

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

In the Matter of	)	
	)	NAL/Acct. No. MB-201841410016
Alaska Educational Radio System, Inc.	)	FRN: 0008610982
	)	
Applications for Renewal and Assignment of	)	Facility ID No. 146553
License, K223BJ, Eagle River, Alaska	)	BRFT-20130925AAF, BALFT-
	)	20130930ASV
	)	
Applications for Renewal of License, K300BY,	)	Facility ID Nos. 146578, 154428
Willow Creek, Alaska, and K283AZ, Anchorage	)	BRFT-20130930ASZ, BRFT-20130930ASY
Alaska	)	

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

**Adopted: July 18, 2018**

**Released: July 18, 2018**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. We have before us applications filed by Alaska Educational Radio System, Inc. (AERS) to renew the licenses for K223BJ, Eagle River, Alaska; K300BY, Willow Creek, Alaska; and K283AZ, Anchorage, Alaska.<sup>1</sup> Also pending before us is an application for consent to assign the license for K223BJ from AERS to Kenai Cares, Inc. (Kenai Cares).<sup>2</sup> Turquoise Broadcasting Co., LLC (Turquoise), filed informal objections (Objections) to all but one of these applications.<sup>3</sup> Based upon our review of the record before us, we grant in part and otherwise deny the Objections. In addition, we determine that AERS apparently willfully and repeatedly violated Section 74.1263 of the Commission's rules (Rules) by discontinuing the operations of K223BJ, K300BY and K283AZ on five different occasions without authority to do so.<sup>4</sup> Accordingly, we find AERS apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000). We also find that AERS failed to submit application filing fees for the

<sup>1</sup> File Nos. BRFT-20130930AAF (K223BJ Renewal Application); BRFT-20130930ASZ (K300BY Renewal Application); BRFT-20130930ASY (K283AZ Renewal Application) (collectively, Renewal Applications).

<sup>2</sup> File No. BALFT-20130930ASV (K223BJ Assignment Application). The K223BJ Assignment Application also seeks authority to assign to Kenai Cares the licenses of two additional translators licensed to AERS: DK287AO, Hope, Alaska; and K279BC, Kasilof, Alaska. DK287AO's license expired by operation of law, and was cancelled on May 11, 2015. *See Broadcast Actions*, Public Notice, Report No. 48489 (MB May 14, 2015); *K287AO, Hope, AK*, Letter Order (MB May 23, 2015). Accordingly, we dismiss as moot that portion of the Assignment Application related to DK287AO. *See supra* para. 23. We consider the portion of the Assignment Application related to K279BC in a separate decision.

<sup>3</sup> Turquoise Informal Objection to the Renewal of Alaska Educational Radio System, Inc. (AERS) FM Translator Station K223BJ, Eagle River, AK (May 16, 2014) (K223BJ Renewal Objection); Turquoise Objection to K300BY License Renewal (K300BY Renewal Objection) (May 27, 2014); Turquoise Objection to Assignment K223BJ, K279BC, and K287AO (May 27, 2014) (K223BJ Assignment Objection) (collectively, Objections). Turquoise did not file an informal objection against the K283AZ Renewal Application.

<sup>4</sup> *See* 47 CFR § 74.1263(c).

(continued....)

Renewal Applications. We direct AERS to pay these application filing fees (and any late payment penalties) and note that, so long as there are no other issues that would preclude grant, we intend to grant the Renewal Applications upon resolution of the forfeiture proceeding commenced herein and payment of the fees. Finally, we dismiss the K223BJ Assignment Application as defective.<sup>5</sup>

## II. BACKGROUND

2. On September 25, 2013, AERS timely filed the K223BJ Renewal Application. A few days later, AERS timely filed the K300BY and K283AZ Renewal Applications, and AERS and Kenai Cares filed the K223BJ Assignment Application. Turquoise then filed the Objections.

3. With respect to the K223BJ Renewal and Assignment Applications, Turquoise alleges that: (1) the Commission's "red light" rules require dismissal; (2) Kenai Cares may not exist; (3) K223BJ has been silent for extended periods of time without authorization; and (4) AERS lacks the character qualifications necessary to hold K223BJ's license.<sup>6</sup> Charles Dunham (Dunham), an officer and director of Kenai Cares, responded to these allegations.<sup>7</sup> He argues that we should dismiss the K223BJ Renewal and Assignment Objections because Turquoise's "service was faulty." In addition, he contends that many of Turquoise's allegations are irrelevant, states that Kenai Cares does exist, and denies that there are any character qualifications issues related to AERS.

4. In terms of the K300BY Renewal Application, Turquoise argues that: (1) the Commission's "red light" rules require dismissal; (2) K300BY's license expired by operation of law; (3) AERS should have paid an application filing fee when it filed the K300BY Renewal Application; and (4) AERS made a false character certification when it amended the K300BY Renewal Application and may have made a false statement to the Commission regarding K300BY's operating status.<sup>8</sup> Dunham also responded to the K300BY Renewal Objection.<sup>9</sup> He again asserts that the pleading should be dismissed because it was not properly served.<sup>10</sup> He also states that he "has no relationship whatsoever with" the station.<sup>11</sup> Further, he argues that he has examined the K300BY Renewal Application and "can find

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<sup>5</sup> See *infra* at para. 22.

<sup>6</sup> In addition, Turquoise attaches copies of objections that it has filed against applications to renew and/or assign the license of another AERS station. See K223BJ Renewal Objection at Attach. 1; K223BJ Assignment Objection at Attach. 1. We address these objections in a decision being released concurrently with this NAL. *Alaska Educ. Radio Sys., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 18-737 (MB July 18, 2018) (*KABN-FM Order*).

<sup>7</sup> Dunham Response to Informal Objection of Turquoise Broadcasting Company LLC Described As "AERS – K223BJ Eagle River" and Alternatively Described As "Objection to Assignment and License Renewal" (June 9, 2014) (K223BJ Renewal Opposition); Dunham Response to Informal Objection of Turquoise Broadcasting Company LLC Described As "Objection to Assignment K223BJ, K279BC, and K287AO" (June 9, 2014) (K223BJ Assignment Opposition).

<sup>8</sup> Turquoise also urges the Commission to look into the relationship between Wolfgang Kurtz, the principal of AERS, and Charles Dunham (Dunham), an officer and director of Kenai Cares, who Turquoise alleges amended the K300BY Renewal Application. K300BY Renewal Objection. However, the Commission's records do not reflect any amendments to the K300BY Renewal Application. Further Dunham has stated that he has no relationship with the Translator. Dunham Response to Informal Objection (June 9, 2014) (K300BY Renewal Opposition). Accordingly, we do not consider this allegation herein. Further, just as it did in the K223BJ Renewal and Assignment Objections, Turquoise attaches copies of objections that it has filed against applications to renew and/or assign the license of another AERS station. K300BY Renewal Objection at Attach. 1. As noted *supra* at note 6, we address these objections in a decision being released concurrently with this NAL.

<sup>9</sup> K300BY Renewal Opposition.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

absolutely nothing in it that corresponds to the complaints in [Turquoise's] Objection, including the existence of any supplement supposed filed by me."<sup>12</sup>

### III. DISCUSSION

#### A. Procedural Issues

5. We reject Dunham's argument regarding Turquoise's service of the Objections.<sup>13</sup> Failure to serve or failure to properly serve a pleading does not constitute a procedural defect here because Turquoise filed its pleadings as informal objections. Unlike petitions to deny, informal objections are not subject to the service requirements set forth in Section 1.47 of the Rules.<sup>14</sup>

6. We further find no merit to Turquoise's claim that, because AERS has not paid a forfeiture proposed by the Media Bureau's Audio Division in a Notice of Apparent Liability for Forfeiture released in 2009 (2009 NAL),<sup>15</sup> the Commission's "red light" rules require us to halt processing of all AERS applications.<sup>16</sup> While it is true that AERS has not paid the proposed forfeiture (either in part or in full), the "red light" rules do not apply. The Commission does "not treat monetary forfeitures imposed after issuance of a notice of apparent liability as debts owed to the United States until the forfeiture ha[s] been partially paid or a court of competent jurisdiction has ordered payment of the forfeiture and such order is final."<sup>17</sup> In any event, the proposed forfeiture never became payable because the Media Bureau never issued a forfeiture order due to license cancellation of the station involved.<sup>18</sup>

#### B. Substantive Issues

##### 1. Operational History

###### a. K223BJ

7. We find that K223BJ was silent without authorization in violation of Section 74.1263(c) of the Rules.<sup>19</sup> The Commission's records indicate that K223BJ rebroadcast the signal of KABN-FM, Kasilof, Alaska, from March 18, 2008—the date it received its original license—until September 26, 2013, the date AERS notified the Commission that K223BJ was rebroadcasting KKNi-FM, Sterling;

<sup>12</sup> *Id.*

<sup>13</sup> K223BJ Renewal Opposition; K223BJ Assignment Opposition; K300BY Renewal Opposition.

<sup>14</sup> See *License Renewal Applications of Certain Broadcast Stations Licensed for and Serving the State of Mississippi*, Memorandum Opinion and Order, 59 FCC2d 1335, 1337 para. 6 (1976). See also, e.g., *WFRM(AM), Coudersport, Pennsylvania*, Letter Order, 24 FCC Rcd 11814, 11815 (MB 2009) (noting that pleading was defective as a petition to deny due to lack of service (and another unrelated defect) but treating pleading as informal objection).

<sup>15</sup> *Alaska Educ. Radio Sys., Inc.*, Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14657 (MB 2009) (2009 NAL).

<sup>16</sup> K223BJ Renewal Objection; K223BJ Assignment Objection; K300BY Renewal Objection.

<sup>17</sup> *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540, 6542 n. 16 (2004). See also 47 CFR §§ 1.1901 (defining the terms "claim" and "debt" to include "forfeitures issued after a notice of apparent liability that have been partially paid or for which a court of competent jurisdiction has ordered payment and such order is final"); 1.1905 (providing that "the assessment and collection of monetary forfeitures imposed by the Commission will be governed initially by the procedures prescribed by 47 U.S.C. 503, 504 and 47 CFR 1.80" and that, "[a]fter compliance with those procedures, the Commission may determine that the collection of a monetary forfeiture under the collection alternatives prescribed by this subpart is appropriate but need not duplicate administrative or other proceedings").

<sup>18</sup> In a related order issued today, the 2009 NAL is being cancelled. See *KABN-FM Order*, DA 18-737, at paras. 5 and 22.

<sup>19</sup> 47 CFR § 74.1263(c). See also Renewal Objection (alleging "AERS failed to request STAs for K223BJ that would coincide with the silent operation of the primary station being rebroadcast"); Assignment Objection (same).

(continued....)

Alaska.<sup>20</sup> During this time period, KABN-FM was silent from January 31, 2010, until January 30, 2011; from March 26, 2012, until March 22, 2013, and from March 26, 2013, until March 23, 2014.<sup>21</sup> Because K223BJ had no primary station to rebroadcast during KABN-FM's silences, we conclude that it too was silent. Thus, we find K223BJ was silent for more than 30 days on three different occasions. Because AERS failed to obtain Commission authorization for these silences, it violated Section 74.1263(c). Below, we propose a forfeiture for these violations.

**b. K300BY**

8. We reject Turquoise's assertion that K330BY's license automatically expired. While it is true that K300BY was silent from January 31, 2010, to January 31, 2011,<sup>22</sup> this silence lasted just shy of 12 consecutive months.<sup>23</sup> Accordingly, the automatic expiration provisions of Section 312(g) of the Communications Act of 1934, as amended (Act),<sup>24</sup> do not apply.

9. We also find no merit to allegations made by Turquoise that are grounded in its misplaced belief that K300BY rebroadcast the signal of DKWMD-FM, Sterling, Alaska.<sup>25</sup> K300BY has never rebroadcast the signal of DKWMD-FM. From 2008 until September 2014, it rebroadcast the signal of KZND-FM, Houston, Alaska.<sup>26</sup> Since then, it has rebroadcast the signal of KVNT(AM), Eagle River, Alaska, via K223BJ, Eagle River, Alaska.<sup>27</sup>

10. In reviewing the translator's service history, we have determined that AERS failed to notify the Commission or obtain authority for a period of silence that began on September 30, 2013,<sup>28</sup> and

<sup>20</sup> See File Nos. BLFT-20080303AAP; BLFT-20090511AGM; K223BJ Renewal Application. As originally filed, the K223BJ Renewal Application listed KKNi-FM as the K223BJ's primary station. The K223BJ Renewal Application subsequently was amended to list KABN-FM as K223BJ's primary station. However, Dunham has explained that Commission staff requested that the K223BJ Renewal Application be amended to reflect the primary station that Kenai Cares proposes to rebroadcast if the Commission approves the K223BJ Assignment Application. K223BJ Renewal Opposition at 1; K223BJ Assignment Opposition at 1-2.

<sup>21</sup> See File No. BRED-20130930BSV at Exh. 13.

<sup>22</sup> See File No. BLSTA-20100413AHR (K300BY STA Request); K300BY Resumption of Operations (Jan. 31, 2011) (K300BY 2011 Resumption Notice).

<sup>23</sup> Had the translator remained silent through 12:01 a.m. on February 1, 2011, its license would have automatically expired. See *Alaska Educ. Radio Sys., Inc.*, Letter Order (MB June 8, 2010).

<sup>24</sup> 47 U.S.C. § 312(g) ("If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period ...."). There is a discrepancy between the K300BY STA Request and K300BY 2011 Resumption Notice. The K300BY STA Request indicates that K300BY went silent on January 31, 2010, while the K300BY 2011 Resumption Notice indicates it went silent on February 5, 2010. This does not affect our analysis. Either way, the translator resumed operations in time to prevent expiration of its license under Section 312(g) of the Act.

<sup>25</sup> Turquoise alleges that K300BY did not—as reported by AERS—resume operations in late January 2010. In support of this claim, it cites the fact that DKWMD-FM was silent at that time. Turquoise also asserts that the translator was "silent far more than operational," citing both DKWMD-FM's operational history and DKWMD-FM's signal strength at the translator's receive site.

<sup>26</sup> See File Nos. BLFT-20071116AAD; K300BY Renewal Application.

<sup>27</sup> K300BY Resumption of Operations (Sept. 30, 2014) (K300BY 2014 Resumption Notice).

<sup>28</sup> AERS indicated K300BY had gone off the air on January 15, 2014. K300BY 2014 Resumption Notice. However, we conclude that K300BY had been off the air since at least September 30, 2013. We reach this conclusion because AERS indicated K300BY was silent when it filed the K300BY Renewal Application on September 30, 2013, K300BY Renewal Application, Section V, Item 2a, and because AERS did not notify the Commission that the translator resumed operations at any time between September 30, 2013, and January 15, 2014.

ended when K300BY resumed operations on September 30, 2014.<sup>29</sup> This violated Section 74.1263(c) of the Rules.<sup>30</sup> Below, we propose a forfeiture for this violation.

**c. K283AZ**

11. In reviewing K283AZ's service history, we have determined that AERS failed to notify the Commission or obtain authority for a period of silence that began on September 30, 2013, and ended when the translator resumed operations on September 20, 2014.<sup>31</sup> This violated Section 74.1263(c) of the Rules.<sup>32</sup> Below, we propose a forfeiture for this violation.

**2. Application Fees**

12. We find no merit to AERS's claim that it is exempt from paying application filing fees for K223BJ, K300BY and K283AZ. Section 1.1116 of the Rules specifies that no fee shall be required for "noncommercial educational (NCE) broadcast stations" in the FM service.<sup>33</sup> To determine whether a translator is an NCE station or not, we look to whether its primary station is NCE or commercial.<sup>34</sup> K223BJ first rebroadcast an NCE radio station (KABN-FM), but began rebroadcasting the signal of a commercial radio station (KKNI-FM) at some point prior to filing the K223BJ Renewal Application.<sup>35</sup> As a result, K223BJ has been operating as a commercial translator. The same is true of K300BY, which rebroadcast first KZND-FM and then KVNT(AM) (both commercial radio stations), and K283AZ, which first rebroadcast KZND-FM and then KOAN(AM), Anchorage, Alaska (both commercial radio stations).<sup>36</sup> AERS therefore should have paid application filing fees when it filed the K223BJ, K300BY and K283AZ Renewal Applications.<sup>37</sup> Had we caught this issue earlier, we would have dismissed the applications.<sup>38</sup> Because it has been more than 30 calendar days since the K223BJ, K300BY and K283AZ Renewal Applications were filed, however, we will bill AERS retroactively for the fees and impose the 25 percent late payment penalty provided for in the Rules.<sup>39</sup>

<sup>29</sup> See K300BY 2014 Resumption Notice.

<sup>30</sup> 47 CFR § 74.1263(c).

<sup>31</sup> K283AZ Resumption of Operations (Sept. 30, 2014) (K283AZ 2014 Resumption Notice).

<sup>32</sup> 47 CFR § 74.1263(c).

<sup>33</sup> 47 CFR § 1.1116.

<sup>34</sup> As a result, a licensee may be exempt from paying filing fees with respect to one translator but required to pay filing fees with respect to another. Indeed, a licensee may be required to pay application filing fees for a translator at one time but not at another. This will occur, for instance, if a translator is rebroadcasting the signal of a commercial station at the time the licensee files an application but has begun rebroadcasting an NCE station prior to the filing of another application related to that translator, or vice versa.

<sup>35</sup> In the K223BJ Renewal Application, AERS notified the Commission that K223BJ had switched from rebroadcasting the signal of KABN-FM, an NCE station, to rebroadcasting the signal of KKNI-FM, a commercial station. K223BJ Renewal Application, Section V, Item 2.b (as originally filed). As explained, *supra* note 20, while the translator continues to rebroadcast the signal of KKNI-FM, the K223BJ Renewal Application was amended to specify the primary station that Kenai Cares proposes to rebroadcast if the Commission approves the K223BJ Assignment Application. The proposed assignee's intended primary station is irrelevant to our fee determination.

<sup>36</sup> K283AZ 2014 Resumption Notice.

<sup>37</sup> The same conclusion applies with respect to the K223BJ Assignment Application. However, because we dismiss that application as defective, *infra* at para. 23, we will not be billing AERS for that application fee.

<sup>38</sup> 47 CFR § 1.1118(a) ("Filings subject to fees and accompanied by defective fee submissions will be dismissed ... where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.").

<sup>39</sup> 47 CFR § 1.1118(b) ("Applications or filings accompanied by insufficient fees or no fees ... that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not

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### 3. Unauthorized Transfer of Control

13. In its objection to the K300BY Renewal Application, Turquoise urges us to scrutinize the relationship between Wolfgang Kurtz, the principal of AERS, and Dunham, who Turquoise alleges amended the K300BY Renewal Application.<sup>40</sup> The Commission's records do not reflect any amendments to the K300BY Renewal Application. Further, Dunham has stated that he has no relationship with the Translator.<sup>41</sup> Accordingly, we do not consider the alleged relationship herein.

### 4. Character Qualifications

14. We find Turquoise has not made a *prima facie* case that AERS lacks the character qualifications necessary to hold the licenses for K223BJ, K300BY and K283AZ. Specifically, we conclude that Turquoise has failed to make a *prima facie* case that AERS made misrepresentations<sup>42</sup> in the form of a false certification that K223BJ was operating in February 2014,<sup>43</sup> and a false statement that K300BY resumed operations on January 31, 2011.<sup>44</sup> We further conclude that Turquoise has not made a *prima facie* case that that AERS made a false certification regarding "character issues" in an amendment to the K300BY Renewal Application. No amendments to the K300BY Renewal Application have been filed.

15. AERS did amend the K223BJ Renewal and Assignment Applications to certify that it was not a party to a "pending broadcast application in which character issues have been raised"<sup>45</sup> and to delete a reference to petitions to deny that Turquoise filed against AERS' applications for new FM

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discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill." See also *Chaparral Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13017, 13019-20, paras. 8-9 (2009).

<sup>40</sup> K300BY Renewal Objection.

<sup>41</sup> See *supra* at note 8.

<sup>42</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 FCC2d 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).

<sup>43</sup> K223BJ Renewal Objection; K223BJ Assignment Objection. Turquoise has offered no evidence demonstrating K223BJ was off the air in February 2014. Further, contrary to Turquoise's assertion, K223BJ's primary station—KKNI(FM)—was on the air in February 2014. While the amended K223BJ Renewal Application specifies KABN-FM as K223BJ's primary station, Dunham has explained that, at the request of Commission staff, he amended the Renewal Application to specify "the station [he] intended to rebroadcast assuming the associated assignments were approved." See *supra* note 20.

<sup>44</sup> K300BY Renewal Objection. Turquoise cites AERS' statement that K300BY's transmitter site was "remote and accessible in winter only by helicopter or sometimes by snow machine" and the nonoperational status of DKWMD-FM—which Turquoise alleges was the translator's primary station at that time—on January 31, 2011. Not only did K300BY not rebroadcast DKWMD-FM's signal on the date at issue but Turquoise offered no evidence that K300BY's transmitter site actually was inaccessible on that date.

<sup>45</sup> K223BJ Renewal Application, Section II, Item 2.b. ("Licensee certifies that the neither the licensee nor any party to the application has or has had any interest in, or connection with: ... any pending broadcast application in which character issues have been raised."); K223BJ Assignment Application, Section II, Item 7.b. ("Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with: ... any pending broadcast application in which character issues have been raised.").

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translators.<sup>46</sup> AERS should not have amended the K223BJ Renewal and Assignment Applications in this manner because the petitions make allegations related to AERS' character qualifications and were pending at the time AERS amended the applications.<sup>47</sup> In any event, we have considered the character-related allegations made by Turquoise in the petitions and determined that they do not make a *prima facie* case that AERS made false statements in other submissions to the Commission.<sup>48</sup>

16. Finally, we note that Turquoise made other character-related allegations in an objection to an application to renew the license of another AERS station and in an objection to an application to assign the license of that station. In a decision being released concurrently with this NAL,<sup>49</sup> we consider those allegations and find that none of them make a *prima facie* case regarding AERS' character qualifications.

## 5. Kenai Cares Corporate Status

17. In its objections to the K223BJ Renewal and Assignment Applications, Turquoise alleges that Kenai Cares, the proposed assignee of K223BJ, is not listed in the State of Alaska Business Database.<sup>50</sup> In response, Dunham states that Kenai Cares, Inc. is a nonprofit corporation in good standing

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<sup>46</sup> Turquoise filed a single petition to deny against 16 applications that AERS had filed for new FM translators, File Nos. BNPFT-20130328AAP, -20130328AAN, -20130328AAM, -20130328AAI, -20130328AAF, -20130327AOS, -20130327AOQ, -20130327AON, -20130327AOI, -20130327AOG, -20130327AOE, -20130327ANX, -20130327ANW, -20130327ANR, -20130327ANQ, and -20130327ANM, and filed individual petitions to deny against an additional six applications. File Nos. BNPFT-20130328AAL, -20130328AAD, -20130328AAC, -20130328AAB, -20130327ANO, and -20130327AND.

<sup>47</sup> AERS also amended the K223BJ Renewal and Assignment Applications to certify that it was not a party to a broadcast application "where character issues were left unresolved or resolved adversely against the applicant" and to delete a reference to the 2009 NAL. K223BJ Renewal Application, Section II, Item 2.a. ("Licensee certifies that the neither the licensee nor any party to the application has or has had any interest in, or connection with: ... any pending broadcast application in which character issues have been raised."); K223BJ Assignment Application, Section II, Item 7.a. ("Licensee/permittee certifies that neither licensee/permittee nor any party to the application has or has had any interest in, or connection with: ... any pending broadcast application in which character issues have been raised."). The 2009 NAL, however, did not involve character issues, does not conclude that AERS lacks the character qualifications to be a Commission licensee, and does not leave any character qualifications issues unresolved. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 (2017) (unresolved character issues are those designated in a hearing designation order and not resolved in a final order). Further, as noted above, in a related order issued today, the 2009 NAL is being cancelled. *See supra* at note 18. Accordingly, AERS did not need to disclose the 2009 NAL in its responses to the character-related items in the K223BJ Renewal and Assignment Applications.

<sup>48</sup> The petitions cite the 2009 NAL. As discussed *supra* at note 47, we find the 2009 NAL has no bearing on AERS' character qualifications. The petitions also allege that AERS made false statements regarding "severe windstorm damage" in STA requests for DKRAW(FM), Kasilof, Alaska; DKWMD(FM); KKNi-FM, Sterling, Alaska; and KABN-FM, Kasilof, Alaska. *See* File Nos. BLSTA-20120529AAP (DKRAW(FM)); BLSTA-20120529AAO (DKWMD(FM)); BLSTA-20120611ABG (KKNi-FM); BLSTA-2010529AAQ (KABN-FM). These STA requests stated: "On January 9<sup>th</sup>, 2012, our joint control point structure was blown over in a windstorm." The petitions dispute this statement and submit a print out from the National Climatic Data Center that indicates that the Kenai Peninsula experienced no storms between January 1, 2012, and June 8, 2012. The petitions, however, do not contain any evidence specifically disproving AERS' claims of damage to its facilities nor does it submit any evidence regarding intent to deceive. *See Fox River Broad.*, *supra*, 93 FCC2d at 129 (1983) (misrepresentation is a false statement of fact ... made with intent to deceive the Commission); *San Francisco Unified Sch. Dist.*, *supra*, 19 FCC Rcd at 13334 nn. 40-41 (2004).

<sup>49</sup> *KABN-FM Order*, DA 18-737, at paras. 10-13.

<sup>50</sup> K223BJ Assignment Objection.

and submits an exhibit to support this assertion.<sup>51</sup> Turquoise has not refuted this evidence. Accordingly, we reject this argument.

### C. Proposed Forfeiture

18. This Notice of Apparent Liability is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission 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>52</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>53</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>54</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>55</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>56</sup>

19. Section 74.1263 of the Rules requires licensees to request permission for an FM translator to remain off the air for more than 30 days. By virtue of its primary station’s silence, K223BJ was off the air on three different occasions but AERS did not notify the Commission that K223BJ had gone off the air or seek special temporary authority for the Translator to remain silent. AERS also failed to notify the Commission or obtain permission for a period of silence at K300BY that began on September 30, 2013, and ended when K300BY resumed operations on September 30, 2014, and a period of silence at K283AZ that began on September 30, 2013, and ran through September 29, 2014. We find that AERS apparently willfully and repeatedly failed to comply with Section 74.1263 of the Rules. Based on the record before us, we propose a forfeiture of ten thousand dollars (\$10,000).<sup>57</sup>

### D. Renewal Application

20. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>58</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>59</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>60</sup>

21. In the case of each of the renewal applications at issue here, we find that AERS’ apparent violations of Sections 74.1263 of the Rules do not constitute “serious violations” warranting designation

<sup>51</sup> K223BJ Assignment Opposition at Exh. 3.

<sup>52</sup> 47 CFR § 1.80; Note to Paragraph (b)(8), Section I.

<sup>53</sup> 47 U.S.C. § 312(f)(1).

<sup>54</sup> See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

<sup>55</sup> See *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991)

<sup>56</sup> 47 U.S.C. § 312(f)(2).

<sup>57</sup> 47 CFR § 1.80, Note to Paragraph (b)(8), Section I.

<sup>58</sup> 47 U.S.C. § 309(k).

<sup>59</sup> 47 U.S.C. § 309(k)(1).

<sup>60</sup> 47 U.S.C. § 309(k)(2), (k)(3).

for evidentiary hearing and that the proposed forfeiture constitutes a sufficient penalty for AERS' apparent violation(s). Moreover, we find no evidence of violations at any of the translators that, when considered together, evidence a pattern of abuse.<sup>61</sup> Further, we find that each of the translators has served the public interest, convenience, and necessity during the subject license term. We will therefore grant the K223BJ, K300BY and K283AZ Renewal Applications by separate action upon the conclusion of this forfeiture proceeding and payment of the application fees (and the penalties for late payment of those fees) so long as there are no issues other than the apparent violation that would preclude grant of the applications.

#### **E. Assignment Application**

22. We find that the K223BJ Assignment Application is defective. First, the assignor's portion of the application is not signed by an officer or director of AERS. Second, the assignee has not indicated the title of the individual signing its portion of the application.<sup>62</sup> We therefore dismiss the K223BJ Assignment Application as defective.

#### **IV. ORDERING CLAUSES**

23. Accordingly, IT IS ORDERED that the applications to assign the licenses for K223BJ, Eagle River, Alaska (File No. BALFT-20130930ASV), and K287AO, Hope, Alaska (BALFT-20130930ASX), IS DISMISSED.

24. IT IS ORDERED that the informal objections filed by Turquoise Broadcasting Co. LLC, on May 16, and May 27, 2014, ARE GRANTED IN PART AND OTHERWISE DENIED.

25. IT IS FURTHER ORDERED, pursuant to Section 1.1118(b) of the Rules, that Alaska Educational Radio System, Inc., will be assessed penalty charges equal to 25 percent of the filing fees for its applications to renew and assign the license of K223BJ, Eagle River, Alaska (BRFT-20130925AAF, BALFT-20130930ASV), in addition to the filing fees. Therefore, it will be billed a total of \$250.00 under separate cover.

26. IT IS FURTHER ORDERED, pursuant to Section 1.1118(b) of the Rules, that Alaska Educational Radio System, Inc., will be assessed a penalty charge equal to 25 percent of the filing fee for its application to renew the license of K300BY, Willow Creek, Alaska (BRFT-20130930ASZ), in addition to the filing fee. Therefore, it will be billed a total of \$ 75.00 under separate cover.

27. IT IS FURTHER ORDERED, pursuant to Section 1.1118(b) of the Rules, that Alaska Educational Radio System, Inc., will be assessed a penalty charge equal to 25 percent of the filing fee for its application to renew the license of K283AZ, Anchorage, Alaska (BRFT-20130930ASY), in addition to the filing fee. Therefore, it will be billed a total of \$ 75.00 under separate cover.

28. IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that Alaska Educational Radio System, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violations of Sections 74.1263 of the Commission's Rules.

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<sup>61</sup> For example, we do not find here that AERS's operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *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 [broadcast stations] 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. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>62</sup> As amended, the Assignment Application indicates that Charles Dunham's title is "Charles Dunham."

29. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, Alaska Educational Radio System, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

30. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>63</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

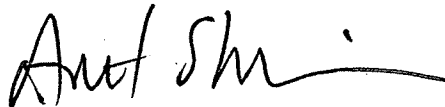
31. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554, ATTN: Albert Shuldiner, and MUST INCLUDE the NAL/Acct. No. referenced above.

32. The Bureau 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.

33. IT IS FURTHER ORDERED that Alaska Educational Radio System, Inc., shall place a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the files maintained for K223BJ, K300BY and K283AZ pursuant to Section 74.1281 of the Commission's rules.

34. IT IS FURTHER ORDERED that copies of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Alaska Educational Radio System, Inc., 12415 Merlin Drive, Seward, AK 99664, and its counsel, David Tillotson, 4606 Charleston Terrace, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION



Albert Shuldiner  
Chief, Audio Division  
Media Bureau

<sup>63</sup> See 47 CFR § 1.1914.

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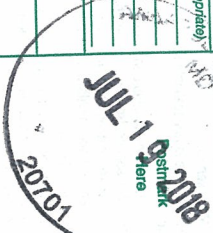
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Seward, AK 99664

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**Article Addressed to:**

David Tillotson  
4606 Charleston Terrace, N.W.  
Washington, DC 20067

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 If YES, enter delivery address below:

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☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

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