

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

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

FORFEITURE ORDER

Adopted: April 11, 2024**Released: April 11, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we affirm our *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*¹ and issue a monetary forfeiture in the amount of sixteen thousand five hundred dollars (\$16,500) to Shelby Broadcast Associates, LLC, (Licensee), licensee of FM translator station W252BE, Tarrant, Alabama (Station), for willfully and repeatedly operating the Station at variance from its license without Commission authorization, in violation of section 301 of the Communications Act of 1934, as amended (Act)² and section 73.1745(a)³ of the Commission's rules (Rules), willfully failing to timely file for special temporary authorization (STA) to operate with its nonconforming technical facilities in violation of section 73.1635(a)(1)⁴ of the Rules, and willfully failing to disclose material information regarding such unauthorized operation, in violation of section 1.17 of the Rules by failing to disclose material information regarding such unauthorized operations for the Station.⁵

II. BACKGROUND

2. 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.⁶ Section 73.1745(a)⁷ further prohibits the operation of a broadcast station at variance from the terms of the Station's authorization. Pursuant to section 73.1635, a licensee may request special temporary authority to operate for a limited time at variance from the terms of its authorization.⁸ However, the licensee must

¹ *Shelby Broadcast Associates, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 24-51 (MB Jan. 17, 2024).

² 47 U.S.C. § 301.

³ 47 CFR § 73.1745(a).

⁴ 47 CFR § 73.1635(a)(1).

⁵ 47 CFR § 1.17.

⁶ See 47 U.S.C. § 301; 47 CFR § 73.1350.

⁷ 47 CFR § 73.1745(a).

⁸ 47 CFR § 73.1635.

request STA ten days prior to beginning operation at variance from the terms of its authorization.⁹ We found that the Station suffered damage, adjusted its parameters, and applied for STA in 2015, then subsequently operated without authorization, at parameters at variance from its authorization, since November 19, 2016, when an STA extension expired. Licensee continued operating the Station at variance from its license, without authorization, and made no attempt to address this issue until July 19, 2018.

3. 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.”¹⁰ 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.¹¹ We also found that Licensee lacked a reasonable basis for certifying in the Renewal Application¹² that there had been no violations by the licensee of the Act or the Rules, because the Station had operated with an incorrect antenna height.

4. Accordingly, on January 17, 2024, we released the *NAL*, which proposed a forfeiture of sixteen thousand five hundred dollars (\$16,500).¹³ As noted in the *NAL*, 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.¹⁴ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we reduced 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.¹⁵ Finally, based on the gravity of the section 1.17(a)(2) violations, and Licensee's history or prior offenses, we proposed a forfeiture amount of \$10,000 for submitting false certifications in its Renewal Application.¹⁶ The *NAL* gave the Licensee thirty days to pay the full amount of the proposed forfeiture, or

⁹ 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).

¹⁰ See 47 CFR § 1.17(a)(2).

¹¹ 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).

¹² Application File No. 0000091616 (filed Nov. 27, 2019).

¹³ *NAL* at 2, para. 2.

¹⁴ *NAL* at 9, para. 26 (citing *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)(11), Table 1).

¹⁵ *NAL* at 10, para. 27 (citing *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 of 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)).

¹⁶ *Id.* (citing *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); *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 also may subject the applicant to a monetary forfeiture as well as criminal liability under 18 U.S.C. § 1001)).

file a written statement seeking reduction or cancellation of the proposed forfeiture.¹⁷

5. On February 16, 2024, the Licensee submitted a written response to the NAL in which it does not dispute that it violated section 301 of the Act and sections 73.1745(a), 73.1635, and 1.17(a)(2) of the Rules, but argues that the proposed forfeiture should be cancelled or reduced based on its inability to pay the forfeiture.¹⁸ Licensee also argues that in light of Licensee's gross revenue and expenses, the forfeiture amount is significant, and notes that the Station has operated at a loss for two of the last three years and the proposed forfeiture will threaten Licensee's ability to continue operating.¹⁹ In support of these claims, Licensee attaches IRS tax returns from 2020, 2021, and 2022.²⁰

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with section 503(b) of the Act,²¹ section 1.80 of the Rules,²² and the *Forfeiture Policy Statement*.²³ Section 503(b)(2)(E) of the Act requires that the Commission take into account 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 other such matters as justice may require.²⁴

7. We have considered Licensee's response in light of these statutory factors. We affirm our finding that the Licensee willfully violated section 301 of the Act and sections 73.1745(a), 73.1635, and 1.17(a)(2) of the Rules. The Commission has previously held that a Licensee's gross revenue is the best indicator of its ability to pay a forfeiture.²⁵ The Commission has also found that forfeitures are not excessive when they amount to a small percentage of a licensee's gross revenue.²⁶ However, the Commission has also held that it "looks to all potential sources of income available to the entity" including the pending sale of a station, and has rejected a claim of inability to pay where a licensee failed to mention the pending sale of its station, which would yield a significantly larger sum than the forfeiture amount.²⁷

8. Although Licensee's tax submissions from 2020-2022 indicate that the proposed forfeiture would not constitute a small percentage of Licensee's gross income, as previously determined

¹⁷ *Id.* at 12, para. 35.

¹⁸ Forfeiture Cancellation Request, Pleading File No. 0000239090 (filed Feb. 16, 2024) (NAL Response). The NAL Response was redacted and included a request for confidential treatment of its tax information pursuant to 5 U.S.C. § 552(b)(4) and 47 CFR § 0.457(d)(1). In accordance with this request, Licensee also submitted an unredacted version of the NAL Response to Bureau staff. Email from Scott Woodworth, Esq., to Albert Shuldiner, Chief, Audio Division, FCC Media Bureau (Feb. 16, 2024, 07:44 EST).

¹⁹ NAL Response at 2.

²⁰ NAL Response, Exh. A.

²¹ 47 U.S.C. § 503(b).

²² 47 CFR § 1.80.

²³ *See generally*, *Forfeiture Policy Statement*.

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ *Unipoint Technologies, Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 29 (2014); *Sunstar Travel & Tours, Inc.*, Forfeiture Order, 25 FCC Rcd 13804, 13808, para. 14 (2010).

²⁶ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Reconsideration, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broad. Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

²⁷ *D.T.V., LLC*, Forfeiture Order, 31 FCC Rcd 2650, 2658-59, paras. 21-22 (2016).

by the Commission, the *Forfeiture Policy Statement* provides that “we must look to the totality of the circumstances surrounding the individual case.”²⁸ Section 1.80 of the Rules also instructs that “substantial economic gain” is a factor that warrants upward adjustment of a forfeiture amount.²⁹ Here, Licensee has a pending sale of the Station for \$184,000,³⁰ which is significantly greater than the forfeiture amount. The forfeiture amount is only 8.9% of the purchase price, which is comparable to gross income percentages the Commission has previously deemed reasonable.³¹ Moreover, the Station sale price would be an addition to the gross income generated by the Station. The proceeds from the Station sale, combined with Licensee’s gross income, demonstrate Licensee’s ability to pay the forfeiture amount.³² Further, due to Licensee’s history of noncompliance, including unauthorized operations, and the extended duration of the violations, we find no basis to reduce or cancel the proposed forfeiture and affirm the *NAL*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, 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, Shelby Broadcast Associates, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$16,500 for its willful violation of section 301 of the Communications Act and sections 73.1745(a), 73.1635, and 1.17(a)(2) of the Commission’s rules.

10. 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),³³ 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:³⁴

- 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).³⁵ For additional detail and wire transfer instructions, go to

²⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17158, para. 113.

²⁹ 47 CFR § 1.80, Paragraph (b)(11), Table 3 (Adjustment Criteria for Section 503 Forfeitures).

³⁰ Assignment Application, Application File No. BALFT-20200608AAG, attach. “1817956_44975764.pdf” (filed June 10, 2020).

³¹ See *supra* note 26 (forfeiture amounts constituting 7.9 and 7.6 percent of violators’ gross revenues were not deemed excessive).

³² Cf. *Pinnacle Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15496 (1996) (*Pinnacle*) (finding rescission of *NAL* warranted due to inability to pay where licensee was in default of a 4,000,000 loan personally guaranteed by licensee’s principal, the station sale was entered into to avoid foreclosure, the buyer assumed certain outstanding liabilities from the seller, neither the licensee or its principal received any cash payment or proceeds, and the licensee did not retain any stations). See also *San Luis Obispo Broad. L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 1020 (1998) (forfeiture not reduced because Licensee’s financial circumstances were not as dire as *Pinnacle*’s, and loan default was not personally guaranteed by a principal).

³³ Payments made using CORES do not require the submission of an FCC Form 159.

³⁴ 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.

³⁵ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

<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.

11. 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 20554.³⁶ 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.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* 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@FCCWORLD.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

³⁶ See 47 CFR § 1.1914.

Federal Communications Commission
Washington, D.C. 20554

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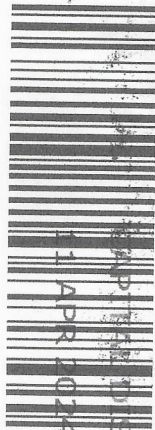
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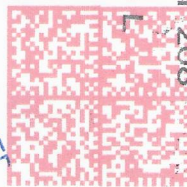
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c/o Lee Reynolds
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Birmingham, AL 35244

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<p>1. Article Addressed to:</p> <p style="text-align: center;">Scott Woodworth, Esq. Edinger Associates PLLC 1725 I Street N.W. Suite 300 Washington, DC 20006</p>	<p>B. Received by (Printed Name) C. Date of Delivery</p> <p><u>Carl Overby</u> <u>4-15-24</u></p>
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<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">Rivera Communications c/o Larry Perry, Esq. 11464 Saga Lane Ste. 400 Knoxville, TN 37931</p>	<p>B. Received by (Printed Name) C. Date of Delivery</p> <p> </p>
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<p style="text-align: center;"></p> <p style="text-align: center;">9590 9402 8449 3156 8134 62</p>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express®</p> <p> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Insured Mail Restricted Delivery (0) </p>
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