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REQUEST FOR CONFIDENTIAL TREATMENT

April 3, 2019

Albert Shuldiner; Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Received-FCC

APR 11 2019

Bureau / Office

Re: **REQUEST FOR CONFIDENTIAL TREATMENT** under Section 0.459(a) of the Commission's Rules in Connection with Response to Notice of Apparent Liability for Forfeiture; NAL/Acct. MB-201941410002, FRN 0021372552 (FM Translator W299BX--Facility ID Number 141166).

Dear Mr. Shuldiner:

We represent Alabama Media, LLC ("*Alabama Media*") which holds the Commission authorization for FM translator station W299BX, Dothan, Alabama. On March 27, 2019, the Commission adopted and released a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (the "*NAL*") finding that Alabama Media committed violations of the Communications Act of 1934, as amended (the "*Act*"), and the rules of the Commission, and finding Alabama Media apparently liable for forfeitures in the aggregate amount of \$18,000.

On or about the date of this letter, we filed a response (the "*Response*") to the NAL with the Secretary's Office. As noted in footnote 1 to the Response, certain information therein was redacted in the version filed with the Secretary's Office. Enclosed herewith is a complete and unredacted version of the Response. On behalf of Alabama Media, and pursuant to Section 0.459(a) of the Commission's rules, we respectfully request that this unredacted version of the response be kept confidential and not made publicly available. In support of such request we state the following:

47 C.F.R. § 0.459(b)(1) -- Identification of the specific information for which confidential treatment is sought

Alabama Media requests confidential treatment of the information in the attached Response which was redacted in the version of the Response filed with the Secretary's office.

47 C.F.R. § 0.459(b)(2) -- Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving a rise to the submission

This information is being submitted in the Response to the NAL as described above.

47 C.F.R. § 0.459(b)(3) -- Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged

The information for which confidentiality is sought contains proprietary and sensitive financial information regarding Alabama Media's operations.

47 C.F.R. § 0.459(b)(4) -- Explanation of the degree to which the information concerns a service that is subject to competition

The information contained in the Response concerns the market for radio broadcasting. Alabama Media competes with a number of other radio broadcast stations, as well as other media platforms generally.

47 C.F.R. § 0.459(b)(5) -- Explanation of how disclosure of the information could result in substantial competitive harm

The Response contains sensitive financial information and would reveal competitive strengths and/or weaknesses that, if disclosed, could be exploited by a business rival.

47 C.F.R. § 0.459(b)(6) -- Identification of any measures taken by the submitting party to prevent unauthorized disclosure

Alabama Media has limited the distribution of the confidential information to persons with a need to know such information.

47 C.F.R. § 0.459(b)(7) -- Identification of the whether the information is available to the public and the extent of any previous disclosure of the information to third parties

The information for which confidential treatment is sought is not publicly available. In addition, there has been no intended disclosure to third parties except on a need-to-know basis.

47 C.F.R. § 0.459(b)(8) -- Justification of the period during which the submitting party asserts that material should not be available for public disclosure

There is no public benefit to be derived from disclosure of the confidential information. However, as discussed above, there is the potential for substantial competitive harm to Alabama Media if the information is disclosed. Therefore, the confidential information included in the Response should be withheld from public disclosure permanently.

47 C.F.R. § 0.459(b)(9) -- Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

N/A.

Pursuant to Section 0.459(e) of the Commission's rules, if this request for confidential treatment is denied, Alabama media requests that the materials submitted herewith be returned without consideration.

Should any questions arise concerning this matter, please communicate directly with the undersigned counsel for Alabama Media.

Sincerely,

PILLSBURY WINTHROP SHAW
PITTMAN LLP

By: _____


David D. Burns



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April 3, 2019

Accepted / Filed

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

APR 11 2019

Federal Communications Commission
Office of the Secretary

Attention: Albert Shuldiner; Audio Division, Media Bureau

Re: FM Translator W299BX (Facility ID Number 141166): Response to Notice of
Apparent Liability for Forfeiture (NAL/Acct. MB-201941410002; FRN
0021372552).

Dear Ms. Dortch:

We represent Alabama Media, LLC ("*Alabama Media*") which holds the Commission authorization for FM translator station W299BX, Dothan, Alabama (the "*Station*"). On March 27, 2019, the Media Bureau adopted and released a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (the "*NAL*") finding that Alabama Media committed violations of the Communications Act of 1934, as amended (the "*Act*"), and the rules of the Commission, and finding Alabama Media apparently liable for forfeitures in the aggregate amount of \$18,000. In accordance with Section 503(b)(2)(D) of the Act, Alabama Media hereby respectfully requests that such forfeitures, individually and/or in the aggregate, be cancelled or reduced due to Alabama Media's financial hardship and corresponding inability to pay. In support of this request, Alabama Media is submitting federal income tax returns for the calendar years 2016 through 2018.¹

Alabama Media's tax returns demonstrate that the company has had gross revenues of less than \$[REDACTED] per year for each of the last three years. Such returns also

¹ See ¶34 of the NAL. Due to the confidential nature of these tax returns, and certain other information provided in this response, the returns and such information have been redacted from this letter. A complete and unredacted version of this letter, including the tax returns, is being submitted to the Commission under cover of a separate letter addressed to Albert Shuldiner, Chief of the Audio Division. That letter requests confidential treatment pursuant to Section 0.459(a) of the Commission's rules for the redacted information, including the tax returns.

show that the company's total assets have amounted to less than \$[REDACTED] for each of those years. Most significantly, the company has incurred net losses in each of the past three years, with such losses totaling \$[REDACTED] in the aggregate over that period.

While the Commission has stated that gross revenues are the "starting point for determining a party's ability to pay" a forfeiture,² the Commission also has made clear that "other financial indicators, such as net losses, may also be relevant."³ While a focus on gross revenues may be appropriate for a large multi-market broadcaster with access to significant cash flow, lines of credit and other financial resources, Alabama Media is a small local broadcaster with minimal assets and revenues, and significant net losses, and without readily available sources of funds beyond operating revenues. Moreover, its stations are located in a single small market,⁴ which makes profitable operation even more challenging. The forfeitures proposed by the Commission in the NAL would serve to exacerbate Alabama Media's losses and hinder its ability to serve its local community. An admonishment, or reduced forfeitures, would be adequate to deter any future misconduct given the company's unprofitable history and the lower value of its stations relative to stations in large and mid-sized markets.⁵

Should any questions arise concerning this matter, please communicate directly with the undersigned counsel for Alabama Media.

Sincerely,

PILLSBURY WINTHROP SHAW
PITTMAN LLP

By: 

David D. Burns

² *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17106 (1997) ("Forfeiture Policy Statement").

³ *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

⁴ BIA/Kelsey ranks the Dothan, AL market as number 193 out of 268 total radio markets in the U.S.

⁵ See *Forfeiture Policy Statement* at ¶43.

Alabama Media Tax Returns
2016-2018

[REDACTED]

Declaration

Robert H. Holladay hereby declares as follows:

1. I am the sole member of Alabama Media, LLC.
2. This Declaration is being provided in support of the response (the "Response") to the Notice of Apparent Liability adopted and released by the Commission on March 27, 2019 with respect to FM translator station W299BX (NAL/Acct. MB-201941410002).
3. I have reviewed the Response, and all statements of fact therein are true and correct to the best of my knowledge, information and belief.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Robert H. Holladay

April 3, 2019