

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

In the Matter of	)	
	)	NAL/Acct. No. MB-202341410019
Northwest Rock N Roll Preservation Society	)	FRN: 0009515602
	)	
Application for License to Cover	)	Facility ID No. 150021
K266BM, Olympia, Washington	)	Application File No. 115909
	)	

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

**Adopted: August 25, 2023**

**Released: August 25, 2023**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us an application (2020 License Application)<sup>1</sup> filed by Northwest Rock N Roll Preservation Society (NWR) for a license to cover the facilities authorized in a construction permit for K266BM, Olympia, Washington (NWR Translator), that was issued on February 25, 2020 (2020 Permit).<sup>2</sup> Also before us are (1) Informal Objections (Objections) to the 2020 License Application filed by Bustos Media Holdings, LLC (Bustos), and Bicoastal Media Licenses IV, LLC (Bicoastal),<sup>3</sup> (2) an Opposition to Informal Objection (NWR Bicoastal Opposition) that NWR filed in response to the Bicoastal Objection,<sup>4</sup> (3) a Supplement (Bustos Supplement) filed by Bustos,<sup>5</sup> and (4) an Opposition to Informal Objection and Supplement, and Motion to Strike (NWR Bustos Opposition or NWR Motion to Strike) filed by NWR in response to the Bustos Objection and the Bustos Supplement.<sup>6</sup> In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,<sup>7</sup> we find NWR apparently willfully and repeatedly engaged in unauthorized operation of the NWR Translator in violation of section 301 of the Communications Act of 1934, as amended (Act),<sup>8</sup> and apparently willfully made false certifications to the Commission in an earlier application in violation of section 1.17(a)(1) of the Commission's rules (Rules).<sup>9</sup> Based upon our review of the facts and circumstances before us, we deny

<sup>1</sup> Application File No. 115909 (2020 License Application).

<sup>2</sup> Application File No. BMPFT-20190618ABI. *See also Broadcast Actions*, Public Notice, Report No. 49684, at 1 (MB Feb. 28, 2020).

<sup>3</sup> Pleading File No. 116061 (Bustos Objection); Pleading File No. 116076 (Bicoastal Objection).

<sup>4</sup> Pleading File No. 118217 (NWR Bicoastal Opposition).

<sup>5</sup> Pleading File No. 120495 (Bustos Supplement).

<sup>6</sup> Pleading File No. 121197 (NWR Bustos Opposition or NWR Motion to Strike).

<sup>7</sup> This *NAL* is issued pursuant to section 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the 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.

<sup>8</sup> 47 U.S.C. § 301.

<sup>9</sup> 47 CFR § 1.17(a)(1).

the NWR Motion to Strike, and grant in part and otherwise deny the Objections. We also conclude that NWR is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000).

## II. BACKGROUND

2. Between April 25, 2013, and December 4, 2019, the NWR Translator was authorized to rebroadcast the signal of KGHO-LP, Hoquiam, Washington at an Effective Radiated Power (ERP) of 10 watts.<sup>10</sup>

3. On August 29, 2016, NWR obtained a construction permit (2016 Permit) to increase the NWR Translator's ERP to 70 watts and change its primary station from KGHO-LP to KGTK(AM), Olympia, Washington.<sup>11</sup> In 2017, at NWR's request, we modified the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).<sup>12</sup> On June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit for a second time.<sup>13</sup>

4. As the 2017 Permit's expiration date of August 29, 2019, approached, and the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities authorized in the 2017 Permit (2019 License Application).<sup>14</sup> We granted the 2019 License Application on December 4, 2019.<sup>15</sup>

5. Our grant of a license to cover the 2017 Permit converted the pending 2019 Modification Application from a request to modify the 2017 Permit to a request to modify the license issued on December 4, 2019 (2019 License). NWR amended the 2019 Modification Application on February 13, 2020. On February 25, 2020, we granted the application and issued the 2020 Permit.

6. On June 8, 2020, NWR filed the 2020 License Application, which seeks a license to cover the facilities authorized in the 2020 Permit. A few days later, Bustos and Bicoastal filed the Objections. Among other things, the Objections allege that the NWR Translator is not operating as authorized,<sup>16</sup> NWR has made false statements to the Commission about the NWR Translator's operations,<sup>17</sup> NWR has violated the LPFM cross-ownership rule,<sup>18</sup> and NWR underwent an unauthorized transfer of control.<sup>19</sup> NWR filed the NWR Bicoastal Opposition on July 21, 2020. Therein, NWR disputes Bicoastal's assertion that the NWR Translator was engaging in unauthorized operations.<sup>20</sup> Bustos filed the Bustos Supplement on August 17, 2020, which asserts the NWR Translator had been off

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<sup>10</sup> See Application File No. BLFT-20130402ACL (2013 License); *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013).

<sup>11</sup> See Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

<sup>12</sup> See Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

<sup>13</sup> See Application File No. BMPFT-20190618ABI (2019 Modification Application).

<sup>14</sup> See Application File No. BLFT-20190904ABL (2019 License Application).

<sup>15</sup> See *Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

<sup>16</sup> Bicoastal Objection at 1-2, Bustos Objection at 2-6.

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

<sup>18</sup> Bustos Objection at 5-6.

<sup>19</sup> *Id.* at 7-8.

<sup>20</sup> NWR Bicoastal Opposition at 1.

the air for more than thirty days without Commission authorization.<sup>21</sup> NWR filed the NWR Bustos Opposition on September 4, 2020. NWR argues that Bustos lacked standing to file the Bustos Objection,<sup>22</sup> and disputes Bustos' assertions regarding unauthorized operations, false statements to the Commission, LPFM cross-ownership violations, and an unauthorized transfer of control of NWR.<sup>23</sup>

7. NWR amended the 2020 License Application on June 3, 2021.<sup>24</sup> On that same date, NWR notified the Commission that the NWR Translator had changed primary stations and was now rebroadcasting the signal of KBRD(AM), Lacey, Washington.<sup>25</sup>

### III. DISCUSSION

#### A. Procedural Issues

8. We reject NWR's arguments that the Bustos Objection and the Bustos Supplement are procedurally defective. While NWR suggests that Bustos lacks standing to object to the 2020 License Application,<sup>26</sup> standing is not required to file an informal objection or a supplement to such an objection.<sup>27</sup>

9. We also reject NWR's assertion that Bustos did not mail copies of the Bustos Objection and the Bustos Supplement to NWR in "a timely manner."<sup>28</sup> In fact, both pleadings included certificates of service indicating they had been mailed to NWR,<sup>29</sup> and Bustos has stated that it also emailed those pleadings to NWR.<sup>30</sup> It appears, however, that Bustos did not use the proper address for NWR. Bustos used an address—PO Box 5672, Lacey, WA 98509-5672—that NWR listed in a pleading filed with the Commission,<sup>31</sup> rather than the address—PO Box 2673, Olympia, WA 98507-2673—listed in NWR's most recently filed FCC application.<sup>32</sup> We conclude that this error was harmless, because NWR did, in fact, obtain copies of the pleadings and filed the NWR Bustos Opposition in response to them. Because NWR suffered no prejudice from Bustos' use of a different address than that specified in the Rules, we decline to strike the Bustos Objection or the Bustos Supplement.

#### B. Substantive Issues

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<sup>21</sup> Bustos Supplement at 3-4.

<sup>22</sup> NWR Bustos Objection at 1-2.

<sup>23</sup> *Id.* at 2-5.

<sup>24</sup> *See Applications*, Public Notice, Report No. PN-1-210608-01, at 22 (MB June 8, 2021).

<sup>25</sup> Email from Northwest Rock N Roll Preservation Society to Rob Gates, Electronics Engineer, Audio Division (dated June 3, 2021 4:55 PM DST).

<sup>26</sup> NWR Bustos Opposition at 1-2 (questioning Bustos' standing to object to the 2020 License Application).

<sup>27</sup> *See, e.g., Chapin Enter., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252, para. 7 (2014); *Edgewater Broad. Inc.*, Letter Order, 34 FCC Rcd 4594, 4596 (MB 2019).

<sup>28</sup> NWR Bustos Opposition at 1.

<sup>29</sup> Bustos Objection at Certificate of Service; Bustos Supplement at Certificate of Service.

<sup>30</sup> Bustos Supplement at 4-5.

<sup>31</sup> *Id.*

<sup>32</sup> *See* 47 CFR § 1.5 ("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").

10. *Unauthorized Operations.* We find that NWR’s operation of the NWR Translator between December 4, 2019, and June 13, 2020, was unauthorized.<sup>33</sup> On those dates, NWR should have been operating the NWR Translator pursuant to the 2019 License (*i.e.*, rebroadcasting the signal of KGTK(AM) at 250 watts). NWR, however, admits that it did not actually begin rebroadcasting KGTK(AM), or increase the NWR Translator’s power to 250 watts until June 13, 2020.<sup>34</sup> Between December 4, 2019, and June 13, 2020, NWR continued operating the NWR Translator with the facilities authorized in its obsolete 2013 License,<sup>35</sup> and continued rebroadcasting the signal of KGHO-LP.<sup>36</sup> These unauthorized operations violated section 301 of the Act. Below, we propose a forfeiture to address this violation.<sup>37</sup>

11. *Operational History.* We reject Bustos’ assertion that the NWR Translator was silent in the summer of 2020.<sup>38</sup> NWR has explained that the licensee of KGTK(AM) was experiencing issues with the feed between its studio and its transmitter, and that these issues resulted in KGTK(AM)’s signal

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<sup>33</sup> Because we find that the NWR Translator’s unauthorized operations lasted for less than one year, we reject Bustos’ argument that the NWR Translator’s license expired under section 312(g) of the Act. Bustos Objection at 6; Bustos Supplement at 4; Renewal Objection at 2. *See also* 47 U.S.C. § 312(g) (providing that “[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary”).

<sup>34</sup> NWR Bicoastal Opposition at 1 (“On June 13, 2020, NWR finished its’ [sic] program tests and commenced relaying KGTK at 250 watts. NWR never relayed KGHO-LP at 250 watts.”); Northwest Rock N Roll Preservation Society, Opposition to Petition for Reconsideration & Supplement and Motion to Strike, Application File No. BNPFT-20180418ABI, at 3 (filed Sept. 8, 2020) (stating that, when we granted the 2019 License without first granting the 2019 Modification Application, NWR was “[blindsided]” and “was not ready to change power and primary station at that site, which has limited access during the winter months”). *See also* Application File Nos. BSTA-20200129AAJ at Exh. 12; BSTA-20200213ABI at Exh. 12 (both seeking authorization for the NWR Translator to continue to rebroadcast KGHO-LP at 10 watts, and both indicating that NWR was waiting for an audio line from KGTK(AM) and having equipment issues). It appears NWR never operated the NWR Translator with the facilities authorized in the 2019 License. Instead, it continued operating the NWR Translator with the facilities authorized in the 2013 License until it was ready to begin operating the NWR Translator with the facilities authorized in the 2020 Permit pursuant to program test authority.

<sup>35</sup> Those facilities operated with an ERP of 10 watts. *See* 2013 License. Accordingly, NWR did not—as Bicoastal and Bustos allege—violate section 74.1235(b)(2) of the Rules. Bicoastal Objection at 2; Bustos Objection at 5. *See also* 47 CFR § 74.1235(b)(2).

<sup>36</sup> Based on NWR’s statement that it did not begin rebroadcasting KGTK(AM) at 250 watts until June 13, 2020, we would expect any evidence collected before that date to demonstrate that the NWR Translator was rebroadcasting KGHO-LP. That is exactly what the evidence submitted by Bicoastal and Bustos shows. *See* Bustos Objection at 5 (indicating that counsel “personally observed while in the Olympia, Shelton and Yelm areas of western Washington State on May 6, 2020: that [the NWR Translator] was . . . rebroadcasting KGHO-LP”); Bustos Objection at 3-5 (including links to recordings made on June 11, 2020 that include music and/or station identifications for KGHO-LP); Bicoastal Objection at Miner Decl. (same).

<sup>37</sup> We will not, as Bustos urges, commence a revocation proceeding. Bustos Objection at 5; Renewal Objection at 2. This decision is within our discretion. *See NTCH, Inc. v. FCC*, 841 F.3d 497, 503 (D.C. Cir. 2016) (“The FCC has full discretion to decide whether to initiate revocation proceedings.”). Furthermore, our decision to propose a forfeiture rather than commence a revocation proceeding aligns with precedent. *See, e.g., Birach Broad. Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 12398 (MB 2018); *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223 (MB 2018) (both proposing forfeiture related to extended period of operation from licensed site with non-conforming facilities).

<sup>38</sup> Bustos Supplement at 3-4.

containing low audio level and a hum, all of which was rebroadcast on the NWR Translator.<sup>39</sup> NWR submitted recordings for July 11, 16, and 20, 2020, which corroborate its claims.<sup>40</sup> Additionally, while one of the recordings submitted by Bustos appears to contain only static, at least one does contain low audio.<sup>41</sup> Based on the record as a whole, we find NWR's account of events to be credible, and determine that no further investigation of Bustos' claim is required.

12. *Cross-Ownership.* We reject Bustos' argument that NWR has violated section 73.860 of the Rules, which generally prohibits grant of an LPFM license if such grant will result in the applicant or a party to the application holding an attributable interest in any other non-LPFM broadcast station.<sup>42</sup> Bustos alleges that John Spencer, President of KGHO-LP's licensee, and Brian Spencer, President of NWR, are "either related or business associates (or both)" and therefore each holds attributable interests in the NWR Translator and the other three FM translators licensed to NWR, and KGHO-LP. However, Bustos has failed to substantiate its claim that the President of NWR and the President of Grays Harbor LPFM are related or in business together. Moreover, even if the two were related, a familial relationship, standing alone, does not create an attributable interest.<sup>43</sup> Finally, even if Bustos had proved the existence of a section 73.860 violation, it would be KGHO-LP's licensee, not NWR, that would be sanctioned for the violation.

13. *False Certifications.* The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."<sup>44</sup> Full and clear disclosure of all material facts in every application (or response to a Commission request for information) is essential to the efficient administration of the Commission's licensing process, and the Commission's proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide.<sup>45</sup> Misrepresentation and lack of candor raise serious concerns as to the likelihood that the Commission can rely on an applicant, permittee, or licensee to be truthful.<sup>46</sup>

14. Section 1.17(a)(1) provides that no person shall, in any written or oral statement of fact, "intentionally provide material factual information that is incorrect or intentionally omit material

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<sup>39</sup> NWR Bustos Opposition at 3-4.

<sup>40</sup> Email from Brian Spencer, Northwest Rock N Roll Preservation Society, to Albert Shuldiner, Chief, Audio Division (July 17, 2020 1:48 PM EDT); Email from Brian Spencer, Northwest Rock N Roll Preservation Society, to Albert Shuldiner, Chief, Audio Division (July 22, 2020 7:57 PM EDT).

<sup>41</sup> Bustos Supplement at 3 (including link to recording from August 2, 2020); Bustos Media Holdings, LLC, Reply to Opposition to Petition for Reconsideration & Supplement, and Motion to Strike, Application File No. BNPFT-20180418ABI, at 5 (Sept. 17, 2020) (including link to recording from September 15, 2020).

<sup>42</sup> See Bustos Objection at 5-6. See also 47 CFR § 73.860.

<sup>43</sup> *John Dunnegan*, Letter, Order, 23 FCC Rcd 8617, 8618 (MB 2008).

<sup>44</sup> See *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (*Contemporary Media*); *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1209-10, para. 58 (1986) (*Character Policy Statement*), recon. granted in part and denied in part, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986) (subsequent history omitted).

<sup>45</sup> *Entertainment Media Trust*, Hearing Designation Order and Notice of Opportunity for Hearing, 34 FCC Rcd 4351, 4370, para. 58 (MB 2019).

<sup>46</sup> *Character Policy Statement*, 102 FCC 2d at 1209-11, paras. 54-61. The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. See *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946) (*WOKO*); *Nick J. Chaconas*, Decision, 28 FCC 2d 231, 233, para. 9 (1971); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC 2d 243, para. 26 (Rev. Bd 1972).

information that is necessary to prevent any material factual statement that is being made from being incorrect or misleading.”<sup>47</sup> A misrepresentation (a false statement of fact or false certification made with intent to deceive the Commission) is within the scope of section 1.17(a)(1).<sup>48</sup> Similarly, lack of candor (a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission) is within the scope of the rule.<sup>49</sup> A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.<sup>50</sup> Intent to deceive can be found where a licensee or applicant knowingly makes a false statement (or false certification), and can also be found from motive or logical desire to deceive,<sup>51</sup> or when the surrounding circumstances clearly show the existence of intent to deceive.<sup>52</sup>

15. We find that NWR made false certifications in the 2019 License Application when it certified that “the station is now in satisfactory operating condition and ready for regular operation.” and “[t]he facility was constructed as authorized in the underlying construction permit.”<sup>53</sup> As discussed above, at the time it filed the 2019 License Application, NWR had not constructed the facilities authorized in the 2017 Permit.<sup>54</sup>

16. We also find that NWR apparently made the false certifications with an intent to deceive the Commission. NWR was aware that the NWR Translator’s new facilities had not been constructed when it filed the 2019 License Application. Further, NWR appears to have had a motive for making the false certifications. Had NWR admitted that it had not constructed the new facilities, we would have dismissed the 2019 License Application and the 2017 Permit would have expired.<sup>55</sup>

17. While grant of the 2019 License Application is final and dismissal of that application is not an option, we can and will sanction NWR for the false certifications.<sup>56</sup> Despite the fact that NWR made false certifications in the 2019 License Application, we believe NWR can reasonably be expected to

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<sup>47</sup> 47 CFR § 1.17(a)(1).

<sup>48</sup> See *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129, para. 6 (1983) (*Fox River*); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435, para. 7 (2004) (*Discussion Radio*).

<sup>49</sup> See *Fox River*, 93 FCC 2d at 129, para. 6; *Discussion Radio*, 19 FCC Rcd at 7435, para. 7.

<sup>50</sup> *Swan Creek*, 39 F.3d at 1222; *Discussion Radio*, 19 FCC Rcd at 7435, para. 7.

<sup>51</sup> See *Discussion Radio*, 19 FCC Rcd 7435, para. 7; *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, para. 6 (Rev. Bd. 1994).

<sup>52</sup> *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int’l Dev., Inc.*, Memorandum Opinion and Order, BC Docket No. 78-40, 86 FCC 2d 808, 816, n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

<sup>53</sup> See 2019 License Application, Section II – Legal, Item 5, and Section III – Engineering, Item 4.

<sup>54</sup> See Northwest Rock N Roll Preservation Society, Opposition to Petition for Reconsideration and Motion to Strike, BNPFT-20180418ABI (filed Sept. 6, 2020) (admitting that NWR “was not ready to change power and primary station” when the 2019 License Application was granted on December 4, 2019).

<sup>55</sup> See *Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order, 21 FCC Rcd 10267, 10273-74, para. 15 (2006); *William L. Zawila*, Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order, 18 FCC Rcd 14938, 14964, para. 98 (2003).

<sup>56</sup> See *Character Policy Statement*, 102 FCC 2d at 1227-1228, para. 103. See also *The Lutheran Church/Missouri Synod*, Memorandum Opinion and Order, 12 FCC Rcd 2152, 2166-2167, para. 25 (1997).

deal truthfully with the Commission in the future.<sup>57</sup> We note that NWR voluntarily disclosed the NWR Translator's unauthorized operations in pleadings filed with the Commission.<sup>58</sup> We conclude that a forfeiture is the appropriate sanction.

18. *Unauthorized Transfer of Control.* We reject Bustos' assertion that NWR underwent an unauthorized transfer of control. Bustos argues that an unauthorized transfer of control occurred because NWR's initial board was comprised of three individuals (Ethel Giberson, Marie Hellinger, and Diane Alderman) while its board at the time Bustos made the allegation was comprised of three different individuals (Gary Jonah, Rita Rameriz and Brian Spencer).<sup>59</sup> We acknowledge that, as Bustos claims,<sup>60</sup> the Commission has held that control of a membership organization resides in the governing board.<sup>61</sup> However, Bustos ignores the fact that, in this case, the original NWR board members were replaced gradually over time.<sup>62</sup> The Commission tentatively concluded in the *Transfers of Control* proceeding that gradual changes in the governing board of a membership organization do not constitute a transfer of control so long as a majority of the organization's directors are not replaced at one time.<sup>63</sup> While we are not bound by the tentative conclusions set forth in that proceeding,<sup>64</sup> we note that the Commission has hewed to them in later policy making decisions.<sup>65</sup> We conclude it is appropriate to do so here too.

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<sup>57</sup> See *Character Policy Statement*, 102 FCC 2d at 1228, para. 103 (purpose of Commission's character inquiry is not to eliminate licensees from further activity in broadcasting but to make predictive judgment as to licensee's propensity to deal truthfully with Commission and to comply with rules and policies).

<sup>58</sup> See *supra* note 34.

<sup>59</sup> Bustos Objection at 7-8.

<sup>60</sup> *Id.*

<sup>61</sup> See, e.g., *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5910, para. 28 (2009) (recognizing that "many NCE broadcast licensees are non-profit, non-stock entities, or governmental organizations that are controlled by governing boards or trustees").

<sup>62</sup> A review of NWR's submissions to the Washington Secretary of State reveals that initially NWR's board was comprised of three people (Ethel Giberson, Marie Hellinger, and Diane Alderman). See Corporations and Charities Filing System, Business Search, Filing History, available at <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessFilings> (UBI Number 603 040 929). NWR added a board member (Katrina Thompson) in 2011, and added two additional board members (Dot Christensen and Rita Ramirez) in 2012. Then, in 2013, it added two additional board members (Brian Spencer, and Kathy Spencer) but lost a board member (Thompson). In 2016, Gary Jonah replaced Hellinger. In 2017, the board shrank to three members (Ramirez, Jonah and Paul Kelley). In 2018, Brian Spencer replaced Kelley. In 2020, two former board members (Alderman, and Hellinger) returned. In 2022, Ramirez left the NWR board.

<sup>63</sup> *Transfers Of Control Of Certain Licensed Non-Stock Entities*, Notice of Inquiry, 4 FCC Rcd 3403, 3405, para. 14 (1989).

<sup>64</sup> *The KBOO Foundation*, Memorandum Opinion and Order, 31 FCC Rcd 1358, 1359, n.19 (2016) ("That some applicants may have relied upon the tentative conclusions contained in the [Transfers of Control] NOI does not alter the fact that such conclusions do not constitute binding precedent.").

<sup>65</sup> See *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educ. Broad. Stations and Low Power FM Stations*, Report and Order 34 FCC Rcd 851, 876, n. 176 (2019) ("For NCE permittees and licensees, the Commission's policy on board changes is not codified; rather, it has been based on proposals that were initially set out--albeit never adopted--in the Transfers of Control NOI, which relies on definitions rather than waivers."); *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21921, para. 20 (2007) (applying the *Transfers of Control* guidelines to "appropriate LPFM licensees").

Accordingly, we find that, because the nature of the changes to the NWR board were gradual, no unauthorized transfer of control of NWR occurred.

19. *Expenses.* We will not, as NWR requests, require Bustos to pay the expenses it has incurred.<sup>66</sup> Absent an agreement by Bustos to voluntarily pay these costs, the Commission is without the statutory authority to compel such payments.<sup>67</sup>

### C. Proposed Forfeiture

20. 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 . . . .”<sup>68</sup> 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 culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

21. NWR apparently willfully and repeatedly violated section 301 of the Act by operating the NWR Translator at a variance from its licensed parameters between December 4, 2019, and June 13, 2020. Section 1.80(b)(10) of the Rules sets forth a base forfeiture of \$10,000 for operating without an instrument of authorization. NWR also apparently willfully violated section 1.17(a)(1) of the Rules by falsely certifying in the 2019 License Application that it had constructed the facilities authorized in the 2017 Permit and that the facilities were ready for operation. Pursuant to the *Forfeiture Policy Statement* and Section 1.80(b)(10) of the Rules, the base forfeiture for misrepresentation or lack of candor is the statutory maximum (currently \$59,316).<sup>74</sup>

<sup>66</sup> NWR Bustos Opposition at 5.

<sup>67</sup> *Turner v. FCC*, 514 F.2d 1354 (D.C. Cir. 1975).

<sup>68</sup> 47 U.S.C. § 503(b).

<sup>69</sup> *Id.* § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>70</sup> 47 CFR § 1.80(b)(10).

<sup>71</sup> *Id.* at Table 3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *The Commission’s Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 21 (1997) (“Regardless of the factual circumstances of each case, misrepresentation to the Commission always is an egregious violation. Any entity or individual that engages in this type of behavior should expect to pay the highest forfeiture applicable to the service at issue.”); 47 CFR § 1.80(b)(10), Table 1. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires the FCC to adjust annually the civil monetary penalties covered thereunder, and provides that new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase[.]” Pub. L. No. 114-74, 129 Stat. 584, 599 (2015). *See also*

(continued....)

22. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we believe downward adjustment of both base forfeiture amounts is appropriate. Taking into account that (1) the NWR Translator provides a secondary service, (2) NWR's unauthorized operation of the NWR Translator was not comparable to "pirate" radio operations, and (3) NWR has a history of compliance with the Act, and the Commission's rules and policies.<sup>75</sup> we propose a total forfeiture in the amount of \$20,000.

#### IV. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that the Motion to Strike (Pleading File No. 121197) filed by Northwest Rock N Roll Preservation Society on September 4, 2020, **IS DENIED**.

24. **IT IS FURTHER ORDERED** that the Informal Objections filed by Bicoastal Media Licenses IV, LLC (Pleading File No. 116061), and Bustos Media Holdings, LLC (Pleading File No. 116076), on June 12, 2020, **ARE GRANTED IN PART AND OTHERWISE DENIED**.

25. **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, that Northwest Rock N Roll Preservation Society is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and its apparent willful violations of section 1.17(a)(1) of the Commission's rules.

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

27. 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->

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Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-21-10 (OMB Dec. 23, 2020). Accordingly, while the false certifications were made in 2019, the statutory maximum on the date this *NAL* is released applies.

<sup>75</sup> See, e.g., *Pirate Media Group, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 34 FCC Rcd 12280 (MB 2019).

[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. 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.

28. 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](mailto:ARINQUIRIES@fcc.gov).

29. 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. 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](mailto: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.

30. **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 Brian Spencer, Northwest Rock N Roll Preservation Society, PO Box 2673, Olympia, WA 98507-2673.

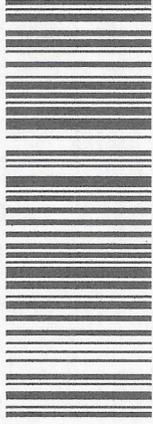
FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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