

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

In the Matter of	)	
	)	File No.: EB-FIELDSCR-16-00022288
Vearl Pennington,	)	NAL/Acct. No.: 201732480001
Morehead, Kentucky	)	FRN: 0010956670
	)	
and	)	
	)	
Michael Williamson,	)	FRN: 0025901489
Morehead, Kentucky	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 11, 2017**

**Released: May 12, 2017**

By the Commission: Commissioner O’Rielly issuing a statement.

**I. INTRODUCTION**

1. We propose a penalty of \$144,344 jointly and severally against Vearl Pennington (Pennington) and Michael Williamson (Williamson, and, together with Pennington, the TV10 Operators) for apparently operating an unlicensed low power television (LPTV) station on channel 10 in Morehead, Kentucky (Station). Although Pennington once held a Commission license to operate the Station, he failed to renew the Station’s license before its expiration on August 1, 1998, and has apparently operated the Station since that time without any authorization from the Commission, currently with Williamson. Upon learning of the Station’s unlicensed operation, earlier this year, the Commission’s Enforcement Bureau instructed the TV10 Operators to cease operating the Station and warned them that continued unlicensed operations could result in significant penalties, yet both continued to operate the Station. Because of the egregious nature of the TV10 Operators’ conduct and their deliberate disregard of Commission instructions, these apparent violations warrant a significant penalty. Commission action in this area is crucial because unlicensed television station operations create a danger of interference to licensed communications, and undermine the Commission’s ability to regulate uses of radio spectrum.

**II. BACKGROUND**

2. In December 1987, the Commission authorized Pennington to construct the Station in Morehead, Kentucky as W10BM, Facility ID No. 69839.<sup>1</sup> According to the Commission’s records, he filed a license application, which was granted by the Commission on March 29, 1990,<sup>2</sup> and on April 9, 1993, Pennington filed an application to renew the Station’s license.<sup>3</sup> The Commission granted the 1993 Renewal Application on July 27, 1993 for a license term expiring on August 1, 1998 (1993 License Renewal). According to the Commission’s records, Pennington never sought to again renew the Station’s license, prior to its expiration on August 1, 1998, or thereafter.

<sup>1</sup> See CDBS File No. BPTVL-19870702Y7.

<sup>2</sup> See CDBS File No. BLTVL-19900102IG. Prior to licensing the Station, Pennington filed an application to modify the Station’s construction permit, which was ultimately granted. See CDBS File No. BMPTVL-19890606IG.

<sup>3</sup> See CDBS File No. BRTVL-19930409AA (1993 Renewal Application).

3. Accordingly, on April 27, 2004, the Media Bureau sent Pennington a letter at his address of record with the Commission stating that it had not received an application to renew the Station's license.<sup>4</sup> As part of the Renewal Inquiry, the Media Bureau provided Pennington with 30 days to establish that he had indeed applied to renew the Station's license and indicated that, if Pennington failed to do so, it would update the Bureau's Consolidated Data Base System (CDBS) to reflect the cancellation of the Station's license.<sup>5</sup> On October 18, 2004, after receiving no response from Pennington, the Media Bureau updated CDBS to note the Station's cancelled status in light of Pennington's failure to seek renewal of the Station's license prior to its expiration on August 1, 1998 or thereafter.<sup>6</sup>

4. Twelve years later, in an unrelated application,<sup>7</sup> it came to the attention of staff of the Media Bureau that the Station had continued to operate despite the fact that its license was cancelled in 1998. As a result, on June 10, 2016, the Media Bureau referred the matter to the Enforcement Bureau for further investigation.

5. On August 16, 2016, two agents from the Enforcement Bureau's Atlanta Field Office (Atlanta Office) traveled to Morehead, Kentucky and, using direction-finding techniques, identified an antenna structure from which the Station appeared to be transmitting (First Inspection). The agents traveled to the antenna structure located at or near 38° 11' 8.7" North Latitude and 83° 25' 11.71" West Longitude (Antenna Structure) to investigate further, and upon arriving, spoke with a technician employed by the owner of the Antenna Structure who happened to be present at the site.<sup>8</sup> The technician confirmed that the Station transmitted from the Antenna Structure. The agents then took field strength measurements and confirmed that the Station was transmitting at a power level that exceeded the levels permitted for unlicensed devices under Part 15 of Commission's rules (Rules), thus requiring a license to operate.<sup>9</sup>

6. Later that day, the agents traveled to the Station's studio, located at 135A Lee Cemetery Road, Morehead, Kentucky (Studio Site), where they spoke with Williamson about the Station's

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<sup>4</sup> See Letter from Hossein Hashemzadeh, Associate Chief, Video Division Media Bureau, to Vearl Pennington, dated April 27, 2004 (on file at EB-FIELDSCR-16-00022288) (Renewal Inquiry). Pennington held a license for station W06BC, Mt. Sterling, Kentucky, that was valid for a five-year term ending on August 1, 1998. In order for the Station to continue to operate beyond that date, Pennington had to first seek and obtain a license renewal. See 47 CFR § 73.3539(a) (requiring a broadcast television license renewal application to be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed"). The Renewal Inquiry sought information about the status of the renewal applications for the Station in Morehead and Pennington's station W06BC in Mt. Sterling.

<sup>5</sup> *Id.*

<sup>6</sup> See Letter from Hossein Hashemzadeh, Associate Chief, Video Division, Media Bureau, to Vearl Pennington, dated October 18, 2004 (on file at EB-FIELDSCR-16-00022288) (Cancellation Letter). The Cancellation Letter also effected a cancellation of the license for Pennington's station W06BC, also due to Pennington's failure to renew.

<sup>7</sup> See Experimental STA Application, LMS File No. 0000011144, Attachment at 2-3 (Texas Application).

<sup>8</sup> We note that the Antenna Structure is not situated at the coordinates specified in the Station's license (CDBS File No. BLTVL-19900102IG), with Station technical facilities that vary from those that were so authorized. Thus, as discussed in paragraphs 9 – 10, *infra*, the Station not only appears to have been operated for more than 18 years without any proper authority from the Commission, it has operated with technical facilities that the Commission has never previously authorized.

<sup>9</sup> Section 15.209 of the Rules provides that non-licensed broadcasting in the 88-216 MHz band is permitted only if the field strength of the transmission does not exceed 150 microvolts per meter ( $\mu\text{V}/\text{m}$ ) at three meters. 47 CFR § 15.209. Measurements taken on August 16, 2016, showed a field strength of 3,090,946  $\mu\text{V}/\text{m}$  (extrapolated to three meters), a value that exceeded the permissible level for a non-licensed Part 15 transmitter by a factor of 20,606.

operations. Williamson, who has identified himself as both the Station's "studio manager" and its "operations manager," was unable to provide the agents with evidence of a current license or other authorization from the Commission to operate an LPTV station on channel 10 in Morehead, Kentucky. Instead, Williamson claimed that Pennington had previously renewed the Station's license in 1993. Williamson alleged further that the Commission lost the 1993 filing and implied that, as a result of that loss, its license remained in effect. In an attempt to substantiate his allegations, Williamson then telephoned an individual who, after identifying himself as Pennington, confirmed Williamson's account. The agents explained that, without a license or other Commission-issued authorization, the Station's transmissions were considered unlicensed and unauthorized and directed that the transmissions must immediately cease. The agents then issued and handed to Williamson a Notice of Unlicensed Radio Operation (NOUO) informing him that an unlicensed station was illegally operating from the Antenna Structure and warning him that continued unlicensed operations could result in additional enforcement action. The NOUO stated, in capital and bold letters, "**UNLICENSED OPERATION OF THIS RADIO STATION MUST BE DISCONTINUED IMMEDIATELY.**"<sup>10</sup>

7. In a written response to the First NOUO dated August 16, 2016,<sup>11</sup> Williamson generally reiterated the assertions he made to the agents earlier in the day that the Station's license was last renewed in 1993 but that the Station never received confirmation of the grant of the 1993 Renewal Application or any subsequent correspondence from the Commission regarding the Station.<sup>12</sup> To substantiate his assertions, Williamson included copies of the Station's construction permits, its license to cover, and a printout of an information page from CDBS pertaining to the 1993 Renewal Application, which, as Williamson noted, includes the date the 1993 License Renewal was granted, but does not specify an expiration date for the Station's renewed license.<sup>13</sup> Williamson, however, neither provided evidence of the Station's authority to operate nor did he indicate compliance with the agents' instruction on that day, repeated in the First and Second NOUO, to cease transmitting on the Station. Instead, Williamson intimated that the Station remained on the air, characterizing the First NOUO's unequivocal directive to cease operations as a "request" and stating that "[f]or us to cease operations immediately . . . would deprive many citizens of Morehead of their only source of news and other events."<sup>14</sup>

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<sup>10</sup> *Michael Williams*, Notice of Unlicensed Radio Operation (EB, Atlanta Field Office, Aug. 16, 2016) (First NOUO). Several days later, the Atlanta Office sent Williamson a second NOUO, which also contained the directive that the Station discontinue operations immediately. *Michael Williams*, Notice of Unlicensed Operation (EB, Atlanta Field Office, Aug. 22, 2016) (Second NOUO). Although both the First NOUO and the Second NOUO were mistakenly issued to "Michael Williams" (rather than Michael Williamson), we find that Williamson has actual notice of the contents of both documents, as he signed the First NOUO to acknowledge receipt and has since provided a written response. See, e.g., *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 121 n.3 (EB 2014) (declining to rescind an incorrectly captioned notice of apparent liability, where the licensee was afforded an opportunity to respond and availed itself of that opportunity).

<sup>11</sup> See Response of Michael Williamson to Atlanta Field Office, Region Two, Enforcement Bureau (August 16, 2016) (on file in EB-FIELDSCR-16-00022288) (NOUO Response). Although the NOUO Response was dated August 16, 2016, Williamson did not mail the document until August 24, 2016, two days after the date of the Second NOUO.

<sup>12</sup> NOUO Response at 1.

<sup>13</sup> *Id.* at 1, 8.

<sup>14</sup> *Id.*

8. On September 7, 2016, an agent from the Atlanta Office returned to Morehead, Kentucky (Second Inspection) and confirmed that the Station was still transmitting from the Antenna Structure at a level that far exceeded the limits for unlicensed transmissions permitted under Part 15.<sup>15</sup>

### III. DISCUSSION

#### A. The TV10 Operators Apparently Violated Section 301 of the Act

9. We find that the TV10 Operators apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act). Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States without a license granted by the Commission.<sup>16</sup> Here, these apparent violations of Section 301 of the Act are both egregious and longstanding.

10. The TV10 Operators attempt to justify Pennington's failure to have renewed the Station's license, as well as the subsequent unauthorized operation of the Station, on twin claims of purportedly lost paperwork relating to the grant of the Station's license renewal application in 1993. Specifically, the TV10 Operators assert that Pennington did not seek renewal of the Station's license in 1998 because he (a) did not receive correspondence from the Commission reminding him to do so, and (b) never received a copy of the 1993 License Renewal.<sup>17</sup> For the reasons discussed below, we conclude that both claims are without merit.

#### 1. Receipt of Renewal Reminders

11. During the First Inspection and in the NOUO Response, the TV10 Operators asserted that they did not receive correspondence from the Commission after Pennington submitted the 1993 Renewal Application and were unaware of the need to file subsequent renewal applications.<sup>18</sup> Interpreting these statements in a light most favorable to the TV10 Operators, they amount to an assertion that their failure to receive a renewal reminder from the Commission and ignorance of the Rules somehow excused Pennington's failure to apply for renewal of the Station's license in 1998.

12. Under long-established precedent, each Commission licensee is generally "charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority."<sup>19</sup> More specifically, the Commission has previously determined that renewal reminders are merely "provided as a courtesy to licensees"<sup>20</sup> and that a licensee's obligation to timely file a license renewal application "attaches irrespective of its failure to receive Commission notification" of an upcoming renewal application deadline.<sup>21</sup> Section 73.3539(a) of the Rules requires a broadcast television license renewal application to be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed...."<sup>22</sup> Thus, because the license for the Station expired on August 1, 1998, the renewal application was due on April 1, 1998.

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<sup>15</sup> See 47 CFR § 15.209. Measurements taken on September 7, 2016, showed a field strength of 4,129,453  $\mu\text{V}/\text{m}$  (extrapolated to three meters), a value that exceeded the permissible level for a non-licensed Part 15 transmitter by 27,530 times.

<sup>16</sup> 47 U.S.C. § 301.

<sup>17</sup> See NOUO Response at 1.

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

<sup>19</sup> *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

<sup>20</sup> *Life on the Way Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 2603, 2608, n.34 (EB 2015).

<sup>21</sup> See *Discussion Radio*, 19 FCC Rcd at 7437, n.20 (citing *ACC Network Corp.*, Order, 16 FCC Rcd 22446, 22447 (WTB 2001)).

<sup>22</sup> 47 CFR § 73.3539(a).

Licensees are obligated to comply fully with the Rules, including filing a timely renewal application and maintaining in effect the station's authorizations.<sup>23</sup> Accordingly, we find that the TV10 Operators' claimed failure to have received a renewal reminder at the Station's address of record is irrelevant to Pennington's obligation to have timely sought renewal of the station's license prior to its expiration on August 1, 1998.<sup>24</sup>

## 2. Receipt of the 1993 License Renewal

13. The NOUO Response includes the following statement: "While we have never received any written confirmation of the [1993] renewal (or, for that matter, any other correspondence at all from the FCC), public records show the [1993] renewal was granted on 7/27/1993 without an expiration date."<sup>25</sup> Construing this statement in a light most favorable to the TV10 Operators, it appears that the TV10 Operators argue that Pennington's failure to file the Station's renewal application in 1998 should be excused because they either (a) never received the 1993 License Renewal, or (b) misinterpreted the CDBS information page as indicating that the 1993 Renewal Application was granted without an expiration date. Both arguments are unsupported and without merit.

14. With respect to the contention that Pennington never received a copy of the 1993 License Renewal, we note that official Commission records reveal that the Media Bureau mailed the 1993 License Renewal to the Station's address of record set forth on the 1993 Renewal Application. If Pennington had changed the Station's address of record prior to the grant of the 1993 License Renewal, under Sections 1.5 and 1.65 of the Rules, he would have been required to advise the Commission of the Station's new address of record.<sup>26</sup> The TV10 Operators have provided no evidence of such a filing changing the Station's address. In the absence of any such change-of-address notification prior to the mailing of the 1993 License Renewal, the Commission looks to the licensee's most recent application (here, the 1993 Renewal Application) to establish the licensee's address of record.<sup>27</sup> Accordingly, the TV10 Operators' unsupported assertions that Pennington did not receive the 1993 License Renewal are unpersuasive.

15. Moreover, even assuming for the sake of argument that Pennington did not receive the 1993 License Renewal, as the then-licensee of the Station, he was responsible for knowing the status of his Station's license. For example, under Section 74.765 of the Rules, a licensee has an affirmative obligation to ensure that a copy of its license is placed among its station's records and is available for inspection.<sup>28</sup> If Pennington had any doubt about the status of the Station's license, he had an affirmative obligation to have inquired with the Media Bureau about the status of the 1993 Renewal Application, and upon learning that it had been granted, should have requested a duplicate of the 1993 License Renewal in order to not only comply with Section 74.765 of the Rules, but also to know when he needed to file his

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<sup>23</sup> See, e.g., *Hemmingford Media, Inc.*, Forfeiture Order, 14 FCC Rcd 2940, 2941-2 (CIB 1999) (responsibility for complying with terms of station license "rests solely and exclusively with the licensee") (citing *Empire Broadcasting Corp.*, Memorandum Opinion and Order, 25 FCC 2d 68 (1970)).

<sup>24</sup> We also note that, through the Renewal Inquiry, the Media Bureau provided the TV10 Operators with an opportunity to discuss the status of the Station's 1998 renewal application. Yet, instead of offering *some* explanation of why a renewal application was not filed in 1998, the TV10 Operators remained silent.

<sup>25</sup> NOUO Response at 1 (emphasis in original).

<sup>26</sup> See 47 CFR §§ 1.5 (licensee's obligation to update address of record, generally) and 1.65 (applicant's responsibility for the continuing accuracy of applications pending before the Commission).

<sup>27</sup> See 47 CFR §§ 1.5(a) ("Unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission" for the purpose of serving documents and sending correspondence); 1.5(b) ("The licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to this address will promptly reach him or some person authorized by him to act on his behalf").

<sup>28</sup> See 47 CFR § 74.765.

next license renewal application. Pennington apparently made no such efforts. TV10 Operators cannot now rely on Pennington's failure to do so as a means of justifying his claimed lack of knowledge of the Station's license term as an excuse for his failure to have filed an application for renewal of the Station's license.

16. TV10 Operators also appear to have misinterpreted the CDBS page to conclude that the Station's 1993 Renewal Application was granted, but without an expiration date, purportedly making the filing of a renewal application unnecessary. TV10 Operators argue that the CDBS information page states that the 1993 Renewal Application was granted and a license was issued without an expiration date. Because CDBS did not exist when the Station's 1998 renewal application was due to the Commission, TV10 Operators could not have relied on information purportedly contained in it to confirm the date on which the Station's license was set to expire.<sup>29</sup> To the extent that TV10 Operators claim to have relied on the information in CDBS following its launch after the 1998 renewal application had been due, they fail to acknowledge that a search of CDBS using the system's "station search" feature does in fact list August 1, 1998 as the license expiration date for the Station. Furthermore, a copy of the Station's license renewal authorization, which was obtained from the Station's publicly accessible Commission Reference Information Center file, also indicates that the Station's license expired on August 1, 1998.<sup>30</sup>

17. We also reject TV 10 Operators' contention that they were confused about the need to renew the Station license upon its expiration in 1998 due to failings by the Media Bureau in its mailings to Pennington and the alleged state of the information in CDBS. As the licensee of the Station, Pennington should have been well aware of the finite term of his LPTV license and the requirement that he timely file a license renewal application, having filed the 1993 Renewal Application upon the initial expiration of the Station license that year.

18. In fact, if there remained any confusion in Pennington's mind as to the status of the Station's license or its license renewal application, such uncertainty was eliminated by the letter sent to Pennington by the Video Division, again at the Station's address of record, dated April 27, 2004.<sup>31</sup> In that letter, the Video Division stated that a renewal application had not been filed during the last renewal period and that "the license for the station is therefore subject to cancellation."<sup>32</sup> The Video Division instructed Pennington to file a license renewal application within 30 days and warned him that "failure to do so will result in cancellation of the license for the station."<sup>33</sup> No license renewal application or response to the letter was received by the Commission. Accordingly, consistent with the warning in the earlier letter, on October 18, 2004, the Station's license was cancelled and its call sign deleted.<sup>34</sup> The Commission never received an appeal of any kind, and that license cancellation has now been final for over twelve years.<sup>35</sup>

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<sup>29</sup> The Commission launched CDBS on November 2, 1999.

<sup>30</sup> See [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/pubacc/prod/sta\\_det.pl?Facility\\_id=69839](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/pubacc/prod/sta_det.pl?Facility_id=69839).

<sup>31</sup> Renewal Inquiry at 1. A copy of this letter was obtained from the Station's Reference Information Center file and is publicly available at: <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=69839>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Cancellation Letter at 1.

<sup>35</sup> Although the Station's license was not formally cancelled until 2004, that does not change the fact that the Station had been operating without a valid instrument of authorization since its license expired on August 1, 1998. Even had Pennington filed a license renewal application at some time after expiration and prior to cancellation, the Station may still have been subject to potential forfeiture for not only failing to file a timely license renewal application, but also operating without a valid authorization. See e.g., *Salmon River Communications, Inc.*, Memorandum Opinion

(continued...)

19. Regardless of the reason for Pennington's failure to seek renewal of the Station's license in 1998 or subsequently challenge the Station's license cancellation in 2004, the fact remains that he continued to operate the Station, with the acknowledged participation of Williamson, long after its license had expired and was subsequently cancelled by the Media Bureau.<sup>36</sup> In fact, the TV10 Operators continued their illegal operation of the Station in 2016 after (a) being specifically warned by agents that such operations were not authorized and (b) receiving written instructions<sup>37</sup> from the Commission in the First NOUO and Second NOUO that such illegal operations "must be discontinued immediately."<sup>38</sup>

20. In the NOUO Response, the TV10 Operators attempt to justify their non-compliance with these unambiguous instructions contained in the First NOUO and Second NOUO with the assertion that terminating the illegal operation of the Station "would deprive many citizens of Morehead of their only source of news and other events."<sup>39</sup> We are aware of no precedent, nor do the TV10 Operators cite any, supporting the proposition that the sustained illegal operation of a station is justified on the ground that the operator provides service to the public. The TV10 Operators have intentionally chosen to ignore our repeated notices that they do not have the requisite authority to operate the Station, including most recently our clear, written directives this year in both NOUOs to terminate the Station's unlawful operations. Accordingly, we now propose against them the maximum monetary forfeiture permitted under the Act.

### **B. Joint and Several Liability**

21. As discussed above, we find that the TV10 Operators are both apparently liable for unauthorized operation under Section 301 of the Act. The Enforcement Bureau has previously found that joint and several liability is appropriate when more than one party demonstrates control over a station,<sup>40</sup> and we find that such joint and several liability is appropriate here in light of both parties' ongoing involvement in the illegal operation of the Station years after its license expired. With respect to Pennington, in the course of the First Inspection, he spoke with a Commission agent by phone and demonstrated that he was knowledgeable about the Station's license history and its current operations. Shortly after the First Inspection, Pennington contacted the Media Bureau by telephone to discuss the status of the Station's license. For his part, during the First Inspection, Williamson demonstrated that he had physical access to the Station's studio, held himself out to Commission agents as the Station's "studio manager" and "operations manager," provided the agents with a business card for "TV/Cable 5" identifying himself as "studio manager, production, technician and sales," and signed the NOUO Response on letterhead bearing the Station's former call sign, repeatedly referring to the Station operation as having been conducted by him and Pennington (*i.e.*, "we"). Inasmuch as both TV10 Operators have admittedly participated in the operation of the Station such liability "may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation."<sup>41</sup>

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and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14490, 14492 (MB 2011) (\$13,000 forfeiture proposed for late-filing and unauthorized operation for more than five years after station's license expired).

<sup>36</sup> See NOUO Response at 1 (claiming that the Station "has been in operation for almost 26 years").

<sup>37</sup> In the response, Williamson characterizes the First NOUO's instructions to immediately cease unauthorized operations as a "request" from the Commission. To be clear, the instructions contained in the First NOUO and Second NOUO are not "requests" but directives requiring the recipient to "discontinue[] immediately" its unlicensed operations. First NOUO at 1; Second NOUO at 1.

<sup>38</sup> *Id.*

<sup>39</sup> NOUO Response at 1.

<sup>40</sup> *Andre Alleyne Jesse White*, Forfeiture Order, 26 FCC Rcd 10372 (EB 2011).

<sup>41</sup> *Id.* at 10374, para. 8 (finding parties "equally culpable" for violating Section 301 in light of the control of the station that both parties demonstrated).

### C. Proposed Forfeiture

22. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any individual or entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”<sup>42</sup> Here, Section 503(b)(2)(D) of the Act authorizes the Commission to assess a forfeiture against the TV10 Operators of up to \$19,246 for each day of a continuing violation, up to a statutory maximum of \$144,344 for a single act or failure to act.<sup>43</sup> In exercising our forfeiture authority, we must consider 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>44</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>45</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>46</sup>

23. Section 503(b)(6) of the Act empowers the Commission to assess forfeitures for violations that occurred within the year preceding the issuance of a Notice of Apparent Liability for Forfeiture.<sup>47</sup> Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for the construction or operation of a station without an instrument of authorization for the service for each violation or each day

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<sup>42</sup> 47 U.S.C. § 503(b).

<sup>43</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (2015 Inflation Adjustment Act) (collectively, Federal Civil Penalties Inflation Adjustment Act, as amended), codified as amended at 28 U.S.C. § 2461 note, required the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, also requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15 of each year. 28 U.S.C. § 2461 note, citing the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended, § 4(a). See also Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies re Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-17-11, Dec. 16, 2016 at 1, [https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11\\_0.pdf](https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf). The Bureau released the order making the 2017 annual adjustment on December 30, 2016. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 13485 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 82 Fed. Reg. 8170 (Jan. 24, 2017) (setting January 24, 2017, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase.” See 28 U.S.C. § 2461 note, citing the Federal Civil Penalties Inflation Adjustment Act, as amended, § 6.

<sup>44</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>45</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

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

<sup>47</sup> 47 U.S.C. § 503(b)(6).

of a continuing violation.<sup>48</sup> Here, the facts justify a substantial penalty. The Station has been operated for 18 years beyond the expiration of the Station's license and with facilities that vary from those previously authorized. More recently, the TV10 Operators have ignored specific instructions from the Commission's agents to cease operating the Station. Given the duration of this apparent violation of Section 301 of the Act, coupled with the disregard by the TV10 Operators of the Commission's instructions, we propose a base forfeiture of \$10,000 for *each day* during the 22-day period between the First Inspection (when Commission agents warned the TV10 Operators that further operations could result in monetary penalties) and the date of the Second Inspection (when Commission agents confirmed that the Station remained on the air), resulting in a total proposed base forfeiture amount of \$220,000. However, because Section 503(b)(2)(D) of the Act imposes a maximum penalty for continuing violations arising from a single act or failure to act, we must reduce the total base forfeiture amount to \$144,344, the maximum amount so allowed.<sup>49</sup>

24. Given the totality of the circumstances, we conclude that a significant upward adjustment of the forfeiture would be warranted if the proposed forfeiture amount were not already at the statutory maximum.<sup>50</sup> First, based on the investigations by the Enforcement and Media Bureaus, the Station has been operated for more than 18 years after the Station's license expired and more than 12 years after the Media Bureau declared it cancelled, in apparent violation of Section 301 of the Act. Second, the TV10 Operators ignored the Commission's directives on August 17 and 22, 2016 and continued to operate the Station after being notified that they lacked any authority to do so. Such misconduct evidences a troubling disregard for the Commission and its processes and calls into question their claims of staff error and their confusion regarding the need to have renewed the Station license in 1998, after it had been renewed in 1993. However, because the apparent violation of Section 301 of the Act constitutes a single, ongoing violation, we do not have the ability to impose upward adjustments beyond the maximum penalty (\$144,344) that Congress has authorized.

25. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. We specifically decline to downwardly adjust the proposed forfeiture on the grounds that the violations allegedly resulted from the TV10 Operators' lack of knowledge of the need to renew the Station's license.<sup>51</sup> Further, we note that the Commission has sometimes downwardly adjusted the base forfeiture in enforcement actions in which the

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<sup>48</sup> 47 CFR § 1.80(b).

<sup>49</sup> 47 U.S.C. § 503(b)(2)(D); *see also supra*, note 43 (adjustment of statutory limits to reflect inflation). *See also Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 109 (D.C. Cir. 1984), *quoting Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("The breadth of agency discretion is, if anything, at its zenith when the action assailed relates ... to the fashioning of policies, remedies and sanctions."); *Consolidated Gas Transmission Corporation v. FERC*, 771 F.2d 1536, 1549 (D.C. Cir. 1985) (same).

<sup>50</sup> *See AT&T, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 856, 861, para. 12 (2015) (proposing a significant upward adjustment for operating multiple common carrier fixed point-to-point microwave stations at variance from their authorizations for up to five years); *Midessa Television Limited Partnership*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (proposing a significant upward adjustment for operating three Broadcast Auxiliary Services (BAS) stations without authorization and six BAS stations at variance from authorizations for at least four years); *Union Oil Company of California*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13811, para. 10 (2012) (significant upward adjustment for unlicensed operation of a Private Land Mobile Radio Service station for six years and an Aeronautical and Fixed Advisory station for nearly eight years).

<sup>51</sup> *See Discussion Radio*, 19 FCC Rcd at 7438, para. 15 (applying a downward adjustment in response to the licensee's claim that it had not received a renewal reminder but noting that "[t]he Commission will be disinclined to propose reductions in future cases based on alleged errors in mailing license renewal materials" to the licensee).

licensee has filed a renewal application after the Station's license expired.<sup>52</sup> We decline to do so here because, despite repeated warnings, in the six years between expiration of the Station's license in August 1998 and its cancellation in October 2004, there was no attempt to renew the Station's license or to request temporary operating authority and operated from a location and at technical parameters that were never authorized. As a result, this case is more similar to those instances in which the Commission has declined to apply a downward adjustment<sup>53</sup> than it is to cases in which it has opted to do so.<sup>54</sup> Moreover, we also consider the fact that the TV10 Operators disregarded repeated Commission instructions to cease operations.<sup>55</sup> Accordingly, we decline to provide a downward adjustment of the base forfeiture amount.

26. Based on all the evidence and the forfeiture adjustment factors discussed above, including the egregiousness regarding the nature and duration of the violations, prior violations, and the TV10 Operators' disregard of the Commission's instruction to immediately cease operations, we propose a total forfeiture of \$144,344, for which Pennington and Williamson shall be jointly and severally liable. In addition, we once again direct the TV10 Operators immediately to discontinue unlicensed operation of the Station. Any further unauthorized operation may be met with additional penalties.

#### IV. CONCLUSION

27. We have determined that Pennington and Williamson apparently willfully and repeatedly violated Section 301 of the Act. We have further determined that Pennington and Williamson are apparently jointly and severally liable for a forfeiture in the amount of \$144,344.

#### V. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>56</sup> and Section 1.80 of the Rules,<sup>57</sup> Vearl Pennington and Michael Williamson are hereby **NOTIFIED** of their **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of One Hundred Forty-Four Thousand, Three Hundred and Forty-Four Dollars (\$144,344) for willful and repeated violations of Section 301 of the Act.<sup>58</sup>

29. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>59</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Vearl Pennington

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<sup>52</sup> See, e.g., *id.* at 7438 (applying a downward adjustment on the basis that post-expiration operation of a previously licensed broadcast station "is not comparable to 'pirate' wireless operations"); *Joe L. Ford, d/b/a Ford Communications*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 23721 (EB 2000).

<sup>53</sup> See, e.g., *AT&T, Inc.*, 30 FCC Rcd at 862-63, para. 15 (no downward adjustment for extended delay in filing conforming applications); *Midessa Television*, 29 FCC Rcd at 13251, para. 11 (declining to apply a downward adjustment and noting that "licensees who find themselves out of compliance with the licensing requirements should immediately cease unauthorized operation and seek operating authority and/or modify their authorizations before continuing to operate"); *Union Oil*, 27 FCC Rcd at 13811, para. 11 (declining to apply a downward reduction "on the grounds of lack of knowledge of the expired authorization" and noting that "all licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term").

<sup>54</sup> See, e.g., *Discussion Radio*, 19 FCC Rcd at 7438, para. 15 (applying downward reduction where, though renewal application was filed 18 months late, licensee was found not to be comparable to "'pirate' wireless operations").

<sup>55</sup> See, e.g., *Iglesia Cristiana Ebenezer, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14642 (EB 2013) (applying an upward adjustment for continuing to operate an FM translator station at an unauthorized location even after it was specifically directed by Commission agents to cease the unauthorized operation).

<sup>56</sup> 47 U.S.C. § 503(b).

<sup>57</sup> 47 CFR § 1.80.

<sup>58</sup> 47 U.S.C. § 301.

<sup>59</sup> 47 CFR § 1.80.

and Michael Williamson **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 32, below.

30. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Vearl Pennington and Michael Williamson shall send electronic notification of payment to SCR-Response@fcc.gov and Matthew.Gibson@fcc.gov on the date said payment is made. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.<sup>60</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:<sup>61</sup>

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

31. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.<sup>62</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

32. The written statement 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(f)(3) of the Rules.<sup>63</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Matthew L. Gibson, Field Counsel, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to SCR-Response@fcc.gov and Matthew.Gibson@fcc.gov.

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<sup>60</sup> Payment may be made online at the Commission's Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require payors to submit FCC Form 159. Alternatively, payment may be made using FCC Form 159; detailed instructions for completing the form may be obtained at: <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>61</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

<sup>62</sup> See 47 CFR § 1.1914.

<sup>63</sup> 47 CFR §§ 1.16, 1.80(f)(3).

33. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

34. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Vearl Pennington and Michael Williamson at each of the following addresses: 135A Lee Cemetery Road, Morehead, Kentucky 40351-1315 and P.O. Box 968, Mt. Sterling, Kentucky 40353.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*Re: Vearyl Pennington, Morehead, Kentucky and Michael Williamson, Morehead, Kentucky, File No. EB-FIELDSCR-16-00022288*

This case highlights how toothless the Commission's approach to broadcast pirates had become under past leadership. How could anyone get away with operating a pirate TV station for almost *twenty years*? No longer a fierce watchdog, the Commission had been reduced to a sometimes annoying, sometimes sleepy, but ultimately harmless Chihuahua when it came to protecting broadcast spectrum licenses. But all pirate operators should be put on notice that we can and we will turn that situation around. I support this Notice of Apparent Liability and look forward to seeing many more to come in this area, if our warnings are not heeded. With pirates crowding legitimate broadcasters out of the spectrum in several of our major metropolitan areas, we can no longer afford to rest. At the same time, the limitations outlined on the proposed forfeiture show that it would be helpful for Congress to revisit and restructure the penalties applicable to pirate broadcasting. More tools in the tool box would come in handy as we implement a reenergized enforcement approach.