

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Four Corners Broadcasting, LLC,	)	NAL/Acct. No.: 201432800001
	)	FRN: 0003779816
Licensee of:	)	
	)	
Station KIQX(FM) and Station WHB352, Durango, Colorado;	)	File No. EB-FIELDWR-12-00004043
	)	Facility ID No. 22174
	)	
Station KRSJ(FM) and Station WLD73, Durango, Colorado	)	File No. EB-FIELDWR-12-00004038
	)	Facility ID No. 22036
	)	
Station KIUP(AM) and Station WPNG746, Durango, Colorado; and	)	File No. EB-FIELDWR-12-00004044
	)	Facility ID No. 22039

To: District Director, Denver Office, Western Region, Enforcement Bureau

**REQUEST FOR CANCELLATION OR REDUCTION OF FORFEITURE**

Four Corners Broadcasting, LLC (“FCB”), by its attorneys, hereby responds to the Notice of Apparent Liability for Forfeiture and Order (DA 13-2059), released October 25, 2013 (the “NAL”), and respectfully requests substantial reduction or cancellation of the proposed forfeiture.

As noted in the NAL, FCB submitted applications (the “Modification Applications”) in October 2012 to modify the licenses for the above-captioned Studio Transmitter Link (“STL”) licenses. These efforts were undertaken in swift response to the Commission’s Notices of Violation issued September 27, 2012, which provided the licensee its first formal notification that the STLs were operating outside licensed parameters. As FCB explained in its Consolidated Response dated November 1, 2012, FCB was unaware, due to the sudden physical and mental

incapacity of its former chief engineer, that the STL matters had not been properly addressed.<sup>1</sup> As noted in the NAL, the 2012 Modification Applications were “returned” and dismissed earlier this year. FCB never received the letters providing notification of the return of the applications, which would have permitted notice and opportunity to amend. FCB did, however, receive notification of the dismissals of the Modification Applications and immediately undertook efforts to rectify the situation.

Working with FCB’s consulting engineer, Mr. Ward Holmes, Regional Manager for FCB, ascertained that an Internet delivery system might be a better alternative to over-the-air STLs for the stations, and thus FCB ordered Tele-Link transmitter equipment from Energy-Onix. During the July 23, 2013 FCC inspection<sup>2</sup> of the above-captioned Stations, Mr. Holmes informed the FCC agent of the planned transition to Internet delivery and that the equipment had been ordered and delivery was imminent. The agent requested of Mr. Holmes that FCB keep the Field Office informed of its progress regarding the STLs, but she did not provide any indication of a specific deadline for completion.

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<sup>1</sup> As noted in the NAL, the licensee was aware of the potential violations as a result of previous inspections. However, as previously explained by FCB in the Consolidated Response, FCB’s chief engineer at that time had undertaken efforts to resolve the issue, including, but not limited to, preparation of modification applications. It was only upon the release of the NOV’s that FCB became aware that its then-critically ill chief engineer had failed to complete the necessary steps to accomplish the modifications.

<sup>2</sup> Each of the Stations was subject to a voluntary alternative inspection conducted in conjunction with the Colorado Broadcasters Association, and each station was found, per certificates dated June 28, 2013, “fully compliant with all current FCC Rules & Regulations.” See Exhibit A hereto. Pursuant to the agreement between the FCC and the state broadcast associations, once a station has obtained an Alternative Broadcast Inspection Program (“ABIP”) Certificate of Compliance, the station is granted a safe harbor period from inspection by the FCC for a period of three years. Mr. Holmes informed the FCC agent on July 23, 2013, that the stations were ABIP certified; the agent acknowledged the certifications, yet conducted an inspection regardless.

FCB received the equipment in late July and began testing in early August. It soon became clear that the transmitter site did not have the level of Internet service necessary to provide reliable delivery, and that acquiring such service would be cost-prohibitive. Thus, Mr. Holmes undertook steps to once again modify the over-the-air STL licenses. Comsearch was engaged by FCB in late August 2013 to conduct frequency coordination; coordination was completed in mid-October, and new modification applications were filed October 30, 2013 (the “New Applications”).

In its prior Consolidated Response, FCB did not deny error – rather, FCB explained that any error had been inadvertent and complicated by the incapacity of its engineer. As demonstrated by the filing of the Modification Applications, FCB in fact acted swiftly to ameliorate the license discrepancies. In an unfortunate turn of events, the Modification Applications were returned, unbeknownst to FCB, and later dismissed. Yet again, upon learning of the dismissals of the Modification Applications, FCB promptly sought solutions, first by acquiring equipment and testing alternate delivery, and then seeking coordination and filing new modification applications. Reference copies of the New Applications are included at Exhibits B, C and D hereto.<sup>3</sup>

The extenuating circumstances presented by the incapacity of the FCB engineer, the failure of receipt of notices of defects in the Modification Applications, and the swift remediation actions by FCB throughout this proceeding undermine the Commission’s allegations that the alleged violations were willful and repeated. Rather, the swift, deliberate and conscious efforts by the licensee to bring the Stations into compliance provides mitigating evidence that

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<sup>3</sup> FCB notes that two of the applications (for WPNG746 and WLD73) were filed under an historical FCB FRN 0001557891; the application for WHB352 was filed under the FRN 0003779816, which is the FRN the Commission appears to be using for all FCB correspondence.

supports a reduction of of the proposed base forfeiture amount. Moreover, the upward adjustment of more than 100% of the base forfeiture is outrageous and cannot be sustained under precedent.

The Commission cites as support for its upward adjustment here two recent staff determinations of *apparent* liability.<sup>4</sup> Although staff-level adjudications may serve as precedent in appropriate circumstances, these particular cases are not final adjudications – they are merely allegations of apparent violations and the forfeitures, and the upward adjustments therein, are mere *proposals*. Indeed, 47 U.S.C. § 504(c) explicitly prohibits allegations against a party to an FCC NAL to be used against that party in any other proceeding unless that proposed forfeiture has been paid by the party (thus rendering an admission of liability) or the order has become final. The same legal theory must apply in this instance as well – unless and until the cited NALs result in final, non-appealable orders in which findings are made establishing that upward adjustment is appropriate in light of the adjudicated violations, such interlocutory decisions may not provide precedential support for upward adjustment in any other proceeding.

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<sup>4</sup> See NAL at n. 20, citing *Remel, Inc. and Its Corporate Parent Thermal Fisher Scientific, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 8778 (2013) and *Union Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 7061 (Enf. Bur. 2013).

In light of the foregoing, FCB respectfully requests that the proposed forfeiture be substantially reduced or canceled.

November 25, 2013

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Enclosures

cc: WR-Response@fcc.gov

**EXHIBIT A**  
**ABIP Compliance Certificates**

**EXHIBIT B**  
**Modification Application for WPNG746**

**EXHIBIT C**  
**Modification Application for WLD73**

**EXHIBIT D**  
**Modification Application for WHB352**