

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

In the Matter of	)	
	)	
CROCODILE BROADCASTING CORP.	)	Facility ID No.: 203215
	)	NAL/Acct. No.: MB-202341410016
Licensee of FM Translator Station W234DH,	)	FRN: 0008354904
Baton Rouge (formerly Norco), LA	)	File No. BLFT-20190830AAN
	)	

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

**Adopted: July 31, 2023**

**Released: July 31, 2023**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (Bureau) has before it an October 15, 2019 Petition from Radio & Investments, Inc. (R&I)<sup>1</sup> seeking reconsideration of our September 20, 2019 grant of the referenced application<sup>2</sup> of Crocodile Broadcasting Corp. (CBC) to license a new FM translator station, W234DH (Translator).<sup>3</sup> The Translator's community at the time of application was Norco, LA, but it has since been changed to Baton Rouge, LA. For the reasons set forth below, we dismiss the Petition as late-filed. Nevertheless, because the allegations raise significant concerns about CBC's truthfulness, we consider the matters on our own motion and find that CBC apparently violated Commission rules (Rules) by failing to file a required form to obtain consent to change antennas, constructing and operating with an unauthorized antenna for approximately two months, and falsely certifying to construction as authorized but without an intent to deceive.<sup>4</sup> Based upon our review of the facts and circumstances, we uphold the initial license grant but issue this Order and Notice of Apparent Liability for Forfeiture (*NAL*) establishing a reporting requirement for future applications and concluding that CBC is apparently liable for a monetary forfeiture in the amount of twelve thousand five hundred dollars (\$12,500).

**II. BACKGROUND**

2. CBC is the licensee of AM station KGLA, Norco, LA. On April 9, 2018, in connection with the Commission's AM Revitalization opportunities, CBC applied for a permit to construct a new FM translator to rebroadcast KGLA.<sup>5</sup> CBC proposed therein to use a directional antenna mounted at 150 meters above ground level.<sup>6</sup> The Bureau granted a construction permit on May 16, 2018, requiring completion by May 16, 2021.<sup>7</sup> CBC filed the License Application on August 30, 2019, and the Bureau

<sup>1</sup> R&I Petition for Reconsideration (rec. Oct. 15, 2019) (Petition). R&I is the licensee of KDDK, Addis, LA and claims standing as a same-market competitor.

<sup>2</sup> File No. BNPL-20190830AAN (granted Sept. 20, 2019) (License Application).

<sup>3</sup> CBC filed an October 25, 2019 Opposition and R&I filed a November 5, 2019 Reply. In these filings, the parties dispute whether R&I has standing.

<sup>4</sup> 47 CFR §§ 74.1251, 1.17.

<sup>5</sup> Application File No. BNPFT-20180409AAA (rec. Apr. 9, 2018).

<sup>6</sup> The specified antenna was manufactured by PSI, model FML-2(0.75)-DA.

<sup>7</sup> Application File No. File No. BNPFT-20180409AAA (granted May 16, 2018) (Construction Permit).

announced that filing by Public Notice on September 5, 2019.<sup>8</sup> CBC certified therein that it had constructed as authorized and responded “yes” that it was using a properly-oriented directional antenna.<sup>9</sup> Thus, when the Bureau granted the License Application on September 20, 2019, it believed that the Translator was operating with the specified directional antenna mounted at the authorized height.<sup>10</sup>

3. R&I filed its Petition on October 15, 2019 alleging that information in the License Application was false. Specifically, R&I contends that CBC substituted an omnidirectional antenna for the authorized directional antenna and mounted it at a height of about 145 meters, *i.e.*, approximately 5 meters lower than authorized. R&I argues that the Bureau should reverse the License Application’s grant because CBC did not construct as authorized, the constructed facilities would result in prohibited contour overlap,<sup>11</sup> and CBC’s false certification calls its basic character qualifications into question.<sup>12</sup>

4. In an Opposition to the Petition, CBC acknowledges temporary use of an omnidirectional antenna for approximately two months ending on October 24, 2019.<sup>13</sup> CBC explains that the authorized directional antenna arrived damaged in August 2019 and, because CBC was eager to commence operations and believed it would receive the repaired antenna shortly, decided in the interim to share an existing omnidirectional antenna at the same site. The constructed facilities operated at a much lower power level than authorized,<sup>14</sup> apparently in order to minimize the potential for interference from use of an omnidirectional antenna.<sup>15</sup> CBC contends that it had no intent to deceive, but simply did not recognize the significance of the antenna substitution and, thus, did not mention it to counsel who prepared the License Application.<sup>16</sup> CBC states that it expected to switch to use of the authorized antenna quickly upon repair, but experienced delays due to several difficulties with the tower structure. For example, CBC says that it was unable to mount the authorized antenna at the original height of 150 meters without interfering with one of the tower’s guy wires, and also discovered discrepancies in the stated height of the tower and diameter of the legs, so that the mounting brackets did not fit.<sup>17</sup> CBC reports that on October 24, 2019, the Translator

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<sup>8</sup> *Broadcast Applications*, Public Notice, Rep. No. 29565 (Sept. 5, 2019).

<sup>9</sup> *See* License Application, Section III, Quest. 4.

<sup>10</sup> The Commission published a public notice of the grant on September 25, 2019. *Broadcast Actions*, Public Notice, Rep. No. 49579 (Sept. 25, 2019).

<sup>11</sup> *See* 47 CFR § 74.1204.

<sup>12</sup> On October 18, 2019, CBC filed a request for Special Temporary Authority (STA) to operate with parameters that are essentially those alleged in R&I’s Petition, and recounting difficulties that delayed construction of the authorized equipment. *See* File No. BSTA-20191018AAB (rec. Oct. 18, 2019) (STA Request). R&I opposed the STA Request. The Bureau dismissed the STA Request on May 10, 2022 without a written decision because it had become moot due to CBC’s operation with corrected facilities since February 10, 2020 pursuant to Bureau grants of subsequent modification and license applications. *See infra*, notes 19, 20. All broadcast stations in Louisiana were required to file applications to renew their licenses by February 3, 2020, three months in advance of the June 1, 2020 common expiration date for all licenses in that state. CBC filed a single consolidated application to renew the licenses of the Translator and KGLA(AM). *See* File No. 0000105139 (filed Feb. 3, 2020) (Renewal Application). R&I also contests the Renewal Application, which we will address separately at a later date.

<sup>13</sup> Opposition at 6.

<sup>14</sup> CBC states that the Translator’s authorized effective radiated power (ERP) was 0.25 kW, but that it operated the Translator’s “temporary” antenna with an ERP of 0.01 kW. *Id.* CBC does not specifically report the height of the “temporary” antenna but, as discussed below, states that it could not mount its authorized antenna at the permitted height due to location of a guy wire.

<sup>15</sup> The alleged facts are supported by a declaration under penalty of perjury from CBC’s consulting engineer. *Id.*, Attachment A.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 7-8, Attachment A.

commenced operation with a repaired, authorized antenna mounted at about 146.6 meters and was at that time investigating a possible inaccuracy in the tower height in order to resolve the issue of proper antenna height.<sup>18</sup>

5. On December 9, 2019, CBC filed an unopposed application for a minor modification to the Translator's facilities, proposing to use the authorized directional antenna mounted at 143 meters above ground level, and changing the Translator's community to Baton Rouge. The Bureau granted a construction permit for the modification on January 24, 2020.<sup>19</sup> CBC filed an unopposed application to license the modified facilities on January 30, 2020, which the Bureau granted on February 10, 2020.<sup>20</sup> It thus appears that CBC is currently operating the Translator with an authorized antenna mounted at an approved height and that there have been no interference complaints. Admittedly, however, the Translator operated previously with nonconforming facilities for approximately two months.<sup>21</sup>

### III. PROCEDURAL MATTER

6. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.<sup>22</sup> If the person seeking reconsideration did not previously participate in the proceeding, they must state with particularity the manner in which their interests are adversely affected and show good reason why it was not possible for them to participate earlier.<sup>23</sup>

7. R&I did not participate in this proceeding prior to filing its Petition. It contends that the Bureau should nevertheless entertain the Petition because it is a same market competitor who had insufficient time to object earlier due to the Bureau's quick grant of the License Application. We disagree. R&I does not establish that it was not possible to participate earlier. Applications for covering licenses, unlike applications for initial construction permits, are not subject to a 30-day public notice period.<sup>24</sup> Although the Commission has allowed petitions for reconsideration if expedient grant effectively precluded participation, in each such case the period between filing of the application and grant was less than a week.<sup>25</sup> Here, there were 15 days between License Application's public notice of

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<sup>18</sup> *Id.* at 8.

<sup>19</sup> Application File No. 0000092898 (granted Jan. 24, 2020).

<sup>20</sup> Application File No. 0000103923 (granted Feb. 10, 2020).

<sup>21</sup> The License Application for the previously authorized facilities remains relevant because CBC obtained its current authorization as a modification of the license grant that R&I challenges.

<sup>22</sup> See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

<sup>23</sup> 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1).

<sup>24</sup> In reviewing applications for licenses to cover construction, the Commission presumes that the public interest determination made during the construction permit proceeding continues in effect unless circumstances have arisen that would make operation of the station against the public interest. See 47 U.S.C. § 319(c); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977). The Commission, in most instances, considers the grant of a license application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith. See, e.g., *Meyer Broad. Co.*, Memorandum Opinion and Order, 65 FCC 2d 438, 441, para. 9 (1977). The Bureau's grant of the License Application 20 days after filing followed this practice because it appeared at the time that CBC had completed construction as authorized in its Construction Permit.

<sup>25</sup> See, e.g., *Robert P. Sanborn III*, Letter Decision, 30 FCC Rcd 38, 39 (MB 2015); *Marissa G. Repp, Esq.*, Letter Decision, 32 FCC Rcd 7538, 7541-42 (MB 2017).

acceptance and its grant.<sup>26</sup> This is ample time to file an informal objection.<sup>27</sup> Although we have accepted petitions for reconsideration from non-parties when special equitable considerations were at issue, no such considerations exist here.<sup>28</sup> Therefore, R&I was not “effectively precluded” from filing an informal objection to the License Application prior to grant. Because R&I had adequate opportunity to participate earlier in the proceeding, but failed to do so, we dismiss the Petition as unacceptable under section 1.106(b) of the Rules. Nevertheless, we will consider on our own motion an appropriate response to CBC’s admitted construction of facilities other than authorized and false certification.

#### IV. DISCUSSION

8. *False Certification.* The Commission cannot properly analyze applications without accurate and complete information from the applicant. Accordingly, section 1.17(a)(1) of the Rules states that no person shall, in any written or oral statement of fact, intentionally provide material information that is incorrect or intentionally omit material information.<sup>29</sup> A misrepresentation is a false statement of fact made with the intent to deceive the Commission.<sup>30</sup> Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.<sup>31</sup> Intent to deceive is an essential element of each<sup>32</sup> and, thus, submission of erroneous information due to carelessness or gross negligence is not misrepresentation or lack of candor.<sup>33</sup> Fraudulent intent can be found from “the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.”<sup>34</sup> Intent can also be found from motive or logical desire to deceive.<sup>35</sup> False material

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<sup>26</sup> Specifically, CBC filed the License Application on August 30, 2019, the Bureau published a Public Notice of its acceptance on September 5, 2019, and granted it on September 20, 2019.

<sup>27</sup> We note that a number of Commission rules allow fewer than ten days to prepare and file a pleading. *See, e.g.*, 47 CFR § 1.45(c) (a reply to an opposition to any to any motion, petition, or request must be filed within five days after the time for filing oppositions has expired); 47 CFR § 1.106(h) (a reply to an opposition for a petition for reconsideration must be filed within seven days after the opposition is filed); 47 CFR § 1.301(c)(2) (interlocutory appeals must be filed within five days from release of the relevant order).

<sup>28</sup> *See, e.g., Frank Jazzo, Esq.*, Letter, 32 FCC Rcd 5692, 5695 (MB 2017) (accepting a petition for reconsideration where petitioner had failed to object timely to a 250-mile FM translator move).

<sup>29</sup> *See* 47 CFR § 1.17(a)(1).

<sup>30</sup> *See Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983) (*Fox River*); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004) (*Discussion Radio*).

<sup>31</sup> *See Fox River*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd at 7435.

<sup>32</sup> *See Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Discussion Radio*, 19 FCC Rcd at 7435.

<sup>33</sup> *KM Radio of St. Johns, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 5847, 5849, para. 5 (2004).

<sup>34</sup> *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (*quoting Leflore Broad. Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)); *see also Discussion Radio*, 19 FCC Rcd at 7435.

<sup>35</sup> *See Discussion Radio*, 19 FCC Rcd at 7435; *Black Television Workshop of Los Angeles, Inc.*, Decision, 8 FCC Rcd 4192, 4198 n.41 (1993) (citing *California Public Broad. Forum v. FCC*, 752 F.2d 670, 679 (D.C. Cir. 1985); *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (Rev. Bd. 1994); *Scott & Davis Enterprises, Inc.*, Decision, 88 FCC 2d 1090, 1100 (Rev. Bd. 1982)). Intent to deceive can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive. *See Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006) (citing *American Int’l Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983)).

information submitted without any intent to deceive may nevertheless be actionable under section 1.17(a)(2) if provided without a reasonable basis for believing that the information is correct.<sup>36</sup>

9. CBC characterizes its nonconforming construction and incorrect certification as “unintentional” “oversights” due to “gross negligence” and an eagerness to commence operations.<sup>37</sup> The central question in any character inquiry is whether the applicant or licensee “is likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies.”<sup>38</sup> Such matters are important because “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”<sup>39</sup>

10. Upon reviewing the record, we find that there is no evidence of deceptive intent and, thus, no misrepresentation or lack of candor. The record does not, for example, contain facts that would suggest any motive for CBC to knowingly deceive the Bureau. When CBC filed the License Application, more than two years remained in which to construct, so it would have been in no danger of forfeiting the Construction Permit had it simply waited for the correct antenna to arrive.<sup>40</sup> The benefit to CBC of its nonconforming construction seems to have been its desire to commence Translator operations immediately, as opposed to waiting what it then believed to be a relatively short time for repair of the authorized antenna.

11. Although we conclude that there was no lack of candor, we do find that CBC apparently violated section 1.17(a)(2) of the Rules, which governs submission of incorrect information without deceptive intent.<sup>41</sup> That Rule focuses on whether the licensee or applicant had a reasonable basis for believing that a false material factual statement or omission was correct and not misleading.<sup>42</sup> In this case, CBC had no reasonable basis for certifying that the Translator was constructed as authorized because CBC knew at the time of application that it had not mounted the damaged, directional antenna and had used an omnidirectional antenna at a different height. CBC acted negligently by failing to communicate the variations from the Translator’s authorization to counsel who prepared the application and then failing to review the application prepared by counsel thoroughly before it was submitted to the Commission. Given the totality of the circumstances, we find it is appropriate to establish a reporting

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<sup>36</sup> See 47 CFR § 1.17(a)(2).

<sup>37</sup> Opposition at 7-8.

<sup>38</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209, para. 55 (1986), *recons. granted in part on other grounds*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broad. v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987), *modified*, 5 FCC Rcd 3252 (1990), *on reconsideration*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

<sup>39</sup> See *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000).

<sup>40</sup> Permits forfeit if construction is not completed prior to permit expiration. Erecting temporary broadcast facilities or one that substitutes a nondirectional for a directional antenna does not constitute completion of construction. See *Tango Radio, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10564, 10568, para. 8 (2015); *Dan J. Alpert, Esq.*, Letter Order, 32 FCC Rcd 10072, 10074 (MB 2017) (full service FM station’s construction permit expired when the permittee did not complete construction with authorized directional antenna prior to permit expiration but, rather, substituted an omnidirectional antenna).

<sup>41</sup> 47 CFR § 1.17(a)(2) (no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”) Even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.

<sup>42</sup> *Id.*

requirement for CBC's future applications and to issue a Notice of Apparent Liability for a monetary forfeiture.

12. *Reporting Requirement.* Even though we have concluded that CBC's false certification was unintentional, we are sufficiently concerned about its gross negligence to require safeguards. CBC's nondisclosure of material information (*i.e.*, construction of facilities other as authorized) raises concerns about the veracity of answers it may provide in future applications. In other cases of incorrect certifications without deceptive intent, we have required applicants to alert the Commission of that history when filing additional applications within the subsequent five years.<sup>43</sup> We will establish such a reporting requirement to make Commission staff and interested parties aware of these matters in future broadcast applications by CBC, its principals, and others with attributable interests. Specifically, as set forth in the Ordering Clauses to this *NAL*, we will require CBC (Ernesto Schweikert, III, Ernesto Alejandro Schweikert, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in section 1.2112 of the Rules or the attribution standards set forth in section 73.3555 of the Rules)<sup>44</sup> to submit copies of this *NAL* with every facilities application and assignment of license or transfer of control application it files with the Commission for a period of five years.

13. *Antenna Substitution.* Section 74.1251(b)(2) of the Rules requires FM translator licensees and permittees to request and receive authority prior to making any changes to their antenna systems.<sup>45</sup> The request must be made by formal application on Schedule 349.<sup>46</sup> CBC had neither applied for nor received authority to substitute antennas prior to filing the License Application. In determining the appropriate action for this apparent violation, we will consider that CBC used the nonconforming antenna for a relatively short (two month) period and completed construction with authorized equipment prior to expiration of its construction permit, but that the violation is compounded by mounting the antenna at the wrong height and substitution of an omnidirectional antenna for a directional antenna (which is typically specified to protect against interference to stations located in the other direction). We note that the reduction in the Translator's ERP<sup>47</sup> may have minimized the threat of interference, but in fact this was yet another unapproved variation from the Translator's authorization. Given these circumstances, we are including this matter in the proposed forfeiture.

14. *Proposed Forfeiture.* We find that CBC is apparently liable for a monetary forfeiture in the amount of \$12,500 based on apparent violations of sections 74.1251(b) by failing to file an application for authority to alter an antenna system;<sup>48</sup> 74.1251(b)(2)<sup>49</sup> by constructing and operating with an unauthorized antenna at an unauthorized height; and 1.17(a)(2)<sup>50</sup> by certifying inaccurately that it had constructed the Translator as authorized. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully and/or repeatedly failed to comply with

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<sup>43</sup> See, e.g., *E-String Wireless, Ltd.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139-40, para. 18 (MB 2016) (*E-String*); see also *Michael W. Richards, Esq.*, Letter Order, File No. BLL-20180830AAW (MB Sept. 9, 2019), extended by *Bertrand Stebbins, President*, Letter Order, DA 23-483 (rel. June 23, 2023) (false certification that was unresolved due to voluntary dismissal of application).

<sup>44</sup> 47 CFR §§ 1.2112, 73.3555.

<sup>45</sup> *Id.* § 74.1251(b)(2).

<sup>46</sup> *Id.*

<sup>47</sup> See note 14 *supra*.

<sup>48</sup> 47 CFR § 74.1251(b).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* § 1.17(a)(2).

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>51</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>52</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>53</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>54</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>55</sup>

15. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish base forfeiture amounts of \$3,000 for failure to file a required form and \$10,000 for construction or operation without an instrument of authorization for the service.<sup>56</sup> The guidelines do not enumerate a base forfeiture amount for a false certification. Thus, with respect to that certification, we must assess a forfeiture amount taking into account the relevant statutory factors in Section 503(b)(2)(D) 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>57</sup> These are the same factors that the Commission considers when deciding whether it is appropriate to adjust base amounts upward or downward.<sup>58</sup> In previous cases of false certifications by secondary stations without intent to deceive, the Commission has found forfeitures of \$5,000 appropriate.<sup>59</sup>

16. In determining whether to adjust the base forfeitures and what amount is appropriate for the certification violation having no base amount, we take note of CBC’s contention that it did not understand the significance of an antenna change. That explanation, however, is “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”<sup>60</sup> As noted above, there are other factors in the present case that mitigate and/or exacerbate the violations. On the one hand, we accept that CBC’s false certification was gross negligence without intent to deceive, CBC used the nonconforming antenna for a relatively short (two month) period, completed construction with authorized equipment before expiration of its construction permit, and is providing only a secondary service. On the other hand, the violation was compounded by mounting the antenna at the wrong height, substitution of an omnidirectional antenna for a directional antenna (albeit at a reduced power level and with no interference complaints arising in the period of noncompliant operation), and filing of an admittedly incorrect certification with the Commission. Taking into consideration all of the factors required by

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<sup>51</sup> See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

<sup>52</sup> 47 U.S.C. § 312(f)(1).

<sup>53</sup> See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

<sup>54</sup> See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

<sup>55</sup> 47 U.S.C. § 312(f)(2).

<sup>56</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

<sup>57</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>58</sup> *Id.* See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

<sup>59</sup> *E.g., E-String*, 31 FCC Rcd. at 139, paras. 15-16, n.50 and cases cited therein (MB 2016).

<sup>60</sup> *Southern California*, 6 FCC Rcd at 4387, para. 3.

section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,<sup>61</sup> and especially that the Translator is providing secondary service, we will reduce the combined forfeiture for the failure to file an application and unauthorized operation from the \$13,000 (\$ 3,000 + \$10,000) base amount to \$7,500, the same amount that the Bureau recently applied to another FM translator that substituted a nonconforming antenna.<sup>62</sup> Further taking these same factors into consideration with respect to the false certification, we propose an additional forfeiture of \$5,000 for that violation, an amount that the Bureau has found appropriate for similar incorrect FM translator certifications which already take into account the secondary nature of such stations. Thus, the total proposed forfeiture is \$12,500 (\$7,500 + \$5,000).

## V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed by Radio & Investments, Inc. on October 15, 2019 with respect to the grant of an application by Crocodile Broadcasting Corp. to license a new FM translator station, W234DH, Baton Rouge (formerly Norco) LA, File No. BLFT-20190830AAN, **IS DISMISSED**.

18. **IT IS FURTHER ORDERED** that Crocodile Broadcasting Corp. (Ernesto Schweikert, III, Ernesto Alejandro Schweikert, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112 or the attribution standards set forth in 47 CFR § 73.3555) **SHALL SUBMIT** a copy of this Order and Notice of Apparent Liability for Forfeiture with every facilities application--FCC Form 301, 309, 318, 340, or 349--or any assignment of license/transfer of control application--FCC Form 314, 315, or 345--it files with the Commission for a period of five years from the date of this decision.

19. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,<sup>63</sup> and sections 1.80 and 0.283(d) of the Commission's rules,<sup>64</sup> that Crocodile Broadcasting Corp., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand five hundred dollars (\$12,500)** for its apparent willful violation of sections 74.1251(b), 74.1251(b)(2), and 1.17(a)(2) of the Commission's rules.<sup>65</sup>

20. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>66</sup> within thirty (30) days of the release date of this *NAL*, Crocodile Broadcasting Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

21. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),<sup>67</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it

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<sup>61</sup> *Supra*, para. 15.

<sup>62</sup> See *WIN Radio Broad. Corp.*, DA 23-552 (rel. June 27, 2023) and cases cited therein (noting that the Bureau has in past cases reduced forfeiture amounts for secondary stations and reducing a base forfeiture in this proceeding from \$13,000 to \$7,500 for an FM translator that failed to apply for consent before substituting a nonconforming antenna).

<sup>63</sup> 47 U.S.C. § 503(b).

<sup>64</sup> 47 CFR §§ 1.80 and 0.283.

<sup>65</sup> *Id.* § 74.1251(b).

<sup>66</sup> *Id.* § 1.80.

<sup>67</sup> Payments made using CORES do not require the submission of an FCC Form 159.



is requested that Licensee send notice that payment has been made to [Irene.Bleiweiss@fcc.gov](mailto:Irene.Bleiweiss@fcc.gov). Below are instructions that payors should follow based on the form of payment selected:<sup>68</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>69</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 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 four digits, denoting the year, excluded (e.g., NAL 202312345678 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 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. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 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.

22. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.<sup>70</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).

23. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.<sup>71</sup> The written response must be filed with the Office of the

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<sup>68</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>69</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>70</sup> See 47 CFR § 1.1914.

<sup>71</sup> *Id.* §§ 1.16 and 1.80(g)(3).

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. A courtesy copy should also be emailed to [Irene.Bleiweiss@fcc.gov](mailto:Irene.Bleiweiss@fcc.gov) to assist in processing the response.

- 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.
  - 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.
  - 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.<sup>72</sup>

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.<sup>73</sup>

25. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ernesto Alejandro Schweikert, Vice President, Crocodile Broadcasting Corp., 3540 South I-10 Service Rd. West, Metairie, LA 70001 and by electronic mail to [alejandro@kgla.tv](mailto:alejandro@kgla.tv). A copy shall also be sent to the station's representative, Francisco Montero, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17<sup>th</sup> St., Arlington, VA 22209 and by electronic mail to [montero@fhhlaw.com](mailto:montero@fhhlaw.com).

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>72</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>73</sup> 47 U.S.C. § 503(b)(2)(E). See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).