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MEMBER, DISTRICT OF COLUMBIA BAR
NOT ADMITTED IN FLORIDA
PRACTICE LIMITED TO FEDERAL AGENCIES

June 16, 2016

BY HAND DELIVERY

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12 Street, S.W.
Washington, D.C. 20554

Accepted / Filed

JUN 16 2016

Federal Communications Commission
Office of the Secretary

ATTN: Video Division, Media Bureau, Room 2-A820

RE: Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID No. 51233

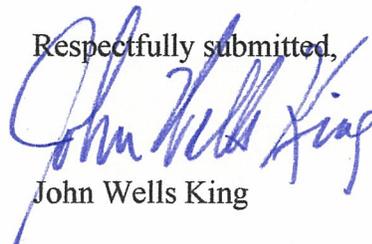
SUBJECT: Petition for Reconsideration, NAL/Acct. No.: 201541420036

Dear Ms. Dortch:

On behalf of Pacific Telestations, LLC, I transmit herewith in triplicate its Petition for Reconsideration of the Forfeiture Order adopted and released May 18, 2016, in the above-referenced matter.

Kindly communicate any questions directly to the undersigned.

Respectfully submitted,



John Wells King

JWK/

Before the
FEDERAL COMMUNICATIONS COMMISSION Accepted / Filed
Washington, D.C. 20554

JUN 16 2016

Federal Communications Commission
Office of the Secretary

In the Matter of)	
)	
Pacific Telestations, LLC)	Facility I.D. No. 51233
Licensee of Station KUAM-TV)	NAL/Acct. No.: 201541420036
Hagatna, Guam)	FRN: 0022452825

TO: Media Bureau, Video Division

PETITION FOR RECONSIDERATION

Pacific Telestations, LLC (the “Licensee” or “Pacific”), by its counsel and pursuant to Section 1.106(b) of the Commission’s Rules, hereby petitions for reconsideration of the Forfeiture Order adopted and released in the above-captioned matter on May 18, 2016, DA 16-552 (the “Order”), in which the Commission, by authority delegated to the Media Bureau, Video Division (the “Division”), ordered the Licensee to forfeit the sum of Ten Thousand Dollars (\$10,000) for willful and/or repeated violation of Section 73.3526(e)(11)(i) of the Rules. The Licensee herein demonstrates that the Commission, pursuant to Section 1.80(i) of the Rules, should remit the forfeiture altogether, and in support thereof, states as follows:

Background

The Order is premised upon a Notice of Apparent Liability issued December 23, 2015 (the “NAL”),¹ in which the Division claimed, *inter alia*, that the failure of Pacific’s

¹ *Pacifica [sic] Telestations LLC*, 30 FCC Rcd 14684 (Vid. Div. 2015).

Television Station KUAM-TV, Hagatna, Guam, to timely place hard copies of its quarterly television issues/programs lists in the physical public file for fifteen quarters prior to August 2, 2012 (the date the Commission's electronic public inspection file became effective) constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i) of the Rules.²

In response to the *NAL*, Pacific explained that the violations occurred before it became the licensee of KUAM-TV, and that it was not responsible for the conduct of the former licensee. The station ownership changed in February 2013, after the Commission approved (1) a long-form transfer of control application and (2) an immediate follow-on pro forma application for assignment to the Licensee.³ The *Order* concluded that a pro forma assignment following a long form transfer of control does not relieve a licensee of liability for violations during the license term.⁴

The Order Erroneously Regards a Single Ownership Change As Two Discrete Transactions

Pacific recognizes that the transfer of control of stock of a corporation subsequent to rules violations does not excuse the licensee of the violations.⁵ But that did not happen here. There was no transfer of control of the former licensee.

² The *NAL* also claimed that KUAM-TV failed to file Children's Television Programming Reports, Form 398, for five quarters, and failed to report such failures in its license renewal application, FCC File No. BRCDT-20140929AFC. The *NAL* proposed a forfeiture of Six Thousand Dollars (\$6,000) for these alleged violations. The *Order* canceled the proposed forfeiture upon the Licensee's showing in response to the *NAL* that the Reports were filed. *Order* at 3.

³ *Response to Notice of Apparent Liability for Forfeiture*, January 15, 2016. See FCC File Nos. BTCCDT-20121121AAL and BALCDT-20130131AAX, respectively.

⁴ *Order* at 3-4.

⁵ *EZ Sacramento, Inc.*, 14 FCC Rcd 13539 (MMB 1999), cited in the *Order* at 3 n.24.

The change in beneficial ownership of the Licensee occurred when the station license was assigned to the new assignee entity, Pacific Telestations, LLC, pursuant to Commission consent granted in FCC File No. BALCDT-20130131AAX. The changes proposed in the application for transfer of control of the former licensee, Pacific Telestations, Inc., FCC File No. BTCCDT-20121121AAL, never occurred. The transfer was never consummated.⁶

The Licensee made this clear to the Commission in the KUAM-TV renewal application, when the Commission staff first addressed the public file issues underlying the issuance of the *NAL*. Pacific advised the Commission:⁷

The change in beneficial ownership of the licensee occurred with the transfer to the new assignee entity, not to a transfer of interests in the former licensee entity. The consummation notice was filed pursuant only to the application for assignment of license.

The new majority ownership acquired control of the station in only one transaction: the assignment of license to Pacific Telestations, LLC. Although that beneficial ownership was proposed to and approved by the Commission in the immediately preceding long-form transfer of control application, it was effectuated pursuant to the short-form assignment application. As the Licensee advised the Commission in its renewal application, “the filing of a long form transfer of control and the filing of a short-form assignment of license, taken together, comprise an effective long form assignment of license.”⁸

⁶ Since the transfer of control was not consummated, the former licensee did not file an ownership report reflecting the beneficial ownership proposed in the transfer of control.

⁷ See FCC File No. BRC DT-20140929AFC, Exhibit 20, a copy of which is attached hereto for reference as Attachment A.

⁸ *Id.*

The *Order* mischaracterizes Pacific's intention and conduct in asserting:⁹

. . . the Licensee argues that, *because* it originally *failed* to file its consummation notice in connection [with] the long form transfer of control and only filed a consummation notice for its subsequent pro forma assignment of license, the two transactions were effectively a long form assignment of license and "the new ownership acquired the license into a new entity."

Pacific did not *fail* to file the long form transfer of control consummation notice. It consciously chose not to do so, for the simple reason that the transfer of control was never consummated. This is evident from the Licensee's explanation in the KUAM-TV renewal.¹⁰ Further, it was not due to the absence of a consummation notice for the transfer of control application that the Licensee treated the two applications as effectively a long-form assignment.¹¹

The rulings upon which the *Order* relies are inapposite and not factually relevant. *EZ Sacramento, Inc.*, 14 FCC Rcd 13539 (MMB 1999), involved *only* a change in beneficial ownership through a stock transfer, as did *Winslow Communications, Inc.*, 45 FCC2d 662 (1972), *Mapleton Licensee of San Luis Obispo*, 27 FCC Rcd 4099 (EB 2012), and *Hensley Broadcasting, Inc.*, 24 FCC Rcd 115 (EB 2009). *There was no transfer of stock here.*

⁹ Order at 3. (Footnote omitted.) (Emphasis added.)

¹⁰ See Attachment A.

¹¹ The Order makes a gratuitous reference to the fact that the transfer of control was an intra-family transaction, at 3 n.29. This, of course, has no bearing upon the requirements of Section 310 of the Communications Act of 1934, as amended, and the Commission's rules and policies concerning changes in ownership and control of broadcast stations. "A transfer of control takes place when an individual or group in privity, gains or loses affirmative or negative (50%) control." 47 CFR §73.3615(c). Pacific Telestations, Inc., was controlled by brothers Paul M. Calvo and Thomas J.M. Calvo, and by Frances M. Calvo, the widow of their brother Edward M. Calvo. See FCC File No. BOA-20111130IBC. Beneficial ownership and control passed to Eduardo A. and John T. Calvo, sons of Paul M. Calvo, who, with Frances M. Calvo, retained minority interests in the new licensee. See FCC File No. BOA-20151112XGW. Eduardo A. and John T. Calvo never held a majority interest in Pacific Telestations, Inc., either before the filing, or after grant, of the long form transfer of control application.

New DMIC, Inc., 13 FCC Rcd 23611 (MMB 1998), involved *only* a pro forma assignment of license with no change in beneficial ownership. The pro forma assignment of license here reflected a change in beneficial ownership.

P.D. Communications, LLC, 20 FCC Rcd 16557 (MB 2005), involved *two* transactions: a stock transfer followed by a pro forma license assignment one year later. *There was only one transaction here.*

Assuming for the sake of argument that a transfer of control took place prior to the assignment of license, the Media Bureau, by its Audio Division, has held that, on the basis of Section 73.3526(d)(1) of the Rules, a licensee is not responsible for the public file prior to either an assignment of license or a transfer of control. It reduced a forfeiture “to an amount commensurate with the violations” that occurred after the changed ownership.¹² On the plain wording and analysis of this ruling, the forfeiture should be canceled.

In light of the foregoing, the *Order* is plainly in error in assigning to the Licensee the responsibility for the conduct of the prior licensee.

¹² *Citadel Broadcasting Company*, 25 FCC Rcd 15060, 15062 (MB 2010). Citadel argued that it was not responsible for the public file prior to the date it acquired control of the licensee. The Audio Division said:

We agree. Section 73.3526(d)(1) of the Rules, “Responsibility in Case of Assignment or Transfer,” states, in pertinent part: “[I]f the assignment [or transfer] is consented to by the FCC and consummated, the assignee [or transferee] shall maintain the file commencing with the date on which notice of the consummation . . . is filed with the FCC.¹⁵

¹⁵ 47 C.F.R. § 73.3526(d)(1). *See also Media Bureau Announces Certain Revisions to Instructions to Form 303-S*, Public Notice, 18 FCC Rcd 8986 (MB 2003) (“[I]f the station license was assigned or transferred during the subject license term pursuant to a “long-form” application on FCC Form 314 or 315, the renewal applicant’s certifications should cover only the period during which the renewal applicant held the station’s license.”).

**The Division Neglected To Acknowledge That
Pacific Had No Knowledge of Acts Undertaken
Prior to the Term of its License**

In its response to the *NAL*, Pacific averred that it cannot be charged with the conscious and deliberate commission or omission of an act by another corporate entity. The *Order* neglected to address and confirm this.

The Commission has explained that “willful” means “the violator *knew* it was taking or failing to take the action in question, irrespective of any intent to violate the Commission’s rules.” *Saga Communications of New England, LLC*, 25 FCC Rcd 3289, 3292 (EB 2010) (Emphasis added). Here, the Licensee was not the violator; it did not take or fail to take the action in question; it had no knowledge.

It follows that if Pacific did not willfully commit or omit an act, it obviously cannot be said to have acted repeatedly, as defined by Section 312(f)(2) of the Act.

**The Order Wrongfully Relies on the Fiction
That a Transfer of Control Occurred – A Fiction the Division Fabricated**

The record is clear that no transfer of control of Pacific Telestations, Inc., occurred. The Division, realizing this, duplicitously compelled Pacific Telestations, LLC, to file, more than three years later, a consummation notice for the long form transfer of control application of the prior licensee, Pacific Telestations, Inc.

Neither the fiction nor the duplicity should be countenanced. They deceitfully impute to the Licensee what is effectively an admission of a “chain of liability” from the former station ownership.

The fictional filing was solicited by the Division staff in a telephone conference to which the *Order* refers: “following conversations with Video Division Staff, the Licensee has filed a consummation notice for the long form transfer of control, making this issue moot.”¹³ Pacific did not file the notice for the purpose of reporting the consummation of the transaction approved in the long-form transfer of control application. Clearly, to do so now – in light of the Division’s position in the *NAL* – would be an admission against interest.

Moreover, as Pacific’s counsel advised Deputy Division Chief David Brown in the conversation to which the *Order* refers, to file the notice would have constituted a misrepresentation to the Commission, since the transaction did not take place. For these reasons, counsel was initially unwilling to accede to Mr. Brown’s demand.

In an effort to secure the filing, Mr. Brown assured counsel that the consummation notice was required to be filed in order to avoid a break in the “chain of ownership” in the Commission’s records.¹⁴ Upon the clear indication from Mr. Brown that the consummation notice was required administratively simply for ownership record purposes, counsel agreed to submit it, despite the facts that the filing would be inaccurate on its face, the filing would be filed some three years late, and the former licensee is no longer in existence.¹⁵

¹³ *Order* at 4. (Footnote omitted.)

¹⁴ Mr. Brown did not use the phrase “break in the chain of liability,” as used in the *Order* at 3, but rather, “chain of ownership.” In light of the subsequent issuance of the *Order*, Mr. Brown’s consistent use of the term “chain of ownership” in the telephone conversation with counsel reflects the deceit that underlay the demand that the notice be filed.

¹⁵ The consummation notice was filed in the name of Pacific Telestations, LLC, under its FRN.

In furnishing a copy of the consummation notice to the staff, counsel articulated his understanding of the specific purpose and conditional nature of the filing, as represented by Mr. Brown:¹⁶

To be clear, I understand that the Commission requires the consummation notice to be filed in order for the Commission's records to reflect accurately the beneficial interests held in the licensee, even though the beneficial interests were not transferred via stock transfers in the corporation, but are instead held as membership interests in the licensee limited liability company.

The *Order* reveals that the filing of the consummation notice turned out not to be for the administrative use and record purposes, as Mr. Brown represented, and upon whose representation Pacific relied. In classic "gotcha" fashion, the Division imbued the filing with substance, and concluded that the filing thereby made the issue moot. In so doing, the Division created, and relied upon, a fiction that the current beneficial ownership of the Licensee held those interests in the prior licensee. The *Order* stands on this fiction in declaring intact a "chain of liability."

Neither the fiction nor the duplicity that gave rise to it can stand; the forfeiture should be canceled in its entirety.

Conclusion

The record is clear: only one transaction occurred, namely, the assignment of the KUAM-TV license to Pacific Telestations, LLC, in the form of ownership previously passed

¹⁶ See email correspondence from John Wells King to Adrienne Denysyk, April 19, 2016, attached hereto at Attachment B.

upon and approved by the Commission in a transfer of control application that was not consummated.

The Division's duplicity in attempting to create a record to the contrary should not be countenanced.

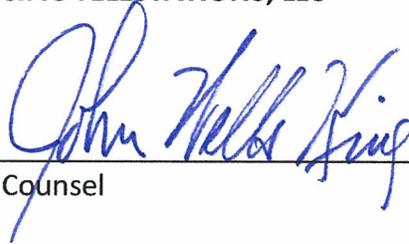
Accordingly, the forfeiture should be canceled altogether.

Respectfully submitted,

PACIFIC TELESTATIONS, LLC

By:

Its Counsel

A handwritten signature in blue ink, reading "John Wells King", is written over a horizontal line. The signature is cursive and fluid.

LAW OFFICE OF JOHN WELLS KING, PLLC

4051 Shoal Creek Lane East
Jacksonville FL 32225-4792
Tel: 904.647.9610
Email: John@JWKingLaw.com

June 16, 2016

ATTACHMENT A

Pacific Telestations, LLC

Application for License Renewal

FCC File No. BRC DT-20140929AFC

Exhibit 20

Statement re Local Public File Certification

August 2015

Pacific Telestations, LLC
Station KUAM-TV, Facility ID 51233
Hagatna, Guam
Response to Section IV, Item 3
Exhibit 20
August 2015

STATEMENT RE LOCAL PUBLIC FILE CERTIFICATION

This statement is furnished in response to an informal inquiry of the Commission staff, arising in the course of review of the application for renewal of license for KUAM-TV, Hagatna, Guam. The staff observed with respect to the online public file that KUAM-TV did not appear to have any issues-programs lists uploaded prior to 2013.

The absence of issues-programs lists for quarters prior to the first quarter 2013 was intentional, based upon the licensee's good faith determination that they were no longer required to be located in the public file. This was because the ownership of the station changed in February 2013, after the Commission approved a long form transfer of control application in BTCCDT-20121121AAL, and a follow-on pro forma license assignment application to the current licensee, in BALCDT-20130131AAX. Due to new ownership, the licensee concluded that only the issues-programs lists for the term of the current licensee's ownership were required to be placed in the online local public file.

Subsequent to the Commission staff's initial informal inquiry, the staff advised KUAM-TV that the retention requirement is truncated only by a change in ownership in a long form assignment of license, and not by a change in ownership in a long form transfer of control.

In this case, the filing of a long form transfer of control and the filing of a short-form assignment of license, taken together, comprise an effective long form assignment of license. (The change in beneficial ownership of the licensee occurred with the transfer to the new assignee entity, not to a transfer of

interests in the former licensee entity. The consummation notice was filed pursuant only to the application for assignment of license.)

Regardless, KUAM-TV is pleased to honor the staff's request for a complete record of issues-programs lists for the preceding license term. KUAM-TV's online public file has been updated to include all issues-programs lists beginning with the 3rd quarter of 2007. (KUAM-TV's last license renewal was granted June 14, 2007.)

In the course of preparing the issues-programs lists for uploading to the online public file, KUAM-TV discovered that some quarterly lists were missing from the hard copy public file at the station. Accordingly, by this amendment, the licensee's certification at Section IV, Item 3, as to public file documentation, is hereby changed to "No," and the following explanation is provided.

KUAM-TV compiles its issues-programs lists from a running log of all local programs, segments, rundowns and topics that is maintained in programming logs in newsroom system archives, under the direction of the news director and program producers. The compilation of information about programs broadcast to address perceived issues of significance to the community thus has been unbroken for the term of the license. However, the task of assembling the information into the format of a hard-copy issues-programs list was not always met. KUAM-TV discovered that hard copy quarterly lists were missing from the local public inspection file for the 3rd and 4th quarters of 2007, four quarters of 2008 and 2009, the first three quarters of 2010, and quarters 1 and 2 of 2012.

Some of the missing quarters in question reflect personnel changes and shifts in duties over the years. In 2008, KUAM-TV eliminated the position of the administrative assistant to whom the task of compiling

issues-programs lists from the programming log was given. Within the station's organizational structure, this responsibility was assigned to other staff. However, due to company cutbacks, the station's personnel make-up has resulted in hybrid roles with multitasking employees and frequent shifts in responsibilities. Because of this, the routine compilation and placement of the issues-programs list in the public file was sometimes overlooked.

Nevertheless, the recordkeeping upon which the lists are based was always intact at the station, though regrettably not filed properly every quarter. Because of the diligence with which KUAM-TV maintained its running log for the issues-programs list, if it had received a request during the missing quarters identified, the station would have been able to honor the concerned citizen's request despite the misfiling. Issues-programs lists for the missing quarters have now been compiled, and all have been uploaded so that the online public inspection file is complete.

Moving forward, KUAM-TV has redoubled its efforts to be compliant and has met each filing deadline since the inception of the online public inspection file. In this connection, it is worth noting that KUAM-TV has a complete record of Children's Television Programming Reports (Form 398).

ATTACHMENT B

Email Correspondence

From John Wells King

To Adrienne Denysyk

Copy to David Brown

April 19, 2016

**Forwarding copy of
Consummation Notice**

John King

From: John King
Sent: Tuesday, April 19, 2016 10:06 AM
To: 'Adrienne Denysyk'
Cc: 'david.brown@fcc.gov'
Subject: KUAM-TV
Attachments: Consummation Notice f 4-19-2016.pdf

Adrienne,

Attached is a copy of the consummation notice I filed in CDBS for the application for consent to transfer control of Pacific Telestations, Inc., in FCC File No. BTCCDT-20121121AAL, pursuant to the discussion yesterday among you, me and David Brown. To be clear, I understand that the Commission requires the consummation notice to be filed in order for the Commission's records to reflect accurately the beneficial interests held in the licensee, even though the beneficial interests were not transferred via stock transfers in the corporation, but are instead held as membership interests in the licensee limited liability company.

Best wishes.

John

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Member, District of Columbia Bar | Not admitted in Florida | Practice limited to Federal agencies

Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0031 (September 2004)	FOR FCC USE ONLY
Consummation Notice Read Instructions/FAQ before filling out form		FOR COMMISSION USE ONLY FILE NO.

Section I - General Information

1.	Legal Name of the Applicant PACIFIC TELESTATIONS, LLC																						
	Mailing Address 600 NORTH HARMON LOOP ROAD SUITE 102																						
	City DEDEDO	State or Country (if foreign address) GU	Zip Code 96912 -																				
	Telephone Number (include area code) 6716375826		E-Mail Address (if available)																				
	FCC Registration Number: 0022452825	Call Sign KUAM-TV	Facility ID Number 51233																				
2.	Contact Representative (if other than licensee/permittee) JOHN WELLS KING		Firm or Company Name LAW OFFICE OF JOHN WELLS KING																				
	Mailing Address 4051 SHOAL CREEK LANE EAST																						
	City JACKSONVILLE	State or Country (if foreign address) FL	ZIP Code 32225 - 4792																				
	Telephone Number (include area code) 9046479610		E-Mail Address (if available) JOHN@JWKINGLAW.COM																				
3.	Purpose: <input checked="" type="radio"/> Consummation Notice <input type="radio"/> Extension of Consummation <input type="radio"/> Notification of Non-consummation																						
4.	Consummation for: <input type="radio"/> Assignment of License and/or Permit <input checked="" type="radio"/> Transfer of Control																						
5.	Lead Station File Number: BTCCDT - 20121121AAL		Lead Facility ID: 51233																				
6.	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:33%;">File Number</th> <th style="width:17%;">Facility ID</th> <th style="width:20%;">Call Sign</th> <th style="width:30%;">Will not Consummate</th> </tr> </thead> <tbody> <tr> <td>BTCCDT-20121121AAL</td> <td>51233</td> <td>KUAM-TV</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>BTCTTL-20121121AAM</td> <td>51235</td> <td>KUAM-LP</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>BTC-20121121AAN</td> <td>51238</td> <td>KUAM</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>BTCH-20121121AAO</td> <td>51236</td> <td>KUAM-FM</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table>			File Number	Facility ID	Call Sign	Will not Consummate	BTCCDT-20121121AAL	51233	KUAM-TV	<input type="checkbox"/>	BTCTTL-20121121AAM	51235	KUAM-LP	<input type="checkbox"/>	BTC-20121121AAN	51238	KUAM	<input type="checkbox"/>	BTCH-20121121AAO	51236	KUAM-FM	<input type="checkbox"/>
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BTC-20121121AAN	51238	KUAM	<input type="checkbox"/>																				
BTCH-20121121AAO	51236	KUAM-FM	<input type="checkbox"/>																				

7.	Date of consummation: 2/12/2013
8.	FRN of Assignee/Transferee: 0022452825

I hereby certify that the referenced assignment of license/transfer of control was consummated within the required time period, on the date indicated in #7 above.

Typed or Printed Name of Person Signing JOHN WELLS KING	Typed or Printed Title of Person Signing COUNSEL
Signature	Date 4/19/2016

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Exhibits

Federal Communications Commission

FCC MB - CDBS Electronic Filing

Account number: 593977

Description: CONSUMMATION NOTICE FOR KUAM-TV TRANSFER OF CONTROL

Successfully filed at Apr 19 2016 9:55AM

Based on the information supplied, no fee is required.

[Informal Menu](#)

[Logout](#)

DECLARATION

The undersigned, John Wells King, does hereby declare and state the following:

1. I am an attorney admitted to practice in the District of Columbia and before the Federal Communications Commission since 1972. I am counsel to Pacific Telestations, LLC (“Pacific”).

2. On or about April 18, 2016, Video Division attorney Adrienne Denysyk contacted me by telephone, concerning the Notice of Apparent Liability issued December 23, 2015, against Pacific, and Pacific’s response thereto, dated January 15, 2016 and filed January 19, 2016. She contacted me a second time, with Deputy Division Chief David Brown on the line.

3. The statements of fact regarding that three-way telephone conference, at pages seven and eight of the Petition for Reconsideration to which this Declaration is attached, are true and correct of my knowledge.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on June 16, 2016.



John Wells King