup>9</sup> See Response of Abacus Television (Mar. 24, 2023) (Response), a copy of which is available at LMS File No. 0000089350. Abacus provided evidence including photos of the Station's equipment, copies of electric bills, lease payments, and Station logs that demonstrated operation of the Station since September 12, 2019.

<sup>10</sup> Response at 1-2. See *infra* paras. 4 and 5.

<sup>11</sup> *Id.* at 2 and 5.

<sup>12</sup> *Id.* at 5. For example, Abacus points to its mistaken belief that the informal conversations with and suggestions by Division staff were sufficient given the temporary nature of the operations and that a formal filing would be "unnecessary" and "wasteful." *Id.*

<sup>13</sup> Inquiry Letter at 1.

<sup>14</sup> *Id.* at 2. See also e-mails between Station staff and Video Division staff dated October 16, 2019, November 8, 2019; November 13, 2019; and November 14, 2019, copies of which are available at Station's main record page, LMS Facility No. 68411.

<sup>15</sup> See e-mail from Benjamin Perez to Hossein Hashemzadeh, Video Division, October 16, 2019, *supra* n.12.

<sup>16</sup> See e-mail from Mark Colombo, Video Division to Benjamin Perez, November 8, 2019, *supra* n.12.

<sup>17</sup> *Id.*

<sup>18</sup> See LMS File No. 0000212844 and Response at 2. The station went silent pursuant to Division instructions. Inquiry Letter at 4.

<sup>19</sup> LMS File No. 0000089350.

<sup>20</sup> Inquiry Letter at 2.

February 2020, Abacus amended the Displacement App to avoid objectionable interference to other stations, however, this amendment failed to resolve the interference issue.<sup>21</sup> Finally, on September 26, 2022, the Station amended its Displacement App to resolve the predicted interference.<sup>22</sup> The Displacement App remains pending as a result of the Division's investigation.

### III. DISCUSSION

6. Pursuant to section 503(b)(1)(B) of the Act,<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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,<sup>26</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>27</sup> 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.”<sup>28</sup>

7. *Apparent Violation.* We find that Abacus apparently willfully and repeatedly failed to comply with sections 73.1745(a) and 73.1635(a) of the Rules and section 301 of the Act.<sup>29</sup> Section 73.1745(a) of the Rules and section 301 of the Act require a station to operate pursuant to the terms and conditions contained in its license.<sup>30</sup> Pursuant to 73.1635(a) of the Rules, in order for a station to operate at variance from its licensed parameters, it must seek special temporary authority at least 10 days prior to the date of the proposed operation.<sup>31</sup> Here, Abacus has acknowledged that it operated the Station at variance to its licensed parameters from October 16, 2019 until March 16, 2023, in violation of section 73.1745(a) of the Rules and section 301 of the Act and that it failed to seek special temporary authority for its reduced power operations as required by section 73.1635(a) of the Rules. Abacus, which has been a Commission licensee since the 1990s, claims its apparent violation was the result of “misjudgments and

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<sup>21</sup> See Amendment to LMS File No. 0000089350 (filed Feb. 28, 2020).

<sup>22</sup> See Amendment to LMS File No. 0000089350 (filed Sept. 26, 2002). The Displacement App was amended on March 24, 2023 to include Abacus's response to the Inquiry Letter. No other changes were made to the application.

<sup>23</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>24</sup> *Id.* See also 47 CFR § 1.80(a)(1).

<sup>25</sup> 47 U.S.C. § 312(f)(1).

<sup>26</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>27</sup> See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

<sup>28</sup> 47 U.S.C. § 312(f)(2).

<sup>29</sup> See 47 CFR §§ 73.1745 and 47 CFR § 73.1635; 47 U.S.C. § 301.

<sup>30</sup> 47 CFR § 73.1745(a); 47 U.S.C. § 301.

<sup>31</sup> 47 CFR § 73.1635(a). Special temporary authority may be granted for an initial period of no more than 180 days and extended a limited number of times for additional periods not exceeding 180 days. *Id.* Requests for special temporary authority are electronically filed in the Commission's Licensing Management System (LMS). A station may also seek to modify its license pursuant to section 74.787 of the Rules. 47 CFR § 74.787. However, in this case, it does not appear that Abacus intended to permanently modify its license to operate at .0363 kW, but only do so temporarily until it was able to construct a displacement facility on channel 10. As such we do not find an apparent violation of section 74.787 of the Rules. *Id.*

distractions.”<sup>32</sup> It is well-settled that such factors are not an excuse for failure to comply with the Rules.<sup>33</sup> Furthermore, it is the obligation of a Commission licensee to be familiar with all rules governing its station’s operations.<sup>34</sup>

8. *Proposed Forfeiture Amount.* The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,00 for the failure to file a required form.<sup>35</sup> The guidelines also specify a base forfeiture amount of \$10,000 for construction and operation without an instrument of authorization for the service.<sup>36</sup> 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.”<sup>37</sup>

9. In this case, Abacus engaged in unauthorized operation of the Station for more than three and one half years by operating at reduced power without special temporary authority. Abacus also failed to file an application for special temporary authority. Abacus should have filed an application for special temporary authority prior to commencing reduced operations on October 16, 2019, and again prior to November 8, 2019. Accordingly, we find Abacus failed to make a required filing on two separate occasions.<sup>38</sup> Abacus gives no justifiable reason for its failures and violations of the Rules and Act. We note that Abacus also has a history of violating the Commission’s rules, including with regards to operation of the Station.<sup>39</sup> Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we decline to reduce the forfeiture from the base amount. While in other cases involving LPTV stations we have reduced the base forfeiture amount for violations

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<sup>32</sup> Response at 5.

<sup>33</sup> See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not “claim ignorance of the law as a defense” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) (“It is well settled that ignorance of the [Commission’s] [r]ules does not excuse a violation.”) (internal cites omitted).

<sup>34</sup> See 47 CFR § 74.769.

<sup>35</sup> 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, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I.

<sup>36</sup> *Id.* A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

<sup>37</sup> 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

<sup>38</sup> Subsequently Abacus would have been required to renew its special temporary authority every 180 days. 47 CFR § 73.1635(a)(4).

<sup>39</sup> See *Abacus Television, Licensee of UHF Translator Station WIIC-LP, Pittsburgh, PA*, Forfeiture Order, 25 FCC Rcd 1766 (EB 2010) (finding station liable for a forfeiture in the amount of \$3,200 for failing to operate the station consistent with the terms of the station authorization); *Abacus Television, Former Licensee of Stations WBYD-CD, Pittsburgh, PA; WTOO-CD, Bolivar, PA; and WWAT-CD, Charleroi, PA*, Forfeiture Order, 32 FCC Rcd 3045 (Vid. Div. 2017) (finding licensee is liable for a forfeiture in the amount of \$5,250 for failing to file in a timely manner quarterly children’s television programming reports).

of the Rules,<sup>40</sup> we find the nature and extent of the violations, as well as Abacus's history of prior violations, justify imposition of the full base forfeiture of amount.<sup>41</sup>

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,<sup>42</sup> Abacus Television is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of sixteen thousand dollars (\$16,000) for its apparent willful and repeated violations of sections 73.1635(a) and 73.1745(a) of the Commission's rules and section 301 of the Communications Act of 1934, as amended.<sup>43</sup>

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,<sup>44</sup> that, within thirty (30) days of the release date of this *NAL*, Abacus Television **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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),<sup>45</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to [Shaun.Maher@fcc.gov](mailto:Shaun.Maher@fcc.gov). Below are instructions that payors should follow based on the form of payment selected:<sup>46</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>47</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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the

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<sup>40</sup> See, e.g., *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1616 (rel. Dec. 21, 2021) (reducing base forfeiture amount as station provided a secondary service); *The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 22-327 (rel. Mar. 28, 2022) (reducing base forfeiture amount, but compared to other similar cases finding that a higher forfeiture amount was appropriate based on the extent and nature of the violations).

<sup>41</sup> The Station's pending Displacement App, LMS File No. 0000089350, will be considered in a separate action, subject to the resolution of this forfeiture proceeding. In the interim, Abacus may choose to resume its reduced operations on its currently licensed channel 31 upon filing and following grant of special temporary authority specifying its operational parameters. Any operations without valid special temporary authority will be considered unauthorized and Abacus will be subject to additional sanction.

<sup>42</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>43</sup> 47 CFR §§ 73.1635(a) and 73.1745(a); 47 U.S.C. § 301.

<sup>44</sup> 47 CFR § 1.80.

<sup>45</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>46</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>47</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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 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.

13. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.<sup>48</sup> 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 at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

14. 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.<sup>49</sup> The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. 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.<sup>50</sup> A courtesy copy should also be emailed to [Shaun.Maher@fcc.gov](mailto:Shaun.Maher@fcc.gov) to 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.

15. 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

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<sup>48</sup> See 47 CFR § 1.1914.

<sup>49</sup> 47 CFR §§ 1.16 and 1.80(g)(3).

<sup>50</sup> 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).

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 section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.<sup>51</sup> In addition, requests to withhold documents from public inspection must comport with the requirements of the Commission's rules.<sup>52</sup>

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Abacus Television, 4310 Brownsville Road, Pittsburgh, PA 15236. A courtesy copy will also be sent via electronic mail to: [ben@abacustelevision.com](mailto:ben@abacustelevision.com).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>51</sup> See 47 U.S.C. § 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

<sup>52</sup> See 47 CFR § 0.459. Casual requests (including simply stamping pages “confidential”) which do not comply with the requirements of the Commission's rules will not be considered. 47 CFR § 0.459(c).