

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

In the Matter of)	
)	NAL/Acct. No. MB-202341410007
Gendreau Broadcast LLC)	FRN: 0027365139
)	
Application to Renew License for)	Facility ID No. 33055
KCLN(AM), Clinton, Iowa)	Application File No. 123955

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

Adopted: May 31, 2023

Released: May 31, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (Renewal Application) filed by Gendreau Broadcast LLC (Gendreau) to renew the license for KCLN(AM), Clinton, Iowa (Station).¹ Also before us are an informal objection (Objection) to the Renewal Application filed by Dave Vickers (Vickers),² and Gendreau's response (LOI Response)³ to a Letter of Inquiry (LOI) that we sent, which requested that Gendreau respond to allegations made in the Objection.⁴ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,⁵ we find Gendreau apparently (1) willfully and repeatedly failed to timely upload or failed to upload required materials to the Station's online public inspection file (OPIF), and failed to include a link to the Station's OPIF on the Station's website in violation of section 73.3526 of the Commission's rules (Rules),⁶ (2) willfully made an incorrect certification in the Renewal Application in violation of section 1.17(a)(2) of the Rules,⁷ and (3) willfully and repeatedly engaged in unauthorized operation of the Station in violation of Section 301 of the Communications Act of 1934, as amended (Act), and sections 73.1350, 73.1560(a)(1) and (d), and 73.1745(a) of the Rules.⁸ Based upon our review of the facts and circumstances before us, we grant in part and otherwise deny the Objection, and propose a monetary forfeiture in the amount of eleven thousand dollars (\$11,000).

¹ Application File No. 123955.

² Pleading File No. 131267 (Objection).

³ Letter from Chris Streets, General Manager, KMCN/KCLN Radio, to FCC (dated Mar. 13, 2023) (LOI Response).

⁴ Letter from Albert Shuldiner, Chief, Audio Division, to Gendreau Broadcast LLC (Dec. 15, 2022) (LOI).

⁵ This *NAL* is issued pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC's rules (Rules). *See* 47 U.S.C. § 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.

⁶ 47 CFR § 73.3526.

⁷ *Id.* § 1.17(a)(2).

⁸ 47 U.S.C. § 301; 47 CFR §§ 73.1350, 73.1560(a)(1) and (d), 73.1635, 73.1745(a).

II. BACKGROUND

2. Gendreau filed the Renewal Application on October 5, 2020. Vickers then filed the Objection. Therein, he alleged that Gendreau (1) had neglected to upload information to the Station's OPIF,⁹ (2) had not included links to the Station's OPIF and most recent Equal Employment Opportunity (EEO) Program Report on the Station's website,¹⁰ (3) had falsely certified in the Renewal Application that the Station's OPIF contained the documentation required by the Rules,¹¹ and (4) had failed to reduce the Station's power at night.¹²

3. Gendreau did not respond to the Objection. Accordingly, we sent the LOI, which requested that they do so. In the LOI Response, Gendreau acknowledged that it had failed to upload information to the Political File Section of the Station's OPIF.¹³ Gendreau also stated that it had "had a number of technical issues" with the Station, and provided documentation regarding various repairs.¹⁴ Gendreau indicated that the Station was currently operating "at between 50 and 70 watts 24 hours a day, while we await repairs."¹⁵ According to Gendreau, the Station had either been silent or "well under [its] full broadcasting strength since the end of October 2022."¹⁶ Gendreau stated that it was not aware of any problems "with being over power" since it acquired the Station.¹⁷ Gendreau provided copies of the Station's logs for six dates in 2022 and 2023.¹⁸

III. DISCUSSION

A. Online Public Inspection File

4. We agree with Vickers that Gendreau has failed to comply with certain requirements related to the Station's OPIF and set forth in section 73.3526 of the Rules.¹⁹ Based on our review of the record, the Station's OPIF, and the Station's website, we conclude that Gendreau (1) failed to timely upload issues/programs list for all four quarters of 2018, and the second quarter of 2019, and has not uploaded any issues/programs lists since,²⁰ (2) did not upload the LOI and the LOI Response to the Station's OPIF,²¹ (3) neglected to upload materials related to a Commission EEO audit to the Station's OPIF,²² (5) failed to timely upload required information to the Political Files section of the Station's

⁹ Objection at 3-6.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 2, 6.

¹² *Id.* at 6.

¹³ LOI Response at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

¹⁷ *Id.* Gendreau acquired the Station on March 15, 2018. *See* Consummation Notice, BAL-20171109ACO (filed Mar. 22, 2018).

¹⁸ *Id.* at Attachs.

¹⁹ Objection at 2-6. *See also* 47 CFR § 73.3526.

²⁰ *See* 47 CFR § 73.3526(e)(12) (requiring that commercial AM and FM broadcast stations upload quarterly issues and programs lists to their OPIFs no later than the tenth day after each quarter).

²¹ *See* 47 CFR § 73.3526(e)(10) (requiring commercial broadcast stations to upload material relating to an FCC investigation or complaint to their OPIFs). The LOI reminded Gendreau to upload it and the LOI Response to the Station's OPIF. LOI at 4. Despite this reminder, Gendreau did not upload these documents to the Station's OPIF.

²² *See* 47 CFR § 73.3526(e)(10). As Vickers notes, Objection at 2, Gendreau received an EEO audit request regarding the Station in June 2019. Gendreau responded to the EEO audit, and the Commission cleared the Station

(continued....)

OPIF,²³ and (6) did not include a link to the Station's OPIF on the Station's website.²⁴ It is crucial that stations maintain OPIFs that are complete and up to date and link to their OPIFs on their websites 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. Below, we propose a forfeiture related to these violations. We urge Gendreau to take steps to bring (and keep) the Station's OPIF in compliance, and note that the failure to do so could lead to additional sanctions.

B. Inaccurate Certification

5. We find that, as Vickers alleges,²⁵ Gendreau made an inaccurate certification in the Renewal Application in response to the item regarding the Station's OPIF. Gendreau was required to certify whether "the documentation required by 47 C.F.R. Section 73.3526 or 73.3527, as applicable, has been uploaded to the station's public inspection file as an when required." Gendreau certified "Yes." As discussed above, however, the Station's OPIF was missing a number of items.

6. We have determined that Gendreau's inaccurate certification violated section 1.17(a)(2) of the Rules, which prohibits applicants from providing material information that is incorrect without a reasonable basis for believing that such information is not incorrect or misleading.²⁶ Given the state of the Station's OPIF, we hold that Gendreau had no reasonable basis for believing its certification was correct.²⁷ We do not find, though, that Gendreau made the inaccurate certification with intent to deceive the Commission. Rather, we conclude that Gendreau failed to exercise appropriate diligence in its filings with the Commission. We propose a forfeiture related to this violation.

C. EEO Program Report

7. We reject Vickers' assertion that Gendreau was required to include the Station's EEO Public File Report on the Station's website.²⁸ While section 73.2080(c)(6) does provide that broadcast stations must annually place in their OPIFs and on their websites an EEO public file report,²⁹ section 73.2080(d) exempts "station employment units that have fewer than five full-time employees" from this EEO requirement.³⁰ The Station's employment unit qualifies for this exemption.³¹ Accordingly, we find that the absence of an EEO public file report from the Station's website violated no Commission rule.

by letter in December 2019. The letter instructed Gendreau to upload it and all other EEO audit materials to the Station's OPIF. To date, Gendreau has not done so.

²³ Gendreau has admitted that, between October 29, 2018, and the date of the LOI Response (*i.e.*, March 13, 2023), the Station did "receive political based advertising." LOI Response at 1. Gendreau states that all paperwork was placed inside the Station's physical public file but the Station's General Manager forgot to post the paperwork to the Station's OPIF. *Id.* Gendreau reports that the paperwork has now been uploaded. *Id.* We have verified that this is the case.

²⁴ See 47 CFR § 73.3526(b)(ii) (requiring commercial broadcast stations to provide a link to "the public inspection file hosted on the Commission's website from the home page" of their own websites).

²⁵ Objection at 2, 6.

²⁶ 47 CFR § 1.17(a)(2).

²⁷ We note that the LOI requested that Gendreau explain the basis for this certification. LOI at 2. However, Gendreau did not offer an explanation in the LOI Response.

²⁸ Objection at 6.

²⁹ See 47 CFR § 73.2080(c)(6).

³⁰ *Id.* § 73.2080(d).

³¹ See Application File No. 123591.

D. Non-Conforming Operations

8. We conclude that Gendreau operated the Station at a variance from its licensed daytime and nighttime parameters for more than 30 consecutive days. The Station is licensed to operate at 1 kilowatt during daytime hours, and 91 watts during nighttime hours.³² Gendreau admits that the Station began operating at between 50 and 70 watts on November 17, 2022, due to a technical issue.³³ Based on the station logs that Gendreau submitted with the LOI Response, it appears these reduced power operations continued through at least March 17, 2023, and may still be occurring.³⁴

9. The Station's non-conforming operations contravened section 301 of the Act and sections 73.1350(a), and 73.1745(a) of the Rules, each of which require licensees to operate in accordance with their Commission-granted authorizations.³⁵ Furthermore, the Station's operation at between 50 and 70 watts violated Section 73.1560(a)(1) of the Rules.³⁶ That section requires AM stations to maintain their antenna input power "as near as practicable to the authorized antenna input power" and specifies that it "may not be less than 90 percent nor greater than 105 percent of the authorized power."³⁷ Finally, we note that Gendreau should have requested special temporary authority to operate the Station at a variance from its licensed parameters. Its failure to do so violated section 73.1560(d).³⁸ We propose a forfeiture related to the Station's non-conforming operations.³⁹

10. In contrast, we find there is no substantial and material question of fact regarding whether the Station failed to reduce power at night as its license specifies. While Vickers alleges that the Station had "been failing to reduce power at night" and that "[t]his had been [an] ongoing issue for 'years,'" he offers no evidence to support his allegation.⁴⁰ Additionally, Gendreau has indicated that it is "not aware of any problems with being over power" since it acquired the Station in 2018, and has submitted a declaration made under penalty of perjury to support its claim.

E. Proposed Forfeiture

11. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission"⁴¹ To determine the appropriate forfeiture amount, we must consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of

³² See Application File No. BL-20020628ACF.

³³ LOI Response at 1-2, and Attachs. The station log for November 17, 2022, states: "At approx[imately] 2:10 pm KCLN started glitching. . . . Will not function above lowest settings (91 w[atts]) only running at 56 w[atts]."

³⁴ LOI Response at Attachs. The station log for February 8, 2023, documents operation of the Station at 61 watts. The log for March 7, 2023, indicates the Station was operating at 64.07 watts, and includes a note about plans to repair the wires on the Station's tower on or about March 17, 2023.

³⁵ 47 U.S.C. § 301; 47 CFR §§ 73.1350(a), 73.1745(a).

³⁶ 47 CFR § 73.1560(a)(1).

³⁷ *Id.*

³⁸ 47 CFR §§ 73.1560(d) (providing that, in the event it becomes technically impossible to operate at authorized power, a station may operate at reduced power for a period of not more than 30 days without specific authority from the FCC, and requiring station to request special temporary authority if reduced power operations will continue for more than 30 days).

³⁹ We note that, if the Station continues to operate at reduced daytime and nighttime powers, Gendreau must seek special temporary authority to cover the continued non-conforming operations. If it does not, it could be subject to additional sanctions.

⁴⁰ Objection at 6.

⁴¹ 47 U.S.C. § 503(b).

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁴² The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.⁴³ Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.⁴⁴ We may adjust a forfeiture upward for violations that are egregious, intentional, continuous, and/or repeated, and violations that cause substantial harm or generate substantial economic gain for the violator.⁴⁵ We may also adjust a forfeiture upward where there is an ability to pay, or where there is a history of prior violations of FCC requirements.⁴⁶

12. Gendreau apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to timely upload or failing to upload required materials to the Station's OPIF, and by failing to include a link to the Station's OPIF on the Station's website. Section 1.80(b)(10) of the Rules sets forth a base forfeiture of \$10,000 for violation of the public file rules. In addition, Gendreau also apparently willfully violated section 1.17(a)(2) of the Rules when it made an inaccurate certification in the Renewal Application regarding the Station's OPIF. The Commission has not established a base forfeiture amount for an inaccurate certification made without intent to deceive. Finally, Gendreau apparently willfully and repeatedly operated the Station at a variance from its licensed parameters without obtaining authorization to do so. Section 1.80(b)(1) establishes a base forfeiture of \$3,000 for failure to file required forms or information. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the guidelines, we propose a total forfeiture in the amount of \$11,000.

F. Renewal Application

13. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.⁴⁷ Section 309(k) requires grant of a renewal application if we find that, with respect to the station, during the preceding term of its license: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁴⁸ If such a finding cannot be made, Section 309(k) provides that the license renewal application is to be designated for a trial-type hearing pursuant to Section 309(k) of the Act.⁴⁹

14. In this case, Gendreau failed to timely upload materials to the Station's OPIF, failed to upload other materials to the Station's OPIF, failed to include a link to the Station's OPIF on the Station's website, operated the Station at a variance from its licensed parameters without authorization to do so, and made an inaccurate certification in the Renewal Application about the Station's OPIF. We find that Gendreau's apparent violations of the Rules do not constitute "serious violations" under section 309(k) of the Act. In addition, we find no evidence of violations that, when considered together, constitute a pattern of abuse. Further, we find that the Station served the public interest, convenience, and necessity during the subject license term.

15. Based on these findings, we do not conclude that designation of the Renewal Application for evidentiary hearing is warranted here, particularly in light of the forfeiture proposed herein.

⁴² *Id.* § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

⁴³ 47 CFR § 1.80(b)(10).

⁴⁴ *Id.* at Table 3.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 47 U.S.C. § 309.

⁴⁸ *Id.* § 309(k)(1).

⁴⁹ *Id.* § 309(k)(3).

IV. ORDERING CLAUSES

16. **IT IS ORDERED** that the Informal Objection filed by Dave Vickers (Pleading File No. 131267) on January 14, 2021, **IS GRANTED IN PART AND OTHERWISE DENIED**.

17. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,⁵⁰ that Gendreau Broadcast LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of eleven thousand dollars (\$11,000) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and sections 73.1350, 73.1560(a)(1) and (d), 73.1745, and 73.3526 of the Commission's rules,⁵¹ and its apparent willful violation of section 1.17(a)(2) of the Commission's rules.⁵²

18. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,⁵³ that, within thirty (30) days of the release date of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, Gendreau Broadcast LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. 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), 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:

- 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). 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.

⁵⁰ *Id.* § 503(b); 47 CFR §§ 0.283, 1.80.

⁵¹ 47 U.S.C. §301; 47 CFR §§ 73.1350, 73.1560(a)(1) and (d), 73.1745, 73.3526.

⁵² 47 CFR § 1.17(a)(2).

⁵³ *Id.* § 1.80.

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.

20. 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. 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.

21. 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.⁵⁴ 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. 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. 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.

22. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526 of the Commission’s Rules,⁵⁵ Gendreau Broadcast LLC shall upload a copy of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* to the OPIF of KCLN(AM), Clinton, Iowa.

⁵⁴ *Id.* §§ 1.16, 1.80(g)(3).

⁵⁵ *Id.* § 73.3526.

23. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Gendreau Broadcast LLC, Attn: Brad Gendreau, 5759 Riverview Rd, Thomson, IL 61285.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau