

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

In the Matter of )
)
SHELBY BROADCAST ASSOCIATES, LLC ) NAL/Acct. No. MB-202441410005
) FRN: 0018897223
Licensee of Station W252BE ) Facility ID No. 141124
Tarrant, Alabama ) File Nos. 0000091616, BALFT-
) 20200608AAG, BLFT-20181016ABE,
) BSTA-20180720AAR

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 17, 2024

Released: January 17, 2024

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us the captioned application for renewal of license (Renewal Application) filed by Shelby Broadcast Associates, LLC (Shelby) for FM translator station W252BE, Tarrant, Alabama (Station).<sup>1</sup> We also have before us a Petition for Reconsideration (Renewal Petition) filed by Marble City Media, LLC (Marble City) on April 16, 2020,<sup>2</sup> seeking reconsideration of the Media Bureau (Bureau)'s March 19, 2020, grant of the Renewal Application,<sup>3</sup> and related responsive pleadings.<sup>4</sup> Also before us is the captioned application (Assignment Application) filed by Shelby for consent to assign the Station license to Rivera Communications, LLC (Rivera).<sup>5</sup> We also have before us a Petition to Deny the Assignment Application (Assignment Petition) filed by Marble City,<sup>6</sup> and related responsive pleadings.<sup>7</sup> Finally, we have before us the captioned license to cover application (2018 License Application)<sup>8</sup> and

<sup>1</sup> Application File No. 0000091616 (filed Nov. 27, 2019).

<sup>2</sup> Petition for Reconsideration, Pleading File No. 0000112328 (filed Apr. 16, 2020).

<sup>3</sup> Bureau staff granted the Renewal Application on March 19, 2020. On April 16, 2020, Bureau staff rescinded the grant and returned the Renewal Application to pending status. See Broadcast Actions, Public Notice, Report No. PN-2-200420-01 (MB Apr. 20, 2020). Accordingly, we will treat the Petition for Reconsideration as an Informal Objection to the Renewal Application.

<sup>4</sup> Shelby filed an Opposition to the Renewal Petition, Pleading File No. 0000112903 (filed Apr. 29, 2020) (Renewal Opposition). Marble City filed a Reply to Opposition to Petition for Reconsideration, Pleading File No. 0000113432 (filed May 8, 2020) (Renewal Reply).

<sup>5</sup> Application File No. BALFT-20200608AAG (filed June 10, 2020).

<sup>6</sup> Marble City Petition to Deny (filed Jul. 10, 2020).

<sup>7</sup> Shelby filed an Opposition to Petition to Deny (filed Jul. 23, 2020) (Shelby Assignment Opposition). Rivera, the proposed assignee, also filed an Opposition to Petition to Deny (filed Jul. 23, 2020) (Rivera Assignment Opposition). Marble City filed a Reply to Shelby's Opposition to Petition (filed Aug. 4, 2020) (Assignment Reply to Shelby) and a Reply to Rivera's Opposition to Petition (filed Aug. 4, 2020) (Assignment Reply to Rivera).

<sup>8</sup> Application File No. BLFT-20181016ABE (filed Oct. 16, 2018).

application for Special Temporary Authority (2018 STA Application) filed by Shelby.<sup>9</sup>

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,<sup>10</sup> we find, as discussed below, that Shelby apparently has willfully and repeatedly operated the Station at variance from its license without Commission authorization, in violation of section 301 of the Act<sup>11</sup> and section 73.1745(a)<sup>12</sup> of the Rules, willfully failed to timely file for special temporary authorization (STA) to operate with its nonconforming technical facilities in violation of section 73.1635(a)(1)<sup>13</sup> of the Rules, and willfully failed to disclose material information regarding such unauthorized operation, in violation of section 1.17<sup>14</sup> of the Rules. Based on our review of the record before us, we conclude that Shelby is apparently liable for a monetary forfeiture in the amount of sixteen thousand five hundred dollars (\$16,500) for these violations. For these reasons, we will grant in part and otherwise deny the Renewal Petition and deny the Assignment Petition.

## II. BACKGROUND

3. On November 17, 2015, Valleydale Broadcasting, LLC (Valleydale), the Station's former licensee, filed an application for Special Temporary Authority (STA) (2015 STA Application), to operate from a lower antenna height and at a higher effective radiated power (ERP) than authorized in its license because the Station's coaxial cable was severed.<sup>15</sup> Bureau staff granted the 2015 STA Application on November 20, 2015, with an expiration of May 19, 2016. On May 19, 2016, Valleydale filed a request to extend the 2015 STA (2015 STA Extension Application), to continue operating from the lower antenna height and higher ERP.<sup>16</sup> Bureau staff granted the 2015 STA Extension Application on May 23, 2016, with an expiration of November 19, 2016 (2015 STA Extension).

4. On April 7, 2017, Valleydale filed an application for consent to assign the Station's license to Shelby.<sup>17</sup> While that application was pending, on May 12, 2017, Valleydale filed an application for minor change to a licensed facility application to modify the Station's ERP and antenna pattern and to resolve alleged interference caused to Marble City's full-service FM station, WFXO(FM), Alexander City, Alabama (Modification Application).<sup>18</sup> Bureau staff granted the Modification Application on June 21,

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<sup>9</sup> Application File No. BSTA-20180720AAR (filed Jul. 20, 2018).

<sup>10</sup> This *NAL* is issued pursuant to sections 309(k) and 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. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. See 47 CFR § 0.283.

<sup>11</sup> 47 U.S.C. § 301.

<sup>12</sup> 47 CFR § 73.1745(a).

<sup>13</sup> 47 CFR § 73.1635(a)(1).

<sup>14</sup> 47 CFR § 1.17.

<sup>15</sup> See Application File No. BSTA-20151116ASH (filed Nov. 16, 2015).

<sup>16</sup> See Application File No. BESTA-20160518ACE (filed May 18, 2016).

<sup>17</sup> Application File No. BALFT-20170406ABR (granted June 20, 2017); Notice of Consummation (filed June 21, 2017) (stating consummation of assignment took place on June 20, 2017).

<sup>18</sup> See Application File No. BPFT-20170511AAL (filed May 11, 2017). Since February 10, 2017, Marble City has filed numerous pleadings related to interference complaints against the Station, alleging that W252BE caused co-channel interference to WFXO(FM). See License Application, Application File No. BLFT-20140411AAT (filed Apr. 11, 2014); Complaint Regarding Co-Channel Interference Caused By Transmissions of FM Translator Station W252BE, (filed Feb. 10, 2017) and Amendment (filed Mar. 9, 2017). Bureau staff issued a Letter on March 29, 2017, requiring Shelby to resolve all interference complaints or risk suspension of operations of the Station. Shelby filed a Response to Complaint Regarding Interference By Marble City Media and FCC Letter of Inquiry (filed May 12, 2017). Marble City filed a Reply to Response to Interference Complaint and FCC Letter of Inquiry and Opposition to W252BE Modification Application (filed May 18, 2017). Ultimately, in response to a Bureau inquiry

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2017.<sup>19</sup> On July 6, 2018, Marble City again raised allegations of interference and argued Shelby, now the licensee of the Station, lacked a valid license because the Station was not modified to operate with the technical specifications authorized in the Modification Application.<sup>20</sup>

5. On July 19, 2018, Shelby once again filed for an engineering STA (Dismissed STA Application) to operate the Station from its licensed site with a lower antenna height and a new directional antenna pattern, but it was dismissed the same day for failure to state a reason for the request.<sup>21</sup> On July 23, 2018, Shelby filed the 2018 STA Application, which provided the same justification for STA as the 2015 STA—that the Station’s cable was severed. Marble City promptly filed an Informal Objection against the 2018 STA Application on July 24, 2018.<sup>22</sup> Marble City objected to Shelby’s reliance on the same explanation put forth in the 2015 STA Application, and argued that since the Station has been operating with unauthorized facilities at the authorized location since November 19, 2016, when the 2015 STA Extension expired, the Station’s license is expired under section 312(g).<sup>23</sup>

6. *License Application.* On October 17, 2018, Shelby filed the 2018 License Application to cover the Modification Application. On October 19, 2018, Marble City filed an informal objection, stating that Shelby was not operating the Station with the authorized antenna height, power, or orientation, and asserting that there is no license to modify because it expired under section 312(g) after more than one year of unauthorized operation.<sup>24</sup>

7. *Renewal Application.* In the Renewal Petition, Marble City requests reconsideration of the Bureau’s grant of the Station’s Renewal Application. Marble City incorporates by reference its history of pleadings filed from 2017 to the present and reiterates allegations regarding the status of Shelby’s license and Shelby’s character qualifications.<sup>25</sup> Specifically, Marble City alleges that: 1) Shelby lacks a license

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letter, on November 6, 2019, Marble City stated that since its original interference complaint in 2017, WFXO(FM) and the Station have both modified their technical operations, and the specifications in the original 2017 complaint are no longer valid. Marble City also argued that because it alleges the Station’s license expired under section 312(g) of the Communications Act of 1934, as amended (47 U.S.C. § 312(g)), the interference complaint is moot. *See Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau to Marble City Media, LLC* (Oct. 7, 2019) (citing *Amendment of Part 74 of the Commission’s Rules Regarding FM Translator Interference*, Report and Order, FCC 19-40, 34 FCC Rcd 3457 (2019)); *Reply to James D. Bradshaw, from Marble City Media, LLC*, (Nov. 6, 2019). However, in Marble City’s most recent filing, the Rivera Reply, Marble City stated it hired a professional engineer who determined that the Station, at its most recently proposed parameters in the Modification Application, covered by the pending license application (Application File No. BLFT-20181016BE), is still likely to cause interference to WFXO(FM). Rivera Reply at 2 and Exh. A.

<sup>19</sup> *Broadcast Applications*, Public Notice, Report No. 49014 (MB June 26, 2017).

<sup>20</sup> *See* Modification Application, Marble City Revival of Complaint and Petition for Cancellation of W252BE License (filed Jul. 6, 2018) (2018 Complaint).

<sup>21</sup> *See* Application File No. BSTA-20180718AAD (filed Jul. 18, 2018); *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Shelby Broadcast Associates, LLC* (dated July 19, 2018) (“We discern no reason for this STA other than the broadcaster’s convenience.”). The Bureau’s Letter dismissing this STA application also cautioned Shelby that it must file an FCC Form 349 construction permit application before modifying the facilities to make the requested changes. All permittees and licensees of FM translators are required to file a formal application on FCC Form 349 to make equipment modifications including, *inter alia*, a change in the transmitting antenna system, a change in the overall height of the antenna, and any increase of authorized ERP. *See* 47 CFR §§ 74.1251 (b)(2), (b)(3), and (b)(7).

<sup>22</sup> *See* 2018 STA Application. Shelby requested STA to operate at reduced ERP from 90 watts to 65 watts.

<sup>23</sup> *See* 2018 STA Application, Marble City Informal Objection (filed Jul. 24, 2018).

<sup>24</sup> *See* 2018 License to Cover Application, Marble City Comments on Application for License (filed Oct. 19, 2018) (2018 Comments).

<sup>25</sup> Renewal Petition at 1-2. Marble City incorporates by reference ten pleadings it has filed against the Station’s licensee since February 10, 2017. *See also* 2018 Complaint and 2018 Comments.

to operate the Station because the STA Extension expired on November 19, 2016, and Shelby took no further action, which meant that the Station operated at variance from the specifications in its license for more than a year, triggering license expiration under section 312(g) of the Act;<sup>26</sup> 2) in response to Marble City's 2018 Complaint, Shelby admitted that the Station operated at parameters at variance from its license for more than one year;<sup>27</sup> and 3) Shelby improperly answered character certifications in the Renewal Application when it certified that it does not have any unresolved or adverse character issues, because (a) Marble City's prior pleadings allege a history of operating the Station without authorization, (b) there were instances where Shelby apparently submitted inaccurate information to the Bureau regarding the Station's operational status, and (c) Shelby's principals were licensees of two cancelled stations involved in cases in which those principals were found to have made false statements and operated with unauthorized facilities.<sup>28</sup>

8. In its Renewal Opposition, Shelby counters that: 1) the Renewal Petition should be dismissed because, in the more than one hundred days that the Renewal Application was pending, Marble City failed to file any pleading against the Renewal Application and has not shown good cause why it was unable to participate before the application was granted;<sup>29</sup> 2) Shelby incorporates by reference its 2018 Complaint Opposition, in which Shelby maintains that the Station's unauthorized operation does not result in a section 312(g) expiration because, although the Station operated with a lower antenna height and higher ERP, the Station remained at its authorized site and was never silent;<sup>30</sup> and 3) in the cases Marble City cites, character issues were not left unresolved or adversely resolved, and in any event, Shelby amended the Renewal Application to include those decisions and updated its responses in the character issues section.<sup>31</sup>

9. In its Renewal Reply, Marble City contends that: 1) Shelby's procedural argument to dismiss the Renewal Petition does not outweigh the Commission's public interest in considering the Petition for Reconsideration due to the seriousness of the allegations;<sup>32</sup> 2) Shelby mischaracterizes prior Marble City pleadings as interference complaints when their focus was on the validity of the Station's license;<sup>33</sup> 3) Shelby still has not rebutted the claim involving the Station's unauthorized operations, which are equivalent to no operation under section 312(g);<sup>34</sup> and 4) Shelby ignores or mischaracterizes critical facts and Commission actions related to its character qualifications.<sup>35</sup>

10. *Assignment Application.* In its Assignment Petition, Marble City argues that the Bureau should not act on the Assignment Application until determining whether the Station license is valid and assignable, and questions of character qualifications are resolved.<sup>36</sup>

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<sup>26</sup> *Id.* at 4, citing 2018 Comments.

<sup>27</sup> *Id.* (citing BMLFT-20140520ALM, Opposition to Revival (2018 Complaint Opposition), at 2, para. 2 and Ex. 1 Decl. of Lee Reynolds (filed Aug. 6, 2018)).

<sup>28</sup> Renewal Petition at 7 (citing *Shelby Broad. Assoc., LLC*, Letter Order (MB Nov. 29, 2018) (*W243AP Letter*); *Valleydale Broad., LLC*, Letter Order (MB Nov. 15, 2017) (*WZNN Letter*) (together, 2017 Letters) (finding that licenses held by Shelby or its principals had expired under section 312(g)).

<sup>29</sup> Renewal Opposition at 1-2. See 47 CFR § 1.106(b)(1).

<sup>30</sup> Renewal Opposition at 3; 2018 Complaint Opposition at 3-4.

<sup>31</sup> *Id.* at 3-4.

<sup>32</sup> Renewal Reply at 1-2, citing 47 U.S.C. §§ 309(a) and 309(k).

<sup>33</sup> Renewal Reply at 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 3-6.

<sup>36</sup> Assignment Petition at 1. Marble City also incorporates by reference eleven pleadings against Shelby's filings. *Id.* at 1-2.

11. Both Shelby and Rivera, the proposed assignee, filed Oppositions to the Assignment Petition. In its Opposition, Shelby references its responses to the license expiration allegations in the Renewal Application proceeding, and maintains that the decisions cited by Marble City do not include character issues that were left unresolved or resolved adversely, and in any event, the Assignment Application reflects updated responses to the character certifications.<sup>37</sup>

12. In its Reply to Shelby, Marble City maintains that Shelby does not address the substance of its Assignment Petition, and further, grant of the Assignment Application is not in the public interest and refers to its prior filings demonstrating, it claims, that the license has expired under section 312(g) and therefore should not be assignable.<sup>38</sup> Marble City also maintains that character qualifications were at issue in the 2017 Letters, the WZNN Letter should have been filed with the Assignment Application, and a hearing is warranted.<sup>39</sup>

13. In its Opposition, Rivera explains that: 1) there are only three stations providing Spanish language programming in the Birmingham, Alabama market; 2) if assigned, the Station would be the only Spanish language FM station, since it would rebroadcast the Spanish language programming from its primary AM station;<sup>40</sup> 3) the Birmingham terrain is hilly, so the FM translator would provide the most effective coverage of Rivera's three station signals to the Birmingham market;<sup>41</sup> 4) the Station reduced ERP from 90 watts to 65 watts in response to prior interference complaints from Marble City;<sup>42</sup> and 5) assignment to Rivera will help eliminate issues between Shelby and Marble City, and Rivera has a history of operation without objection from the public and fully met its own obligations to comply with the Rules.<sup>43</sup>

14. In its Reply to Rivera, Marble City explains that it does not believe Shelby is operating at the STA parameters, but instead is likely operating at the parameters reflected in the Modification Application and the License Application.<sup>44</sup> Marble City reiterates that the license expiration, not interference, is its primary objection, but it also hired a professional engineer who concluded that interference is still likely to continue.<sup>45</sup>

### III. DISCUSSION

#### A. Renewal Application

15. *Procedural Issue.* Section 1.106(b)(1) of the Rules provides that if a petition for reconsideration is filed by a person who is not a party to the original proceeding, it must show good reason why it was not possible for petitioner to participate in the earlier stages of the proceeding.<sup>46</sup> Section 1.106(c)(1) of the Rules<sup>47</sup> provides that the Bureau will only accept a petition for reconsideration relying on facts not previously presented to the Commission if: (1) the petition relies on facts relating to

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<sup>37</sup> Shelby Assignment Opposition at 1.

<sup>38</sup> Assignment Reply to Shelby at 1-3.

<sup>39</sup> *Id.* at 3-7.

<sup>40</sup> Rivera Assignment Opposition at 1 and Exh. 1.

<sup>41</sup> *Id.* at 2.

<sup>42</sup> *Id.* at 2 and Exh. 2. *See also* BSTA-20180720AAR.

<sup>43</sup> *Id.* at 2.

<sup>44</sup> Assignment Reply to Rivera at 1-2.

<sup>45</sup> *Id.* at 2 and Exh. A.

<sup>46</sup> 47 CFR § 1.106(b)(1).

<sup>47</sup> 47 CFR § 1.106(c)(1) (“In the case of any order other than an order denying an application for review, a petition for reconsideration . . . may be granted only [if] . . . the facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2) . . .”).

events which have occurred, or circumstances which have changed since the last opportunity to present such matters; (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters, which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity; or (3) the designated authority determines that consideration of the facts relied on is required in the public interest.<sup>48</sup>

16. Marble City was not a party to the original proceeding and has not demonstrated why participation in the earlier stages of the proceeding was not possible. Marble City has likewise not demonstrated that new information or changed circumstances prevented earlier participation. Shelby filed the Renewal Application on November 27, 2019, and Bureau staff granted the Renewal Application more than one hundred days later on March 19, 2020. Marble City had ample opportunity to object to the Renewal Application prior to grant but did not do so. However, we will not dismiss the Renewal Petition because Marble City's allegations in this matter remain unresolved in Shelby's other pending applications, and the Bureau erred in granting the Renewal Application while those applications remained pending. We find the public interest would be best served by treating the Renewal Petition as an informal objection to the Renewal Application.<sup>49</sup>

17. *Substantive Issues.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.<sup>50</sup> That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>51</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>52</sup>

18. *Section 312(g) Expiration.* We reject Marble City's claim that the Station's unauthorized operation triggers automatic expiration of the Station's license under section 312(g) of the Act. Section 312(g) provides that if a broadcast 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, except that the Commission may extend or reinstate such station license to promote equity and fairness.<sup>53</sup> The Commission has also held that, in cases involving operation from an unauthorized site or on an unauthorized frequency, such operation is “no better than silence” for section 312(g) purposes; therefore, consecutive periods of both silence and operation from an unauthorized site or on an unauthorized frequency are considered in the aggregate when calculating a consecutive 12-month period under the

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<sup>48</sup> 47 CFR § 1.106(b); see also *Coosa Valley News, Inc., c/o Mr. Thom Holt, Mr. Howard C. Toole*, Letter Order, 23 FCC Rcd 17310, 17313 (MB 2008); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

<sup>49</sup> *Cf. New York Telephone Co.*, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 3303, 3304 (1991), *aff'd sub nom. New York State Department of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993) (declining to dismiss a petition for reconsideration that did not satisfy the requirements of section 1.106(b)(1) because the public interest would be best served by “exercising our discretion to address petitioners' claims and clarify our action in this proceeding”); see generally 47 CFR § 1.106(c)(2) (A procedurally-defective petition for reconsideration may be granted “if the Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest”). As shown above in note 3, the Renewal Application was returned to pending status in 2020.

<sup>50</sup> 47 U.S.C. § 309(k).

<sup>51</sup> 47 U.S.C. § 309(k)(1).

<sup>52</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>53</sup> 47 U.S.C. § 312(g).

Act.<sup>54</sup>

19. Marble City has not demonstrated that the Station's operations at the authorized location with unauthorized parameters, *i.e.*, lower antenna height and higher ERP output, triggered expiration of the Station's license under section 312(g). Both Marble City and Shelby have submitted documentation showing that, after the Station's coaxial cable connecting the transmitter to the antenna was severed, the Station resumed operation at the authorized location with the authorized antenna and frequency, at a lower height and higher ERP.<sup>55</sup> In past cases, we have held that when a licensee engages in unauthorized operations including unauthorized antenna height or output at variance from its license, but the station operates on its authorized frequency at its authorized site, the violations do not support a finding of license cancellation under section 312(g).<sup>56</sup> Instead, for nonconforming operations not involving an unauthorized location or frequency, even if the violation lasted longer than a year, the Bureau has typically entered into a consent decree or imposed a forfeiture under section 503(b)(1) of the Act.<sup>57</sup> Accordingly, we deny the Petition for Reconsideration in part, as it relates to claims of section 312(g) license expiration.

20. *Unauthorized Operations and Material Factual Information.* Section 301 of the Act and section 73.1350 of the Rules prohibit the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization.<sup>58</sup> Section 73.1745(a)<sup>59</sup> further prohibits the operation of a broadcast station at variance from the terms of the Station's authorization. Pursuant to section 73.1635,<sup>60</sup> a licensee may request special temporary authority to operate for a limited time at variance from the terms of its authorization. However, the licensee must request STA ten days prior to beginning operation at variance from the terms of its authorization.<sup>61</sup>

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<sup>54</sup> See *Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008) (*Eagle*), *aff'd by Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009) ("Under the statute, unauthorized and unlicensed transmissions are no better than silence"); *Absolute Broad. LLC*, Memorandum Opinion and Order, FCC-23-38 at 8, para. 18 (2023) (*Absolute*).

<sup>55</sup> See 2018 Complaint Opposition at 2 and Exh. 1 Decl. of Lee Reynolds. See also 2018 Complaint at 4-6, Exh. 2 Statement of Frank L. Giardina, and Exh. 3 Statement of Larry Wilkins.

<sup>56</sup> See *Absolute*, FCC 23-38 at 8-9, para. 19 (citing *Zwerling Broad. System, Ltd.*, Forfeiture Order, DA 22-1318 (MB Dec. 15, 2022) (imposing a forfeiture on an AM station for years of "non-conforming operations," including exceeding its authorized nighttime power limit); *Low Power Television Stations KRLB-LD, Richland, WA, et al.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1058 (MB Oct. 4, 2022) (imposing a forfeiture on low power TV stations for years of "unauthorized operation" after failing to file applications for licenses to cover after the expiration of the underlying construction permits); *Roy E. Henderson*, Forfeiture Order, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223 (MB 2018) (*Henderson*) (imposing a forfeiture on an FM licensee for "unauthorized operation with non-conforming facilities" for more than a year, specifically, an unauthorized power reduction, while finding that the station had not expired under section 312(g)).

<sup>57</sup> Compare *Henderson* (finding monetary forfeiture, not license cancellation, was warranted for unauthorized operations at variance from the station license where, *inter alia*, licensee remained at its authorized site) and *John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541 (MB 2009) (*White*), with *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (MB 2009), and *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (finding cancellation appropriate when unauthorized operations at variance from the station license were, *inter alia*, at a different location than the authorized site).

<sup>58</sup> See 47 U.S.C. § 301; 47 CFR § 73.1350.

<sup>59</sup> 47 CFR § 73.1745(a).

<sup>60</sup> 47 CFR § 73.1635.

<sup>61</sup> 47 CFR 73.1740(a)(4); *South Seas Broad. Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 6474, para. 2. (MB 2008).

21. We find that the Station has operated with parameters at variance from its authorization, at its authorized location since November 8, 2015, when it suffered damage, adjusted its parameters, and applied for the 2015 STA Application.<sup>62</sup> However, these operations have been unauthorized since the 2015 STA Extension expired on November 19, 2016. Shelby continued operating at variance from its license, without authorization, and made no attempt to address this issue until July 19, 2018, when Shelby filed the Dismissed STA Application and 2018 STA Application. Moreover, when Valleydale filed the 2015 STA Application, it explained that “[o]n Sunday November 8, 2015 the W252BE coaxial cable suffered catastrophic damage . . . the cable was completely severed . . . [and] to recommence broadcasting, climbers lowered the current antenna to the location of the cut . . . to increase its ERP from 90 watts to 112 watts.”<sup>63</sup> Valleydale further stated that “the facility remains on the same tower that supports the licensed facility of W252BE.”<sup>64</sup> Subsequently, in its 2018 Complaint pleading, Marble City submitted documentation from two engineers who inspected the site and confirmed the Station was operating at variance from both its license *and* the 2015 STA Application.<sup>65</sup>

22. In its 2018 Complaint Opposition, Shelby admitted that the Station previously operated and continued to operate at variance from its license, stating “W252BE is still operating [at] parameters at variance from its license. The failure to extend the STA on November 19, 2016 was simply an oversight of Mr. Reynolds.”<sup>66</sup> Shelby also admitted that the 2015 STA Application was filed with “inaccurate technical information.”<sup>67</sup> We further find that Shelby failed to timely request STA to operate from the lower antenna height and increased ERP, as Shelby waited roughly twenty months after the Station proceeded with unauthorized operations, until July 19, 2018, and July 23, 2018, to file the Dismissed STA Application, which lacked a reason for the request, and the 2018 STA Application, both of which were filed after Marble City filed the 2018 Complaint. In light of these admissions and findings, we grant the Renewal Petition in part, and find that a monetary forfeiture is an appropriate penalty.<sup>68</sup>

23. *False Certification.* Section 1.17(a)(2) of the Rules provides that 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.”<sup>69</sup> 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>70</sup>

24. Shelby certified “Yes” in the Renewal Application that “there had been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulation of the Commission during the preceding license term.”<sup>71</sup> We find that Shelby apparently lacked a reasonable basis for this certification because, at the time the Renewal Application was filed in 2020, Shelby was aware that the

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<sup>62</sup> 2018 Complaint Opposition at 3, para. 3.

<sup>63</sup> 2015 STA Application, Exh. 12.

<sup>64</sup> *Id.* at Exh. 11.

<sup>65</sup> *See* 2018 Complaint at 4-6, Exh. 2 Statement of Frank L. Giardina, and Exh. 3 Statement of Larry Wilkins.

<sup>66</sup> *See* 2018 Complaint Opposition at 2, para. 2 and Exh. 1 Decl. of Lee Reynolds.

<sup>67</sup> *Id.* at 3.

<sup>68</sup> Because the Station has operated continuously from its authorized site, we find that monetary forfeiture, rather than cancellation of the Station’s license pursuant to section 312(g), is appropriate. *See supra* note 57.

<sup>69</sup> *See* 47 CFR § 1.17(a)(2).

<sup>70</sup> *See Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission, Report and Order, 18 FCC Rcd 4016, 4017, para. 5 (2003) (subsequent history omitted).*

<sup>71</sup> Renewal Application at Renewal Certification, FCC Violations during the Preceding License Term.

Station was operating with an incorrect antenna height. Moreover, while Shelby amended its application certifications regarding unresolved character issues, it should not have certified that there were no prior violations during the license term, and Shelby has yet to amend its application, or otherwise attach an explanatory exhibit detailing its violations. We accordingly issue this *NAL* to Shelby for this apparent violation of section 1.17(a)(2) of the Rules.

25. *Proposed Forfeiture.* We find that Shelby has apparently willfully and repeatedly violated section 301 of the Act and section 73.1745 of the Rules by engaging in unauthorized operation of the Station from June 20, 2017, when it became the licensee of the Translator, to the present. We also find that Shelby apparently willfully violated section 73.1635(a)(1) of the Rules by failing to timely file the Dismissed and 2018 STAs. We further find that Shelby apparently willfully violated section 1.17 of the Rules by failing to provide accurate technical specifications in the 2015 STA Application and by not disclosing its violation of section 301 of the Act and sections 73.1745 and 73.1635(a)(1) of the Rules in the Renewal Application. Under section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>72</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>73</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>74</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>75</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>76</sup>

26. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of \$10,000 for operation without an instrument of authorization for the service, and \$3,000 for failure to file a required form or information.<sup>77</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(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>78</sup>

27. Here, the Station has apparently been operating at variance from the terms of its authorization since November 8, 2015, despite the filing and grant of the 2015 STA Application and STA Extension Application. Shelby has since taken corrective action to come into compliance with the Act and our Rules, by filing the Modification Application and the 2018 STA Application. However, this corrective action is expected and does not nullify or mitigate the violations.<sup>79</sup> For the unauthorized operations, extensive

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<sup>72</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

<sup>73</sup> 47 U.S.C. § 312(f)(1).

<sup>74</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>75</sup> *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

<sup>76</sup> 47 U.S.C. § 312(f)(2).

<sup>77</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80, Paragraph (b)(10), Table 1.

<sup>78</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(11).

<sup>79</sup> *See e.g. AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21871, para. 14 (2002) (finding that remedial action to correct violation at issue was not a mitigating factor; licensees are expected to take remedial action when violations are brought to their attention).

period of time, and ongoing nature of the violations, a forfeiture in the base amount of \$10,000 is appropriate.<sup>80</sup> Regarding Shelby's failure to timely file the required STA and corresponding technical information, a forfeiture in the base amount of \$3,000 is appropriate.<sup>81</sup> Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture for these apparent violations from the base amount of \$10,000 for unauthorized service to \$5,000, and from \$3,000 for the late-filed STA applications, to \$1,500 because, as a translator station, the Station is providing a secondary service.<sup>82</sup> Finally, based on the gravity of the section 1.17(a)(2) violations, and Shelby's history or prior offenses, we propose a forfeiture amount of \$10,000 for submitting false certifications in its Renewal Application.<sup>83</sup> Considering the record as a whole, we propose a total forfeiture of \$16,500.

28. *Character Issues.* Marble City has not established that Shelby lacks the character qualifications necessary to be a Commission licensee. Marble City has not made a *prima facie* case that Shelby submitted misrepresentations<sup>84</sup> in the form of false statements to the Commission regarding the Station's operational status. We also conclude that Marble City has not made a *prima facie* case that Shelby made a false certification regarding "character issues" in the Renewal Application or the Assignment Application when it indicated that it was not a party to a broadcast application "where character issues were left unresolved or were resolved adversely against the applicant."<sup>85</sup>

29. In support of its claim, Marble City cites two letter decisions in which Bureau staff issued a notice of license expiration under section 312(g) against stations WZNN(FM), Maplesville, Alabama, and

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<sup>80</sup> Cf. *White*, 24 FCC Rcd at 12544, paras. 11-12 (citing \$10,000 base forfeiture for unauthorized service, but reducing proposed forfeiture to \$4,000, because licensee delayed in filing an STA for just over nine weeks).

<sup>81</sup> See e.g., *Id.*, 24 FCC Rcd at 12544, para. 12 (\$3,000 forfeiture proposed for late filed applications for modification and STA).

<sup>82</sup> See, e.g., *Corning Christian Radio Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1084 (MB Oct. 12, 2022); *Virginia Center for Public Press*, Memorandum Opinion and Order and Notice for Apparent Liability for Forfeiture, 34 FCC Rcd 9312 (MB 2019) (each reducing forfeiture for untimely filed renewal application for LPFM station due to secondary service status).

<sup>83</sup> See *E-String Wireless*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139, para. 16 and n.50 (MB 2016) (proposing \$5,000 forfeiture to licensee of translator that made false certifications in license to cover application, and noting a higher forfeiture would be appropriate for licensees of full-service stations); see also *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, para. 19, n.40 (2004) (false certifications are abuses of Commission processes which waste Commission resources and which may not only violate 47 CFR § 73.1015 but may subject the applicant to a monetary forfeiture as well as criminal liability under 18 U.S.C. § 1001 (citing *Financial Certifications by Applicants for Broadcast Station Permits*, Public Notice, 2 FCC Rcd 2122 (1987)).

<sup>84</sup> A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *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). Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., 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). In a case where all of the allegations are a matter of public record on file with the Commission, there is no logical basis to infer a motive to deceive unless there is other probative evidence of intent to deceive. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 and n.69 (2017) (*KAXT*).

<sup>85</sup> *KAXT*, 32 FCC Rcd at 9646, para. 16 ("[u]ntil such [character] allegations are determined to have merit and are designated for hearing, no 'unresolved' issue is pending 'against' the applicant, so there is nothing to report.").

W243AP, Mooresville, Alabama, licensed to Valleydale and Shelby respectively.<sup>86</sup> The 2017 Letters, however, do not make findings of character issues, do not conclude that Shelby, Valleydale, or their principals lack the character qualifications to be a Commission licensee, and do not leave character qualification issues unresolved.<sup>87</sup> The *WZNN(FM) Letter* required that a copy be attached to every facilities application filed by Valleydale, its principals, and stations in which they hold an interest under section 1.2112 of the Rules.<sup>88</sup> While not specifically enumerated in the ordering clauses, Shelby should have disclosed the WZNN Letter in its responses to the character-related certifications in the Renewal Application and answered the certifications correspondingly. Shelby has since amended the Renewal Application to include the 2017 Letters and reversed its responses to the certifications. The Assignment Application does not certify that there are no pending or unresolved character issues and includes the 2017 Letters. As such, Marble City's argument regarding the certifications is now moot. While Marble City has raised allegations related to Shelby's character qualifications, it has not made a *prima facie* case that Shelby or Valleydale possessed the intent to deceive necessary for a false certification finding<sup>89</sup> and therefore has not demonstrated that Shelby lacks the character qualifications needed to be a Commission licensee. Moreover, we note that section 309(k)(1) of the Act limits the scope of our review to the station for which license renewal is being considered.<sup>90</sup> Thus, Shelby's purported behavior involving other stations is not germane to our consideration of the Renewal Application.

## B. Assignment Application

30. *Discussion.* Section 310(d) of the Act<sup>91</sup> requires the Commission to determine whether the proposed assignment of a broadcast license would be in the public interest. Informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>92</sup> For the reasons discussed above, Petitioner has not satisfied this threshold requirement.

31. Marble City makes no argument that Rivera is unqualified to become the new licensee of the Station. Moreover, Rivera currently holds two broadcast licenses in the Birmingham market without issue. While Marble City has referenced and filed voluminous pleadings and arguments related to Shelby's unauthorized operations and character qualifications, for the reasons discussed above in reference to the Renewal Application, we do not find that these violations resulted in license expiration

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<sup>86</sup> See 2017 Letters (finding the stations' licenses expired as a matter of law after more than one year of unauthorized operation under section 312(g) of the Act).

<sup>87</sup> Bureau staff declined to exercise discretion to reinstate the licenses after expiration because the circumstances that led to expiration under section 312(g) were within the licensees' control. The WZNN Letter went further, citing Valleydale's violations of section 301 of the Act for operating from an alternate facility without FCC approval and informing the Commission that it returned to air with the same facilities, which were in fact operating from a different location. However, the primary issue in the 2017 Letters was a section 312(g) analysis, and the WZNN Letter did not make a determination on Valleydale's character qualifications.

<sup>88</sup> WZNN Letter at 3.

<sup>89</sup> See *supra* note 73.

<sup>90</sup> See 47 U.S.C. § 309(k)(1) ("If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license ...") (emphasis added). See also *Entercom Licenses, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196, 12208, para. 28 (2016) ("for renewal purposes, section 309(k)(1) limits the scope of our review to the station for which license renewal is being considered.").

<sup>91</sup> 47 U.S.C. § 310(d).

<sup>92</sup> 47 U.S.C. § 309(d). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986).

pursuant to Section 312(g). We also find that Marble City has not made a *prima facie* case that Shelby lacks the character qualifications necessary to be a Commission licensee, or to assign the license it holds.

32. *Conclusions/Actions.* Considering the entire record in this proceeding, we find that Shelby's apparent violations of the Act and the Rules do not constitute "serious violations,"<sup>93</sup> warranting designation for evidentiary hearing and that the proposed forfeiture constitutes a sufficient penalty for these apparent violations. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>94</sup> We therefore deny the Renewal Petition.

33. Concerning the Assignment Application, we find that Marble City has failed to raise a substantial and material question of fact calling for further inquiry regarding the Assignment Application. We therefore deny the Assignment Petition.

#### IV. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules, that Shelby Broadcast Associates, LLC, is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR FORFEITURE** in the amount of sixteen thousand five hundred dollars (\$16,500) for apparent willful and repeated violation of section 301 of the Act and sections 73.1745(a), 73.1635, and 1.17(a)(2), of the Commission's rules.

35. **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 *NAL*, that Shelby Broadcast Associates, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

36. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),<sup>95</sup> or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:<sup>96</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)

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<sup>93</sup> See 47 U.S.C. § 309(k)(1)(c).

<sup>94</sup> For example, we do not find that Shelby's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that Shelby is either incapable of correcting or unwilling to correct the operating deficiencies." *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, para. 10. See also *Center for Study and Application of Black Econ. Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>95</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>96</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).

captioned above (Payor FRN).<sup>97</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. (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.

37. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.<sup>98</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).

38. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A copy must be emailed to Alexander Sanjenis ([alexander.sanjenis@fcc.gov](mailto:alexander.sanjenis@fcc.gov)) and Olivia Hill ([olivia.hill@fcc.gov](mailto:olivia.hill@fcc.gov)).

39. 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.

40. **IT IS FURTHER ORDERED** that the Petition for Reconsideration, filed on April 16, 2020, by Marble City Media, LLC **IS GRANTED IN PART AND DENIED IN PART**.

41. **IT IS FURTHER ORDERED** that the Petition to Deny the Assignment Application, filed on July 10, 2020, by Marble City Media, LLC, **IS DENIED**.

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<sup>97</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>98</sup> See 47 CFR § 1.1914.

42. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Shelby Broadcast Associates, LLC, c/o Lee Reynolds, 5256 Valleybrook Trace, Birmingham, AL 35244, (and via email to: LEER@REYNOLDSTECHNICAL.COM), and to its counsel, Scott Woodworth, Esq., Edinger Associates PLLC, 1725 I Street N.W., Suite 300, Washington, DC 20006, (and via email to: swoodworth@edingerlaw.net), and to Marble City Media, LLC, c/o M. Scott Johnson, Esq., Smithwick and Belendiuk, P.C., 5028 Wisconsin Avenue, Suite 301, Washington, DC 20016 (and via email to: sjohnson@fhhlaw.com), and to Rivera Communications, c/o Larry Perry, Esq., 11464 Saga Lane, Ste. 400, Knoxville, TN 37931 (and via email to: larryperry@att.net).

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau