

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

In re Applications of)	
)	
Alabama Media, LLC)	NAL/Acct. No. MB-201941410002
)	FRN: 0021372552
)	
Licensee of FM Translator Station W299BX)	Facility ID No. 141166
Dothan, Alabama)	File Nos. BPFT-20161026ABO
)	BSTA-20161027AAY
)	BLFT-20161109ABT

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

Adopted: March 27, 2019

Released: March 27, 2019

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us the referenced applications of Alabama Media, LLC (AMLLC) for a construction permit (CP Application), special temporary authority (STA Request), and license to cover (License Application), respectively, for FM translator station W299BX, Dothan, Alabama (Translator). We also have before us an Informal Objection (WOOF Objection) to the CP Application and STA Request filed on October 28, 2016, by WOOF, Inc. (WOOF) and an Informal Objection (Fox Objection) to all three AMLLC applications filed on June 8, 2017, by Fox Broadcasting Corporation, LLC (Fox), as well as related pleadings.¹

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (NAL),² we find that AMLLC apparently committed willful and repeated violations of Section 301 of the Act and Section 74.1251(b) of the Rules by operating the Translator at an unauthorized location.³ We also find that AMLLC apparently committed willful and repeated violations of Sections 74.1231(b) and 74.1263(b) of the Rules⁴ by originating programming on the Translator while its primary station was silent. Further, we find that AMLLC apparently committed willful and repeated violations of Section

¹ AMLLC filed an Opposition to the WOOF Objection (WOOF Opposition) on November 29, 2016, to which WOOF replied on December 6, 2016 (Reply). WOOF is licensee of Stations WOOF(AM/-FM), Dothan, Alabama. AMLLC filed an Opposition to the Fox Objection (Fox Opposition) on October 12, 2017. Fox is licensee of Station WFXX(FM), Georgina, Alabama.

² This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and Section 1.80 of the FCC's rules (Rules). 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Media Bureau (Bureau) has delegated authority to issue the NAL under Section 0.283 of the Rules. 47 CFR § 0.283.

³ 47 U.S.C. § 301; 47 CFR § 74.1251(b).

⁴ 47 CFR §§ 74.1231(b) and 74.1263(b).

74.1263(c) and (e) of the Rules⁵ by failing to seek Commission approval for an 11-month period of silence. We also propose to impose the full \$3,000 forfeiture against AMLLC for its apparent failure to file a required form.⁶ Finally, we admonish AMLLC for violating Section 1.17 of the Rules⁷ by failing to disclose a material fact in the CP Application. Based upon our review of the record before us, we conclude that AMLLC is apparently liable for a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000), which includes an upward adjustment of \$2,000 for the extensive and egregious nature of the apparent violations. For the reasons set forth below, we grant the WOOF Objection in part and deny it in all other respects, and we deny the Fox Objection.

II. BACKGROUND

3. The Translator is authorized to rebroadcast Fox Station WFXX(FM), Georgiana, Alabama.⁸ AMLLC indicates that it owns four commercial FM stations, as well as the Translator, in the Dothan, Alabama, area. It states that, in conjunction with an effort to locate all of its stations to a common site, AMLLC relocated the Translator to a new tower site, commencing operation from that new site on or about September 10, 2016. AMLLC acknowledges that it failed to file an application for Commission consent to relocate the Translator prior to commencing operation from the new site, becoming aware of this problem only when a Commission inspector notified it of the apparent violation on October 24, 2016.⁹ AMLLC filed the CP Application two days later, seeking approval of the facilities and site change and proposing to rebroadcast Station WARB(AM),¹⁰ Dothan, Alabama as a “fill-in” translator.¹¹ The next day (October 27, 2016), AMLLC filed the STA Request, seeking special temporary authority (STA) to continue operating from the new tower site as a fill-in translator for WARB(AM) until the CP Application was granted.¹² In neither the CP Application as originally filed, nor in a December 1, 2016, amendment, did AMLLC disclose that it had already commenced the operation proposed in that application, but it did submit such a disclosure in the STA Request.¹³

4. *WOOF Objection.* WOOF contends that: (1) AMLLC admittedly operated the Translator “at an alternate location 4.2 km from its licensed site, at a height at variance from its listed parameters,” in violation of Section 74.1251(a) of the Rules;¹⁴ (2) while AMLLC’s primary Station WARB(AM),

⁵ 47 CFR § 74.1263(c) and (e).

⁶ See 47 CFR § 1.80(b)(4).

⁷ 47 CFR § 1.17.

⁸ See BLFT-20150429ABN.

⁹ See WOOF Opposition at 2.

¹⁰ Formerly WCNF(AM).

¹¹ WARB(AM) is owned by Alarado Media, LLC (Alarado). The Bureau staff initially granted the CP Application on November 9, 2016, but rescinded the grant on November 10, 2016, in light of the WOOF Objection. See *Broadcast Applications*, Public Notice, Report No. 28862 (rel. Nov. 16, 2016), p. 13.

¹² STA Request, Exh. 12.

¹³ See CP Application, Exh. 12, Technical Narrative (both in original and amended Application): “Alabama proposes to modify W299BX by relocating to a different transmit location at Dothan, AL. W299BX would operate with .088 kW at 119 meters AGL and 124 meters HAAT. The modified W299BX will be used as a fill-in translator for Class D AM station WARB, 700 kHz, Facility ID Number 23616, licensed to Dothan, AL.” (emphasis supplied). An exhibit to the STA Request disclosed that the Translator’s site change had occurred without FCC approval. See BSTA-20161027AAY, Exh. 12.

¹⁴ WOOF Objection at 4.

Dothan, Alabama, was off the air from September 7, 2016, until September 18, 2016, the Translator originated its own programming “for at least 11 days” in violation of Sections 74.1231(b) and 74.1263(b) of the Rules;¹⁵ (3) AMLLC made false certifications in its CP Application in violation of Section 1.17(a)(2) of the Rules because it made no reference to the fact that the Translator was already constructed with facilities for which AMLLC now, belatedly, seeks permission;¹⁶ (4) the Translator was silent for more than 30 days—in fact, it was silent for 11 months without Commission approval, in violation of Section 74.1263(c) of the Rules, a discontinuation of service enabling the Commission to cancel the Translator station license at its discretion under Section 74.1263(e) of the Rules;¹⁷ (5) AMLLC failed to provide proper station identification for the Translator;¹⁸ and (6) the managing member and owner of primary station WARB(AM) is also an employee of AMLLC, and due to familial relationships, AMLLC may be in violation of the local radio ownership rules.¹⁹ Finally, WOOF asserts that AMLLC knowingly and willfully violates the Commission’s Rules on a regular basis, and therefore, the Commission must impose the strongest possible sanctions upon AMLLC.

5. In its WOOF Opposition, AMLLC acknowledges that in the course of moving its three full-power stations to a new tower site, it “inadvertently failed to file a modification application to relocate the Translator to the new tower site.”²⁰ In addition, AMLLC asserts that it took prompt remedial steps once it became aware of its noncompliance; *i.e.*, it swiftly filed the CP Application and STA Request and the period of unauthorized operation “amounted to less than seven weeks.”²¹ (Notably, though, AMLLC does not dispute that it was an FCC inspection that spurred those remedial measures.) Next, AMLLC argues that the brief period of “several days” during which the Translator was originating programming did not constitute a material violation of the Rules.²² Further, AMLLC contends that WOOF is incorrect and that AMLLC has complied with the Rules regarding station identification since the Translator commenced

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 6. WOOF, in fact, alleges that the Translator may have been silent for “almost a year.” *Id.* at 8.

¹⁷ *Id.*, citing 47 CFR §§ 74.1263(c), (e). *See also* “Declaration of WOOF Chief Engineer Michael Holderfield” (Holderfield Declaration), submitted as Attachment A to the WOOF Objection. Holderfield declares under penalty of perjury that he “regularly scans” the local airwaves to identify any changes in the market” and that his daily commute takes him past the new site location, and the Translator was silent for 11 months from early November 2015 until September 2016. *See* Holderfield Declaration at paras. 5-6.

¹⁸ WOOF Objection at 8-9. WOOF submits for review a compact disc containing a recording allegedly made on September 14, 2016, at approximately 1:00 p.m. local time in which the Translator identifies the WARB call sign but not the Translator’s call sign. *Id.*

¹⁹ *Id.* at 7. WOOF also argues that the Commission, pursuant to the local radio ownership rules, should review the “economic relationship[s]” between primary AM station WARB’s licensee, Alarado, owned by James Ricky Carter (Carter), AMLLC principal Robert Holladay, and his brother Clay Holladay of Gulf South Communications, Inc. (Gulf South), who together control nine full-power stations in the Dothan, Alabama, Nielsen radio market. *Id.*

²⁰ WOOF Opposition at 2-3.

²¹ *Id.* at 3.

²² *Id.* at 4-5, citing *Amendment of Part 74 of the FM Commission’s Rules Concerning Translator Stations*, Report and Order, 5 FCC Rcd 7212, para. 48 (1990). AMLLC indicates that it was the intention of AMLLC and Alarado to turn both stations on at the same time, but technical problems prevented WCNF(AM)’s (now WARB(AM)) resumption of operations. AMLLC indicates that, “unaware that such action would violate Commission rules and knowing that WCNF would return to service in a matter of days,” it continued with its plan and recommenced operation with the translator, airing the sports-oriented programming it would have received from what was then WCNF(AM). WOOF Opposition at 4-5.

operations.²³ AMLLC also argues that WOOF fails to raise any substantial and material issue of fact regarding its candor before the Commission. Specifically, AMLLC argues that the filing of the STA Request one day after the filing of the CP Application demonstrates that AMLLC was entirely candid about construction of the Translator. It asserts that, because FCC Enforcement Bureau staff alerted AMLLC to the matter just two days before the CP Application was filed, AMLLC assumed that the Commission was already aware of the non-compliance issue.²⁴ Finally, AMLLC argues that WOOF's claim that AMLLC has somehow violated the Commission's local radio multiple ownership rules "has no basis in law or in fact."²⁵

6. In its Reply, WOOF reiterates the arguments that it made in its Objection and argues that although AMLLC alleges that its violations were inadvertent, brief, and immaterial, AMLLC has a previous history of non-compliance and that the Commission should cancel the Translator's license.²⁶

7. *Fox Objection.* Fox argues that the Translator interferes with the reception of Fox's Station WFXX(FM), Georgiana, Alabama, in violation of Section 74.1203(b) of the Rules and that AMLLC should take the Translator off the air immediately.²⁷ Fox supplies nine complaints of purportedly unaffiliated WFXX(FM) listeners to demonstrate that the current operation of AMLLC's Translator causes interference with the reception of WFXX(FM) in areas inside W299BX's 60 dBμ contour.²⁸

8. In its Fox Opposition, AMLLC argues that between July 26 and August 9, 2017, its Chief Engineer and General Manager attempted to contact the alleged nine listener complainants to address their interference concerns.²⁹ AMLLC officials declare under penalty of perjury that of the nine, Wesley George and Will Searcy denied ever having signed a complaint form; Justin Lawson, or anyone with a similar name,³⁰ could not be found at the address provided; and Carey and Jeffrey Douglas (same address), Brent Howell, Mark Goodson, Eric Waters, and Jimmy Anderson never responded to AMLLC's entreaties to discuss their purported interference concerns.³¹ AMLLC therefore argues that Fox has not

²³ *Id.* at 8. The relevant Rule is 47 CFR § 74.1283(c). AMLLC submits a compact disc allegedly containing the station identification announcement it broadcasts three times daily (7:59:30 a.m.; 12:59:30 p.m.; and 4:58:30 p.m. local time) on the Translator in accordance with that Rule. *Id.* at Attach. 2.

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ Reply at 4.

²⁷ Fox Objection at 2; *see also* 47 CFR § 74.1203(b). Previously, on June 5, 2017, AMLLC filed an Interference Complaint with the Bureau indicating that the Translator was interfering with WFXX(FM) listeners' reception of that station. *See Letter to Mr. James D. Bradshaw* (Jun. 5. 2017) (Interference Complaint). The Bureau staff ordered AMLLC to respond to the complaint on September 12, 2017, *see Letter to Alabama Media, LLC*, Ref. 1800B3-PPD (MB rel. Sep. 12. 2017), but ultimately dismissed that complaint. *Letter to Dennis J. Kelly, Esq. and David D. Burns, Esq.*, Ref. 1800B3-PPD (MB, rel. Feb. 15, 2018).

²⁸ *See* Fox Objection at Exhibit A.

²⁹ Fox Opposition at 2.

³⁰ AMLLC notes that the last name was illegible on the form and could be either "Lawton" or "Layton."

³¹ *Id.* at 3; *see also* Fox Opposition, "Declaration of Christopher Mendez" and "Declaration of James Ricky Carter," submitted as Attach. A.

provided evidence of “actual interference” in the form of valid listener complaints pursuant to Section 74.1203(a)(3) of the Rules³² and that the Fox Objection should be denied.³³

III. DISCUSSION

9. Under Section 309(d) of the Act,³⁴ informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.³⁵ For the reasons explained below, we find that AMLLC did commit apparent violations of the Act and the Rules, for which we propose a forfeiture, but there is no substantial and material question of fact here.

10. *WOOF Objection. Operation at an Unauthorized Location.* The evidence in this case establishes that AMLLC apparently violated Section 301 of the Act and Section 74.1251(b) of the Rules. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.³⁶ In addition, Section 74.1251(b) of the Rules requires that a change in a translator’s location be approved by the FCC pursuant to an application providing the relevant information.³⁷

11. Pursuant to AMLLC’s license as of 2015, the Translator was authorized to serve Dothan, Alabama, from the coordinates 31-13-35 N, 085-23-33 W. The record evidence, however, shows that AMLLC engaged in unauthorized operation by operating the Translator at a different location (*i.e.*, at coordinates 31-11-33.1 N, 085-24-42.7 W), with different technical facilities, and rebroadcasting WARB(AM), which had not been designated as the Translator’s primary station. FCC Enforcement Bureau staff visited the new site on October 24, 2016, and advised AMLLC that it had failed to obtain FCC approval for operation at that site. AMLLC filed the CP Application two days later and filed the STA Request the following day. Nevertheless, until such minor change application has been *granted*, a licensee is expected to operate in strict conformity with its current license, unless it has been granted STA in the interim.³⁸ Here, although AMLLC applied for an STA on October 27, 2016, to permit operations at the new location while its CP Application remains pending, AMLLC operated the Translator for nearly seven

³² 47 CFR § 74.1203(a)(3).

³³ Opposition to Fox at 3-4.

³⁴ 47 U.S.C. § 309(d).

³⁵ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

³⁶ 47 U.S.C. § 301.

³⁷ 47 CFR § 74.1251(b)(4) (excluding only “a move within the same building or upon the same pole or tower” that does not involve any of the other changes restricted by Section 74.1251(b), such as a change in frequency, power, direction of radiation, etc.).

³⁸ See 47 U.S.C. § 301. See also *J. Thomas Dev. of NM, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 10859 (MB 2012) (finding that licensee’s operations after license expired and without STA apparently violated Section 301).

weeks at the unauthorized site before filing the CP Application and STA Request to so operate.³⁹ Based on the evidence before us, we therefore find that AMLLC apparently willfully and repeatedly violated Section 301 of the Act and Section 74.1251(b) of the Rules from September 10, 2016, until the Bureau staff granted the CP Application on November 9, 2016. A forfeiture is appropriate for this violation.⁴⁰

12. Program Origination. Sections 74.1231(b) and 74.1263(b) of the Rules prohibit an FM translator station from originating programming while its primary station is off the air, except under limited circumstances.⁴¹ WOOF alleges that AMLLC originated programming on the Translator in violation of Sections 74.1231(b) and 74.1263(b) for at least 11 days from September 7, 2016, until September 18, 2016, when the Translator's primary station was off the air. AMLLC does not deny that the Translator broadcast sports-oriented programming when the primary station was off the air. AMLLC asserts, however, that this violation occurred inadvertently due to technical problems in returning the primary station to service and that this isolated transgression did not have an adverse impact on the public.

13. We find that AMLLC apparently originated programming on the Translator in violation of the Rules.⁴² AMLLC's attempt to minimize this mistake by emphasizing that the incident extended for days instead of weeks is in no way reassuring. A licensee is fully responsible for all programming broadcast over a station, and the restriction on program origination by a translator is fundamental to the role served by translator stations. We conclude that AMLLC apparently violated Sections 73.1231(b) and 74.1263(b) of the Rules and that a forfeiture for these apparent violations is appropriate.

14. Off the Air Without Notice. Section 74.1263(c) of the Rules requires an FM translator licensee to notify the Commission of its intent to discontinue operations for 10 or more consecutive days, and Commission approval is required for such discontinued operation beyond 30 days.⁴³ Section 74.1263(e) of the Rules states that failure to operate for 30 or more consecutive days, except under limited circumstances, shall be deemed evidence of discontinuation of operation and subject to license cancellation at the discretion of the Commission.⁴⁴ WOOF's Holderfield declares that the Translator may have been off the air "well in excess" of 30 days from November 2015 until September 2016, but failed to

³⁹ As the record reflects, in response to WOOF's September 28, 2016, filing of a Request for Enforcement with the FCC's Enforcement Bureau, inspector Rakesh Patel, on October 24, 2016, notified AMLLC on site that it was operating W299BX at an unauthorized location. See WOOF Opposition at n.3

⁴⁰ See *Bay Broad. Corp.*, 15 FCC Rcd 13613 (EB 2000) (forfeiture issued for operating a translator station at unauthorized location in violation of Section 74.1251); see also, e.g., *James Rouse*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5602 (MB 2008) (forfeiture for full base amount of \$10,000 for unauthorized operation of AM station).

⁴¹ 47 CFR § 74.1231(b) ("An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station . . . and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section."); 47 CFR § 74.1263(b) ("An . . . FM translator station rebroadcasting . . . an AM or FM primary station shall not be permitted to radiate . . . when signals of the primary station are not being transmitted," except for nighttime transmission by a translator rebroadcasting a Class D station that has operated during the daytime in the last 24 hours).

⁴² See also 47 CFR § 74.1231(g) ("Originations concerning financial support are limited to a total of 30 seconds an hour").

⁴³ 47 CFR § 74.1263(c). Notification must be made within 10 days of the date on which the station first discontinues operation, and Commission approval is required for such discontinued operation beyond 30 days.

⁴⁴ 47 CFR § 74.1263(e).

notify the Commission and obtain the necessary authorization, as required by the Rules.⁴⁵ AMLLC provides no response in the WOOF Opposition or declarations from its officials under penalty of perjury to rebut Holderfield's claim.

15. Here, the record evidence indicates that the Translator was silent for nearly 11 months, from November 2015 to September 2016, without Commission approval. AMLLC should have filed an STA request seeking approval for the Translator to be silent by December 2015, and again, six months later. It failed to file any STA request for that period. We therefore find that AMLLC apparently willfully and repeatedly violated Section 74.1263(e) of the Rules by remaining silent without authority. WOOF is correct that an FM translator station that is silent for 30 or more consecutive days without STA is considered to have permanently discontinued operations and its authorization can be cancelled at the Commission's discretion under Section 74.1263(e) of the Rules.⁴⁶ However, examining the totality of circumstances here, we conclude that license cancellation is not the appropriate remedy. Instead, we will issue a forfeiture to AMLLC for its apparent violation of Sections 74.1263(c) and (e) rather than initiating a revocation proceeding.

16. Improper Station Identification. Section 74.1283(c) of the Rules states, in pertinent part, that: "A translator station authorized under this subpart shall be identified by one of the following methods: (1) By arranging for the primary station whose station is being rebroadcast to identify the translator station by call sign and location. Three such identifications shall be made during each day: once between 7 a.m. and 9 a.m., once between 12:55 p.m. and 1:05 p.m. and once between 4 p.m. and 6 p.m."⁴⁷ We have reviewed the compact disc submitted by AMLLC containing the Translator's station identification announcement broadcast three times daily,⁴⁸ and we find that further discussion of this issue is unwarranted.

17. Failure to Disclose a Material Fact. 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."⁴⁹ 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.⁵⁰

18. AMLLC acknowledges in its WOOF Opposition that it made no reference in the CP Application that it had already constructed the Translator with the facilities for which it sought permission to construct. However, AMLLC argues that it filed the STA Request the following day, demonstrating that it was entirely candid about the construction of the Translator at a new site, and further noting that the FCC's Enforcement Bureau was already aware of this non-compliance issue. AMLLC also claims that

⁴⁵ WOOF correctly notes that CDBS has no record of AMLLC requesting authority to remain silent during this period. See WOOF Objection at 8.

⁴⁶ See *Triangle Access Broad., Inc.*, Letter Order, 32 FCC Rcd 10105, 10112 (MB 2017).

⁴⁷ See 47 CFR § 74.1283(c).

⁴⁸ See note 18 *supra*. Staff listened to the disc on February 5, 2019, and found the station identifications satisfy the Rules.

⁴⁹ 47 CFR § 1.17(a)(2).

⁵⁰ 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).

this inadvertent error was caused by the considerable financial and administrative burden for a small broadcaster with limited resources in moving three full-power stations to a new site.

19. We find that AMLLC failed to disclose a material fact in the CP Application.⁵¹ Neither the subsequent STA Request nor the Enforcement Bureau's awareness of the Translator's unauthorized operation excused AMLLC from being completely forthright in the CP Application. As stated in Note 13 above, AMLLC indicated that it "*proposes to modify W299BX by relocating to a different transmit location at Dothan, AL*" and that "*the modified W299BX will be used as a fill-in translator for Class D AM station WARB, 700 kHz, Facility ID Number 23616, licensed to Dothan, AL.*" The CP Application failed to state that, in fact, the Translator had been operating with the facilities proposed in the CP Application for more than seven weeks before the CP Application was filed. This omission of material information would typically warrant an additional forfeiture for violation of Section 1.17 of the Rules.⁵² However, because AMLLC corrected the omission the next day in the STA Request, we will only admonish AMLLC for this violation.⁵³ We caution AMLLC to exercise diligence in ascertaining the accuracy of its certifications because "a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules."⁵⁴

20. Prohibited Business Relationship. Regarding WOOF's claim that Carter, the primary station's licensee and an employee of AMLLC, is evidence of an improper business relationship in violation of Section 74.1232 of the Rules, we disagree. Section 74.1232(d) of the Rules prohibits "any person or entity having an interest whatsoever, or any connection with a primary FM station" from holding a license for an FM translator station whose coverage contour extends beyond the protected contour of the commercial primary station.⁵⁵ Here, the Translator's coverage contour does not extend beyond the protected contour of primary AM station WARB. Therefore, the Translator is properly classified as a fill-in translator station with regard to WARB(AM) and is not subject to the ownership restrictions set forth in Section 74.1232(d). As a result, Carter's employment at AMLLC is not a prohibited business relationship pursuant to the Rules.⁵⁶

⁵¹ "Material" has been defined as "important," "more or less necessary," and "having influence or effect." Additionally, a "material representation" has been defined as "relating to matter which is so substantial or important as to influence the party to whom it is made." *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4020, n.4 (2003) (citations omitted). Whether the STA applicant has already commenced operation with the technical facilities for which it seeks approval is "material" in determining the applicant's compliance with the Act and the Rules. We do not, however, find AMLLC's omission of factually material information from the CP Application to be intentionally deceitful because AMLLC did disclose that information in the STA Request.

⁵² See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability, 33 FCC Rcd 5223, 5228-29 (MB 2018), Forfeiture Order, 33 FCC Rcd 7365 (2018) (\$5,000 forfeiture levied for failure to disclose material information where licensee failed to disclose in STA request that the station had been operating with the requested facilities for 17 months) (*Henderson*).

⁵³ See, e.g., *Donald E. Martin, Esq., and Harry C. Martin, Esq.*, Letter Order, 28 FCC Rcd 411 (MB 2013) (admonishing applicant for failure to report a loss of transmitter site when the property was sold and to report changes in its governing board).

⁵⁴ See, e.g., *Applications of Detroit Pub. Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688, 13692 (MB 2006), and *Henderson*, *supra*.

⁵⁵ 47 CFR § 74.1232(d).

⁵⁶ See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7215 (1990) (*Translator Order*). A primary station is the full-service station whose signal a translator retransmits. Section 74.1232(d) permits "fill-in" stations -- those located entirely within the protected

21. Regarding WOOF's unsubstantiated inference that the business relationships of Robert Holladay's AMLLC, brother Clay Holladay's Gulf South (which WOOF claims also owns four stations in the market),⁵⁷ and Carter's Alarado, should be investigated by the Commission for possible violations of the local radio multiple ownership rules, we disagree.⁵⁸ WOOF's allegations would be relevant to our evaluation of the referenced applications if it presented facts indicating that Clay Holladay has interests in or involvement with AMLLC. Here, the Bureau has already investigated and rejected similar claims, and WOOF presents no facts, other than the familial relationship, showing that Clay Holladay has any interest or involvement in the operation of AMLLC's stations, or that Robert Halladay has any interest or involvement in Gulf South's stations.⁵⁹ Accordingly, further discussion of this issue is unwarranted.

22. *Fox Objection.* Regarding Fox's claim that the Translator is causing "actual interference" to Fox's WFXF(FM) in violation of Section 74.1203 of the Rules, we find that Fox has failed to make such a showing. Under Section 74.1203(a), objectionable interference occurs when a translator station interferes with the "direct reception by the public." Thus, only a complaint from a *bona fide* listener of the desired station can force a translator station off the air.⁶⁰ In addition, the staff has considered only those complaints of translator interference where the complaining listener cooperates in efforts to identify the source of interference and accepts reasonable corrective measures.⁶¹ For instance, "on-off" tests may be required on a case-by-case basis to determine whether the translator is the source of the alleged interference.⁶² We note that Section 74.1203(a) complaints are often marked by prolonged, contentious proceedings centered around allegations that complainants were not "bona fide," that interference

service contour of the primary station -- to be co-owned; see also *Translator Order*, 5 FCC Rcd at 7232; *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 4 FCC Rcd 9642 (2009) (adopting changes to FM translator rules allowing AM stations to use FM translators to rebroadcast AM programming as a fill-in service). We note, however, that, although not argued in the pleadings, a recent ownership report for WARB(AM) indicates that Robert Halladay's AMLLC was operating WARB(AM) pursuant to a Local Marketing Agreement executed on September 18, 2016. This, in fact, gave AMLLC an attributable interest in five stations in the Dothan, Alabama, area. AMLLC reported it as such. However, that agreement appears to have been superseded by a "Local Management Agreement" between Alarado and Brian Baker's Good Guys Broadcasting, LLC, effective January 2, 2019, pursuant to which Good Guys Broadcasting is programming WARB(AM). See Ownership Report No. 0000042255, submitted on February 15, 2018.

⁵⁷ WOOF Objection at 7.

⁵⁸ WOOF's claim that "AMLLC already operates 4 FM stations in this market, and the operation of the FM translator effectively gives it a fifth," see WOOF Objection at 7, requires no further discussion. WOOF provides no support for its proposition that an FM translator station counts as an attributable station interest for purpose of compliance with the Commission's multiple ownership rules.

⁵⁹ See, e.g., *David D. Oxenford, Esq., David D. Burns, Esq., and Charles L. Spencer, Esq.*, Letter Order, 27 FCC Rcd 13363, 13368 (MB 2012) ("There are no relevant facts before us to suggest that Clay Holladay will be involved in the financial affairs, programming, or personnel decisions of Alabama Media [AMLLC] Should it come to our attention, however, that Gulf South and Alabama Media principals are exercising common influence or control over the operations of these Dothan radio market stations, we are prepared to apply the full weight of available sanctions."). WOOF's claims here suffer from a similar paucity of factual support.

⁶⁰ See, e.g., *Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682, 12688, para. 16 (2004).

⁶¹ See *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, 2018 WL 2192431, FCC 18-60, MB Docket 18-119, para. 7 (rel. May 19, 2018) (*Translator Notice*); see also *Radio Power, Inc.*, Letter Order, 26 FCC Rcd 14385, 14385-86 (MB 2011).

⁶² See *Translator Notice*, FCC 18-60 at para. 7; see also, e.g., *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722, 15723, para. 4 (MB 2013).

locations were not properly identified, that complainants did not cooperate with remediation attempts, etc.⁶³ Here, the record indicates that AMLLC made a good faith attempt, without success, to contact each of the listener complainants in the Fox Objection to alleviate their alleged interference concerns. Accordingly, we find that Fox has not provided evidence of “actual interference” in the form of *bona fide* listener complaints and that further discussion of this issue is unwarranted. We note, however, that should the Translator cause actual interference to WFXF(FM) or any other full-service station under the standard set forth in our Rules, AMLLC will be required to eliminate the interference or cease operation.

23. *Proposed Forfeiture.* Under Section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶⁴ 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.⁶⁵ 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,⁶⁶ and the Commission has so interpreted the term in the Section 503(b) context.⁶⁷ 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.”⁶⁸ The Commission’s *Forfeiture Policy Statement*, Section 1.80 of the Rules, and Section 503(b)(2)(A) of the Act establish Commission guidelines for assessing forfeitures.⁶⁹ These guidelines, however, do not enumerate a base forfeiture amount for an FM translator’s originating programming in excess of the limits prescribed in Sections 74.1231 and 74.1263(b) of the Rules. They do, however, set a base forfeiture amount of \$4,000 for “unauthorized emissions.”⁷⁰ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁷¹

24. As noted above, it is uncontested that unauthorized programming originated on the Translator over several days, apparently with AMLLC’s knowledge. Taking into consideration these facts

⁶³ *Id.*

⁶⁴ 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

⁶⁵ 47 U.S.C. § 312(f)(1).

⁶⁶ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁶⁷ *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) *recon denied*, 7 FCC Rcd 3454 (1992).

⁶⁸ 47 U.S.C. § 312(f)(2).

⁶⁹ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80.

⁷⁰ 47 CFR § 1.80(b)(6).

⁷¹ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(4).

and the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a forfeiture in the amount of \$4,000 for unauthorized programming.⁷²

25. The guidelines also specify a base forfeiture amount of \$10,000 for station construction and/or operation without an instrument of authorization for the service, and \$3,000 for failure to file a required form.⁷³ In this case, AMLLC continued operating the Translator for nearly seven weeks before filing the CP Application and STA Request to so operate. Taking into consideration the fact that AMLLC holds a license to operate the Translator, that AMLLC properly filed applications to relocate its four full-service Dothan-area stations, and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose a reduced forfeiture for the unauthorized operation from the \$10,000 base amount to \$4,000, but we will impose the full \$3,000 for AMLLC's failure to file a required form.⁷⁴

26. Finally, it is uncontested that the Translator was silent for 11 months without Commission authorization. The guidelines specify a base forfeiture of \$5,000 for unauthorized discontinuance of service.⁷⁵ Notwithstanding WOOF's unsupported claim regarding AMLLC's "previous history of noncompliance," considering the extensive and egregious nature of the apparent violations here, we believe that no downward adjustment is warranted, and in fact an upward adjustment of \$2,000 is appropriate.⁷⁶ Thus, we propose a forfeiture for AMLLC's apparent rule violations here in the total amount of \$18,000.

27. *Referenced Applications.* We find that the AMLLC's apparent violation of Section 301 of the Act and Sections 1.80, 74.1231(b), 74.1263(b), (c) and (e), and 74.1251(a) of the Rules does not constitute a substantial and material question of fact calling for further inquiry regard the CP and License Applications and that the proposed forfeitures constitute an appropriate sanction for the apparent violations. Further, we have reviewed those applications and find that they comply with all pertinent statutory and legal requirements and that their grant would serve the public interest, convenience, and necessity. We will therefore grant the CP Application and the STA Request, and we will also grant the License Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of that application.

IV. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED, that pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Alabama Media, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for its apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, and Sections 1.80, 74.1231(b), 74.1263(b), (c) and (e), and 74.1251(a) of the Commission's Rules.

⁷² See, e.g., *Juan Alberto Ayala*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16033, 16036, para. 12 (MB 2012) (proposing a \$4,000 forfeiture to an FM translator station for originating programming).

⁷³ See 47 CFR § 1.80, Section 1, Note to subsection (b)(8).

⁷⁴ See, e.g., *Southern Broadcasting and Investment Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 13199, 13201, para. 6 (MB 2010) (\$4,000 forfeiture proposed for unauthorized operation and \$3,000 forfeiture proposed for failure to file required form).

⁷⁵ See, e.g., *Roger L. Hoppe, II*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 8790, 8792, para. 6 (MB 2016) (proposing a \$5000 forfeiture for 11-month period of unauthorized silence); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15; 47 CFR § 1.80(b)(4), note to paragraph (b)(4), Section I.

⁷⁶ See 47 CFR § 1.80, Section II, Note to Subsection (b)(8).

29. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the FCC's Rules, that, within thirty (30) days of the release date of this NAL, Alabama Media, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

30. IT IS FURTHER ORDERED, that Alabama Media, LLC, is hereby ADMONISHED for its apparent willful and/or repeated violation of Section 1.17(a)(2) of the Commission's Rules.

31. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the NAL/Acct. No. and FRN No. referenced herein. Regardless of the form of payment, a completed FCC Form 159 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). Licensee will also send electronic notification on the date said payment is made to Stephen.Svab@fcc.gov and Michael.Wagner@fcc.gov.

32. Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

33. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Albert Shuldiner, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

34. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

35. Requests for full payment of the forfeiture proposed in this NAL under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.⁷⁷

⁷⁷ 47 CFR § 1.1914.

36. IT IS FURTHER ORDERED, that the Informal Objection filed by WOOF, Inc., on October 28, 2016, IS GRANTED in part and IS DENIED in all other respects.

37. IT IS FURTHER ORDERED, that the Informal Objection filed by Fox Broadcasting Corporation, LLC, on June 8, 2017, IS DENIED.

38. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Alabama Media, LLC, 1109 Hudson Lane, Monroe, LA 71201, and to its counsel, David D. Burns, Esq., Pillsbury Winthrop Shaw Pittman, LLP, 1200 17th Street, N.W., Washington, DC 20036; to WOOF, Inc., P.O. Box 1427, Dothan, AL 36302, and to its counsel, David D. Oxenford, Esq., Wilkinson Barker Knauer, LLP, 1800 M St., N.W., Suite 800N, Washington, DC 20036; to Fox Broadcasting Corporation, LLC, P.O. Drawer 110, Evergreen, AL 36401, and to its counsel, Dennis J. Kelly, Esq., Law Office of Dennis J. Kelly, P.O. Box 41177, Washington, DC 20018.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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Morse, LA 71201

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Pillsbury Winthrop Shaw Pittman, LLP
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Washington, DC 20036

9590 9403 0295 5155 4257 25

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