

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

In the Matter of)	
)	File No.: EB-FIELDSCR-16-00022288
Vearl Pennington,)	NAL/Acct No.: 201732480001
Morehead, Kentucky,)	FRN: 0010956670
)	
and)	
)	
Michael Williamson,)	FRN: 0025901489
Morehead, Kentucky)	

FORFEITURE ORDER

Adopted: January 28, 2019

Released: January 29, 2019

By the Commission: Commissioner Rosenworcel concurring.

I. INTRODUCTION

1. We impose a forfeiture of \$144,344, jointly and severally, against Vearl Pennington (Pennington) and Michael Williamson (Williamson) for operating an unlicensed low-power television (LPTV) station on channel 10 in Morehead, Kentucky (Station). The Commission takes very seriously the statutory obligation to obtain a Commission license in order to use or operate radio facilities. Operating an unlicensed low-power television station is illegal under Section 301 of the Communications Act of 1934, as amended (Act).¹ Such stations undermine the Commission's primary mission to manage radio spectrum. These illegal operations can interfere with licensed communications by authorized broadcasters and public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their viewers of important public safety messages, including Emergency Alert System (EAS) transmissions that provide vital information regarding hazardous weather events and other dangers to the public.

2. In 2017, the Commission adopted a Notice of Apparent Liability for Forfeiture (*NAL*) in which it proposed a forfeiture of \$144,344, jointly and severally, against Messrs. Pennington and Williamson for operating the Station for more than 18 years without a license. In their respective responses to the *NAL*, neither Mr. Pennington nor Mr. Williamson denies that the Station has operated for more than 18 years without authorization granted by the Commission. Instead, they point to unsuccessful attempts in 2004 to submit a late-filed renewal application that was originally due in 1998. After reviewing their responses to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$144,344 forfeiture the Commission previously proposed.

II. BACKGROUND

3. On May 12, 2017, the Commission released the *NAL* proposing a monetary forfeiture of \$144,344 against Messrs. Pennington and Williamson for their apparent willful and repeated violation of

¹ 47 U.S.C. § 301.

Section 301 of the Act by operating the Station for more than 18 years after the expiration of its license.² Section 301 of the Act states: “[n]o 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 this Act and with a license in that behalf granted under the provisions of this Act.”³

4. In the *NAL*, the Commission stated that, on March 29, 1990, it granted a license to Mr. Pennington to operate the Station in Morehead, Kentucky, as W10BM, Facility ID No. 69839.⁴ Several years later, on April 9, 1993, Mr. Pennington filed an application to renew the Station’s license, which the Commission granted on July 27, 1993, for a license term expiring on August 1, 1998.⁵ As stated in the *NAL*, Commission records show that the Media Bureau sent the grant of the Station’s license renewal to the Station’s address of record.⁶ Pursuant to Section 73.3539 of the Commission’s rules, Mr. Pennington was required to file a license renewal application on April 1, 1998.⁷ In 2004, a Media Bureau staff examination of Commission records found that Mr. Pennington had not sought to renew the Station’s license prior to its expiration.⁸ Following the expiration of the Station’s license, Mr. Pennington never sought special temporary authority to continue to operate the Station. On April 27, 2004, the Media Bureau wrote Mr. Pennington to confirm whether he had filed a renewal application, as required.⁹ Mr. Pennington failed to respond directly to the April 27, 2004, letter. Accordingly, on October 18, 2004, the Media Bureau notified Mr. Pennington of the license cancellation and updated its licensing database to note the Station’s cancelled status.¹⁰ Mr. Pennington did not timely seek reconsideration of the Media Bureau’s cancellation of the Station’s license. However, in his response to the *NAL*, Mr. Pennington asserts that on May 21, 2004, he filed a renewal application (2004 Renewal Application) for the Station, and that in August 2004 he tendered \$1,155 to the Commission in order to pay “renewal fees for 3 stations [at] [sic] \$50 per station per renewal period through the year 2022.”¹¹ The 2004 Renewal Application was not accepted for filing because, as discussed in greater detail below, Mr. Pennington failed to pay the application processing fee, and the Media Bureau consequently could not review the application.¹² In addition, after receiving the *NAL* in 2017, Mr. Pennington sought reconsideration of the

² *Vearl Pennington, Morehead, Kentucky and Michael Williamson, Morehead Kentucky*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 4206 (2017). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

³ 47 U.S.C. § 301.

⁴ *NAL*, 32 FCC Rcd at 4206, para. 2.

⁵ *Id.*

⁶ *NAL*, 32 FCC Rcd at 4210, para. 14.

⁷ 47 CFR § 73.3539 (requiring broadcast licensees to submit renewal applications four months prior to expiration).

⁸ *NAL*, 32 FCC Rcd at 4206, para. 2.

⁹ *Id.*, 32 FCC Rcd at 4207, para. 3. Because Mr. Pennington had not changed the Station’s address of record with the Commission, the Media Bureau mailed its April 27, 2004, letter to the same address of record as it had mailed the grant of the Station’s license renewal in 1993, consistent with our rules. *See* 47 CFR § 1.5.

¹⁰ *NAL*, 32 FCC Rcd at 4207, para. 3. Because Mr. Pennington had not changed the Station’s address of record following after the issuance of the Media Bureau’s April 27, 2004, letter, the Media Bureau mailed its October 18, 2004, letter cancelling the Station’s license to the same address of record as the grant of the Station’s license renewal in 1993 and the Media Bureau’s April 27, 2004, letter.

¹¹ Vearl Pennington, Response to Notice of Apparent Liability for Forfeiture (Jun 5, 2017) (on file in EB-FIELDSCR-16-00022288) (Pennington *NAL* Response). The application fee associated with the 2004 Renewal Application was \$50. *See* 47 CFR § 1.1104(5)(c) (2003) (using the 2003 fee schedule because the 2004 fee schedule was not effective until July 2004).

Media Bureau's 2004 cancellation of the Station's license¹³ – a request that was denied on substantive grounds and dismissed on procedural grounds.¹⁴

5. In June 2016, the Media Bureau learned that the Station might still be operating and referred the matter to the Enforcement Bureau for investigation.¹⁵ On August 16, 2016, two agents from the Enforcement Bureau's Atlanta Field Office (Atlanta Office) traveled to Morehead, Kentucky, and confirmed that the Station was operating without a license or other Commission authorization. After interviewing Mr. Pennington by telephone and Mr. Williamson in person at the Station's studio, the agents issued and hand delivered to Mr. Williamson a Notice of Unlicensed Radio Operation (NOUO), which informed him that it is illegal to operate the Station without a license and warned him that continued unlicensed operations could result in additional enforcement action.¹⁶ As the Commission stated in the *NAL*, the NOUO included an unequivocal directive to cease unlicensed operations immediately.¹⁷ Mr. Williamson submitted a written response to the NOUO, arguing that he thought the Station remained licensed because it never received confirmation of the grant of its renewal application filed in 1993. As stated in the *NAL*, Mr. Williamson neither provided evidence of the Station's authority to operate nor indicated compliance with the agents' spoken and written instruction to cease transmitting on the Station.¹⁸ Instead, Mr. Williamson indicated that the Station remained on the air and characterized the NOUO's directive to cease operations as a mere "request."¹⁹ On September 7, 2016, an agent from the Atlanta Office returned to Morehead, Kentucky and confirmed that the Station was still operating without license or authorization.²⁰

6. Following the Commission's release of the *NAL* on May 12, 2017, both Messrs. Pennington and Williamson timely submitted separate, *pro se* responses to the *NAL*.²¹ In his response to the *NAL*, Mr. Pennington (a) explains how the Station benefits the residents of Morehead, (b) asserts his belief that the license remains valid because fees paid to the Commission in 2004 should have covered the fees associated with the renewal of the Station's license, and (c) claims that he has "never operated a TV

¹² See *infra*, para. 13. The \$1,155 that Mr. Pennington references represented the annual regulatory fees that Mr. Pennington owed to the Commission in 2004 and therefore did not constitute the payment of the application processing fee for the 2004 Renewal Application.

¹³ Petition for Reconsideration filed by Ulta Comm, Inc., File No. BLTVL-19900102IG (filed July 2, 2017) (Petition for Reconsideration). Although the Commission's records reflect that the station was licensed to Vearl Pennington, the Petition for Reinstatement was filed by the entity "Ulta Comm, Inc." According to the corporate database of the Kentucky Secretary of State, Mr. Pennington once served as a director of the entity Ulta-Comm, Incorporated (Ulta-Comm), but that entity was administratively dissolved on November 3, 1997 after failing to make an annual filing with the Commonwealth of Kentucky.

¹⁴ See *Petition for Reconsideration Seeking Reinstatement of Licenses for Stations DW10BM, Morehead, Kentucky et. al.*, Letter Order, (Vid Div. 2018) (on file in FCC File No. BLTVL-19900102IG) ("*Letter Order*"). This decision was subsequently appealed to the full Commission. See Application for Review filed by Vearl Pennington (filed Jul. 20, 2018).

¹⁵ *NAL*, 32 FCC Rcd at 4207, para. 4

¹⁶ *Id.*, 32 FCC Rcd at 4207-08, paras. 5 – 6.

¹⁷ *Id.*, para. 6.

¹⁸ *Id.*, para. 7.

¹⁹ *Id.*

²⁰ *Id.*, 32 FCC Rcd at 4209, para 8. In addition, the *NAL* stated that the Station was operating at a power level that far exceeded the permitted power level for non-licensed operation. *Id.*; 47 CFR § 15.209.

station in Morehead, KY, and [he has] not visited those facilities for over 15 years.”²² As noted above, Mr. Pennington asserts that he filed the 2004 Renewal Application and paid the requisite application filing fee.²³ Mr. Pennington also claims that, as a retiree, his annual income is sufficiently low that he is not required to file federal tax returns. As a result, Mr. Pennington was unable to produce tax returns as part of his request for a reduction or cancellation of the forfeiture proposed against him.²⁴

7. In his separate response to the *NAL*, Mr. Williamson asserts several arguments, namely that the Station “has specifically made an effort to avoid ‘interstate commerce.’”²⁵ Like Mr. Pennington, Mr. Williamson claims that he lacks the financial resources to pay the forfeiture proposed in the *NAL*.²⁶

8. On February 7, 2018, the Enforcement Bureau contacted Messrs. Pennington and Williamson to request additional information to support their respective claims of inability to pay the monetary forfeiture proposed in the *NAL*.²⁷ Both Messrs. Pennington and Williamson responded to the Enforcement Bureau’s request and supplemented their responses to the *NAL*.²⁸

III. DISCUSSION

9. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,²⁹ Section 1.80 of the Commission’s rules,³⁰ and the Commission’s *Forfeiture Policy Statement*.³¹ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account 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.”³² As discussed below, we have fully considered Messrs. Pennington and Williamson’s responses to the *NAL* and find no reason to cancel, withdraw, or reduce the penalty proposed in the *NAL*.

²¹ Pennington *NAL* Response; ; Michael Williamson, Response to Notice of Apparent Liability for Forfeiture (May 27, 2017) (on file in EB-FIELDSCR-16-00022288) (Williamson *NAL* Response). In addition, on June 22, 2017, Joe Donalson, a resident of Texas, contacted the Enforcement Bureau in his individual capacity to express his concern over the *NAL*. See Email from Joe Donalson to Matthew L. Gibson, Field Counsel, Office of the Field Director, Enforcement Bureau, FCC (June 22, 2017, 10:45 a.m.) (on file in EB-FIELDSCR-16-00022288). In his email, Mr. Donalson indicated that Mr. Williamson provided him with his login credentials to the Commission’s licensing database, but he did not represent that he had been engaged by Mr. Williamson to represent him before the Commission in this proceeding. Further, we note that even if Mr. Donalson had affirmatively stated in his June 22, 2017, email that he was representing Mr. Williamson in this matter, his submission fails to meet the requirements of Section 1.52 of the Commission’s rules, as it was not accompanied by a signed verification by Mr. Williamson. 47 CFR § 1.52. Accordingly, we afford no weight to Mr. Donalson’s June 22, 2017, email.

²² Pennington *NAL* Response at 1-2.

²³ See *supra*, para. 4.

²⁴ *Id.*

²⁵ Williamson *NAL* Response at 1-2.

²⁶ Williamson *NAL* Response at 1.

²⁷ Email from Matthew L. Gibson, Field Counsel, Office of the Field Director, Enforcement Bureau, FCC, to Vearl Pennington (Feb. 7, 2018) (on file in EB-FIELDSCR-16-00022288); Email from Matthew L. Gibson, Field Counsel, Office of the Field Director, Enforcement Bureau, FCC, to Michael Williamson (Feb. 7, 2018) (on file in EB-FIELDSCR-16-00022288).

²⁸ Declaration of Vearl Pennington (Feb. 9, 2018) (on file in EB-FIELDSCR-16-00022288) (Pennington Declaration); Affidavit of Michael Williamson (Feb. 11, 2018) (on file in EB-FIELDSCR-16-00022288) (Williamson Affidavit).

A. The Pennington NAL Response

10. Mr. Pennington advances three principal arguments as to why the *NAL* should be cancelled. We are unpersuaded by any of them.

11. First, Mr. Pennington asserts that the Station is providing an important service to residents of Morehead, Kentucky.³³ While such an argument may be relevant in the context of certain licensing proceedings, the Commission has previously held – and we reiterate here – that service to a community does not absolve from liability an operator of an unlicensed station.³⁴

12. Second, Mr. Pennington argues that because the Commission accepted funds, which he claims were tendered in connection with the 2004 Renewal Application, the Station’s license should still be valid.³⁵ We disagree. As an initial matter, even if we agreed that Mr. Pennington had properly filed the Station’s license renewal application in 2004 – which, as explained below, we do not – the Station would still be subject to forfeiture penalty for operating without an authorization. Mr. Pennington’s argument serves as an admission that the 2004 Renewal Application was tendered more than six years too late. Further, the mere act of filing a renewal application on its own would not cure the station’s unauthorized operation. Although Section 307(c)(3) of the Act permits licensees to continue operation while there is a pending license renewal application,³⁶ it is well-established Commission precedent that a licensee that fails to file a license renewal application by its license expiration date and continues to operate without special temporary authority is engaged in unauthorized operation and subject to sanction.³⁷ No request for special temporary authority was ever filed. In addition, regardless of whether the license renewal application that was purportedly filed in 2004 was still pending or had been granted, this license renewal application would have only covered the station’s 1998 to 2005 license term. Two additional renewal applications would also have been required to cover subsequent license periods – one by April 1, 2005 (for the 2005-2013 license term) and the next by April 1, 2013 (for the 2013-2021

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 C.F.R. § 1.80.

³¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³² 47 U.S.C. § 503(b)(2)(E).

³³ Pennington NAL Response at 1.

³⁴ See, e.g., *In Re Jerry Szoka Cleveland, Ohio*, Decision, 14 FCC Rcd 9857, 9862 (1999) (stating that providing service to a “niche audience that is not otherwise being served adequately by licensed broadcasters” does not establish “a right to broadcast without a license and in contravention of the Commission’s rules”); *C.J. Community Services, Inc., Bridgeport, Washington*, Decision, 20 FCC 860, 868 (1956) (noting that “Considerations of . . . alleged benefits of the augmented service made possible by the boosters are irrelevant to a determination as to whether an unlicensed operation causing interference to authorized service should be allowed to continue operation”).

³⁵ Pennington NAL Response at 1-2.

³⁶ 47 U.S.C. § 307(c)(3).

³⁷ See, e.g., *Atlantic City Board of Education*, Memorandum Opinion and Order, 31 FCC Rcd 9380, 9385, para. 11 (2016); *Pollack/Belz Communications Company, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1063 (MB 2014) (four months late and with prior license renewal application still pending), *forfeiture ordered*, Forfeiture Order, 29 FCC Rcd 14635 (MB 2014); *J. Thomas Development of NM, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 10859 (MB 2012) (over 5 years); *Hope Broad., Inc.*,

license term).³⁸ An examination of the Media Bureau's online filing system (CDBS) finds that these required filings were not made, and Mr. Pennington has provided no evidence to the contrary. Thus, even if the 2004 Renewal Application had been accepted for filing, the Station would still have lacked authority to operate for the entire period covered by the *NAL*.

13. In reality, Mr. Pennington did not properly file a license renewal application in 2004. Although Mr. Pennington purports to have done so, under Media Bureau precedent, that application would not have been deemed "accepted for filing" and therefore could not have been evaluated until Mr. Pennington paid the associated application processing fee.³⁹ This interpretation is consistent with the Commission's rules.⁴⁰ The Commission has reviewed its records and found no evidence that the application processing fee was paid.⁴¹ Mr. Pennington contends that the \$1,155 purportedly paid to the Commission was meant to apply to his "renewal fees" for his three former LPTV stations, including the Station, through 2022.⁴² Even if such funds were received by the Commission, this argument merely demonstrates a misunderstanding of when fees are due and how they are collected by the Commission. Application processing fees are only due upon filing an application, and a renewal application is only required to be filed *once* every eight years, not annually.⁴³ Moreover, because application processing fees may change on an annual basis, there is no way for a licensee to pre-pay such fees. The fee that *is* due on an annual basis is the Commission's annual regulatory fee. In 2004, the annual regulatory fee for LPTV stations was \$385.⁴⁴ We conclude that Mr. Pennington's purported payment of \$1,155 would have represented the 2004 annual regulatory fee for three LPTV stations, and not the \$50 application fee owed in connection with the 2004 Renewal Application.⁴⁵ As a result of Mr. Pennington's failure to perfect the filing of the 2004 Renewal Application, including his failure to pay the required application processing fee, the Media Bureau cancelled the Station's license on October 18, 2004.⁴⁶ That cancellation was mailed to Mr. Pennington's address of record, and Mr. Pennington did not appeal the decision until thirteen years later, a request which the Media Bureau dismissed on procedural grounds and denied on

Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16370 (MB 2011) (over 7 years); *Hartford Bd. of Ed.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14476 (MB 2011) (over 4 years); *St. Mary's Coll. of Minn.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 13345 (MB 2011) (over 5 years); *Westport Bd. of Ed.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3215 (MB 2010) (over 3 years). See *Superior Commc'ns*, Letter, 22 FCC Rcd 16634, 16635-36 (MB 2007). The Commission has developed and applied an interstitial processing policy regarding the treatment of late-filed renewal applications to provide stations with the opportunity to rectify their failure and seek renewal of the Station's license in order to avoid disruption in service to public. See, e.g., *Atlantic City Board of Education*, 31 FCC Rcd at 9385, para. 11 (discussing the Commission's policy and practice with regard to license renewal applications filed after a station's license has expired and it has continued operation). However, such policy only is only applicable until the Commission or its delegated authority issues a cancellation notice that becomes a final order. See, e.g., *Christian Family Network, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 2459 (2016) (upholding dismissal of renewal application filed more than four years after license expiration and more than two and one-half years after Bureau issued cancellation notice to licensee and public notice of cancellation).

³⁸ See, e.g., *Media Bureau Announces Revision to Television License Renewal Procedures and Form 303-S License Renewal Application; Television License Renewal Filings Accepted Beginning May 1, 2012*, Public Notice, 27 FCC Rcd 2460 (MB 2012). Since 2009, the Station also would have been obligated to file Biennial Ownership Reports but did not do so. See 47 CFR § 74.797.

³⁹ See, e.g., *KWSA(FM), Price, Utah*, Letter Order, 31 FCC Rcd 8916, 8921 (MB 2016) (admonishing a licensee for failing to comply with a Commission order to file an application where "the filing fee was not paid, and the application was accordingly not accepted for filing"); *WURB(FM), Cross City, Florida*, Letter Order, 30 FCC Rcd. 2015, n.4 (MB 2015) (stating that because the "[f]iling fees were not paid [for two applications] . . . they were never accepted for filing or reviewed by Commission staff"). To the extent that a file number was assigned to the tendered 2004 Renewal Application, we find that such action was merely ministerial in nature and does not represent that the application was, in fact, properly filed with the Commission. Even if filed, staff could have nevertheless dismissed the 2004 Renewal Application for failing to provide the requisite filing fee.

substantive grounds. Accordingly, we reject Mr. Pennington's assertion that he had a valid license for the Station.

14. Third, Mr. Pennington asserts that he "never operated a TV station in Morehead, KY," and that he has "not visited those facilities for over 15 years."⁴⁷ We reject these assertions, however, as they run contrary to the weight of the evidence. In particular, these statements are inconsistent with the following: (a) Mr. Pennington's status as the Station's licensee until its license was cancelled,⁴⁸ (b) statements in the Pennington NAL Response indicating that, in the months prior to the Enforcement Bureau's investigation, Mr. Pennington was involved in efforts to ascertain the status of the Station's license,⁴⁹ (c) un rebutted statements in the *NAL* that, during an interview with an agent, Mr. Pennington was conversant in the Station's license status and past filings with the Commission,⁵⁰ and (d) statements in the Williamson Affidavit indicating that Mr. Pennington prepared the financial summary included in the Williamson NAL Response, which purports to set forth payments made to Mr. Williamson in connection with operating the Station from 2015 through 2017.⁵¹

15. For the reasons set forth above, we reject Mr. Pennington's substantive arguments that the Commission should cancel the *NAL*.

B. The Williamson NAL Response

16. Mr. Williamson asserts a range of specious and otherwise non-cognizable legal defenses to the allegations contained in the *NAL*. For example, Mr. Williamson seems to suggest that the Commission lacks jurisdiction over the Station because the Station's signal is "not designed to reach beyond the boundary of the radio horizon with common or normal atmospheric conditions nor in the interstate commerce of the land of Kentucky or the surrounding counties of the land of origin."⁵² Such an argument contradicts the plain meaning of Section 301 of the Act, which states, in relevant part, that, absent Commission authorization, "[n]o person shall use or operate any apparatus for the transmission of

⁴⁰ See 47 U.S.C. § 158(c)(2) (2006) (permitting the Commission to "dismiss any application or other filing for failure to pay in a timely manner any application fee or penalty"), amended by RAY BAUM'S Act, Pub. L. No. 151-141, March 23, 2018, 132 Stat 348 (amending the Act, *inter alia*, to remove the quoted text, effective October 1, 2018); 47 CFR § 1.1114(a)(1) (instructing staff to dismiss an application or filing that does not include the requisite fee and barring *nunc pro tunc* treatment after the relevant filing date).

⁴¹ Indeed, to this day, the application that Mr. Pennington attempted to file in 2004 resides solely in Mr. Pennington's private CDBS account and is not viewable to the Commission for application processing or otherwise viewable to the public.

⁴² Pennington NAL Response at 1. Beyond the fact that application processing fees cannot be pre-paid, Mr. Pennington's argument is not mathematically possible: \$1,155 is not a multiple of \$50.

⁴³ See 47 USC § 307(c); 47 CFR § 73.1020.

⁴⁴ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order, 19 FCC Rcd 11662, 11690 (2004).

⁴⁵ We also note that, had the Station's license continued in effect, the Station's licensee would have been subject to an annual regulatory fee each year from 2005 to the present. Mr. Pennington makes no claim to have paid (or attempted to have paid) such fees for the Station. Licensees who fail to pay applicable regulatory fees are subject to significant monetary penalties and risk rescission of their licenses. See 47 CFR § 1.1164.

⁴⁶ *NAL*, 32 FCC Rcd at 4206, para. 2.

⁴⁷ Pennington NAL Response at 2.

⁴⁸ *NAL*, 32 FCC Rcd at 4206-07, paras. 2-3. The Station's authorization specifically identifies Mr. Pennington as the licensee. See, e.g., File No. BLTVL-19900102IG.

⁴⁹ Pennington NAL Response at 2 (establishing that Mr. Pennington was involved in the Station's finances as recently as April 2017).

energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District.”⁵³ Further, at no point in the Williamson NAL Response does Mr. Williamson deny his role in operating the Station, as established in the *NAL*.⁵⁴

17. In addition, in his supplemental affidavit, Mr. Williamson could be viewed as advancing two additional arguments why the *NAL* should be cancelled. First, Mr. Williamson included in his affidavit a screen capture from CDBS.⁵⁵ The screen capture shows that a Form 303-S Renewal Application (File Number 20040521AEE) was initiated in CDBS on May 21, 2004.⁵⁶ The screen capture also contained a handwritten citation to Section 1.62 of the Commission’s rules, which authorizes continued operation under a license while a “proper and timely” renewal application is pending before the Commission.⁵⁷ Even if we were to construe Mr. Williamson’s handwritten citation to Section 1.62 as equivalent to an affirmative argument that the Station’s operations are authorized, we would reject such an argument. Consistent with the *Letter Order*, we find that the 2004 Renewal Application was neither a “proper” application (fee not paid) nor a “timely application” (filed six years late) for purposes of Section 1.62.⁵⁸ Accordingly, because Mr. Pennington (i) failed to perfect the filing of the 2004 Renewal Application⁵⁹ and (ii) as noted above, failed to file any subsequent required renewal applications (even if the 2004 Renewal Application had been accepted for filing (which it was not)),⁶⁰ Section 1.62 of the Commission’s rules does not afford the Station any ongoing operating authority. Second, Mr. Williamson included with his affidavit a petition, signed by more than 100 area residents, urging the Commission to allow the Station to continue to operate and to waive the monetary forfeiture proposed in the *NAL*.⁶¹ While we acknowledge the Station’s community support, as stated above, we do not give weight to service to the community in the context of a proceeding involving an unlicensed broadcast station.⁶² For the reasons set forth above, we reject Mr. Williamson’s substantive arguments that the Commission should cancel the *NAL*.

⁵⁰ *NAL*, 32 FCC Rcd at 4207-08, para 6.

⁵¹ Williamson Affidavit at 1-2. Even if we accepted Mr. Pennington’s claim that he was no longer involved in the Station and that it was being operated and controlled by Mr. Williamson, such argument would represent admission of an unauthorized transfer of control, as no assignment application was filed with the Commission. Such action would constitute another violation of the Act and rules and be subject to additional sanction. 47 U.S.C. § 310(d) (requiring Commission authority to transfer or assign any license or rights thereunder); 47 CFR § 74.780 (requiring LPTV stations to file for authority to assign or transfer a broadcast television station, as required by 47 CFR § 73.3540).

⁵² Williamson NAL Response at 1.

⁵³ 47 U.S.C. § 301.

⁵⁴ *NAL*, 32 FCC Rcd at 4207-08, paras. 6-7.

⁵⁵ Williamson Affidavit at 3.

⁵⁶ *Id.*

⁵⁷ *Id.* 47 CFR § 1.62(a)(1).

⁵⁸ See para. 12, *supra*; see generally, *Letter Order*.

⁵⁹ See *Letter Order* at 3.

⁶⁰ See para. 11, *supra*.

⁶¹ Williamson Affidavit at 4 – 20.

⁶² See text accompanying note 32, *supra*.

C. A Reduction of the Forfeiture is Not Warranted

18. After considering the relevant statutory factors and the Commission's Forfeiture Policy Statement, we find that Messrs. Pennington and Williamson are jointly and severally liable for a total forfeiture of \$144,344. As explained in the *NAL*, this amount results from imposing a base forfeiture of \$10,000 per day for operating an unlicensed television station for 22 days.⁶³ The Commission found that Messrs. Pennington and Williamson were apparently liable for a total proposed base forfeiture amount of \$220,000, which it was required to reduce to \$144,344, the maximum forfeiture then permitted under Section 503(b)(2)(D) of the Act for continuing violations arising from a single act or failure to act.⁶⁴ The Commission also found that because the violations in this case are egregious, intentional, and repeated, a significant increase to the base forfeiture would have been warranted if the proposed forfeiture amount was not already at the statutory maximum.⁶⁵ Nothing in their respective responses to the *NAL* persuades us otherwise. Accordingly, we find no basis to reduce the forfeiture.

19. As noted above, Messrs. Pennington and Williamson separately seek a reduction of the forfeiture based on their asserted inability to pay.⁶⁶ In support of their individual claims, both asserted that their respective incomes were below the Internal Revenue Service's thresholds for filing federal income tax returns and provided tables purporting to summarize their respective finances.⁶⁷ As noted above, at the request of the Enforcement Bureau, Messrs. Pennington and Williamson supplemented their responses to the *NAL* and affirmed, under penalty of perjury, that due to their income each of the last three years, they were not required to file federal taxes.⁶⁸

20. Despite Messrs. Pennington and Williamson's respective claims that they are unable to pay the forfeiture, we decline to reduce the \$144,344 forfeiture proposed in the *NAL* based on the egregious, intentional, and repeated nature of the violation. As discussed above, a violator's "ability to pay" is only one of several factors the Commission must consider when determining an appropriate forfeiture under Section 503 of the Act and our forfeiture guidelines. We must also consider "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, . . . and such other matters as justice may require."⁶⁹ Here, after the Enforcement Bureau verified that the Station was not licensed, its agents provided Messrs. Pennington and Williamson with a clear spoken and written directive to cease the Station's unlicensed – and illegal – operation. Yet, Messrs. Pennington and Williamson chose to flout those instructions and continued to operate the Station.⁷⁰ Furthermore, Messrs. Pennington and Williamson have operated the Station for

⁶³ *NAL*, 32 FCC Rcd at 4214, para. 23. Although the Station has operated for more than 18 years without a license from the Commission, monetary forfeitures imposed by the Commission are constrained by Section 503(b)(6) of the Act, which requires that monetary forfeitures be based on violations of the Act that occurred within a year preceding the issuance of the *NAL*. *Id.*; 47 U.S.C. § 503(b)(6). As a result, the monetary forfeiture in the *NAL* is calculated based on the Station's operations for a 22-day period between (a) August 16, 2016, when two Enforcement Bureau agents inspected the Station and instructed Messrs. Pennington and William to cease unlicensed operations, and (b) September 7, 2016, when an Enforcement Bureau agent returned to Morehead, Kentucky, and determined that the Station was still operating, despite the prior warning. These dates of confirmed operation of the unauthorized station occurred within one year prior to the issuance of the *NAL* on May 12, 2017.

⁶⁴ *NAL*, 32 FCC Rcd at 4214, para. 23.

⁶⁵ *Id.*, para. 24.

⁶⁶ See Pennington *NAL* Response at 2; Williamson *NAL* Response at 1.

⁶⁷ *Id.*

⁶⁸ See Pennington Declaration; Williamson Affidavit at 1-2.

⁶⁹ 47 U.S.C. § 503(b)(2)(E).

⁷⁰ See, e.g., *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, FCC 18-58, para. 45 (May 10, 2018) (finding that an inability to pay was "greatly outweighed by the other balancing

more than 18 years without a license. Accordingly, we decline to downwardly adjust the monetary forfeiture, notwithstanding Messrs. Pennington and Williamson's request to reduce the forfeiture amount based on an inability to pay. Rather, we find that factor to be greatly outweighed by the other balancing factors that militate in favor of a large forfeiture.

21. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$144,344 properly reflects the seriousness, duration, and scope of Messrs. Pennington and Williamson's violations of Section 301 of the Act.

IV. CONCLUSION

22. Based on our review of the record, we find that Vearl Pennington and Michael Williamson willfully and repeatedly violated Section 301 of the Act. After evaluating the entire record, including Pennington and Williamson's separate responses to the *NAL*, we affirm the findings made in the *NAL* and decline to cancel, withdraw, or reduce the \$144,344 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁷¹ and Section 1.80 of the Commission's rules,⁷² Vearl Pennington and Michael Williamson **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of One Hundred Forty-Four Thousand, Three Hundred Forty-Four Dollars (\$144,344) for willfully and repeatedly violating Section 301 of the Act.⁷³

24. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Forfeiture Order, Vearl Pennington and Michael Williamson **SHALL PAY** the full amount of the proposed forfeiture.

25. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. Vearl Pennington and Michael Williamson shall send electronic notification of payment to field@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁷⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). 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,

factors that militate in favor of a large forfeiture"); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840, 7844–45, para. 16 (EB 2011) (violator's repeated intentional and malicious violations outweighed evidence of inability to pay), *recon. dismissed*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator's demonstrated inability to pay outweighed by gravity of repeated violations).

⁷¹ 47 U.S.C. § 503(b).

⁷² 47 CFR § 1.80.

⁷³ 47 U.S.C. § 301.

⁷⁴ A copy of an FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

26. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁷⁵ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

27. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail to Messrs. Pennington and Williamson at their respective addresses of record.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷⁵ See 47 CFR § 1.1914.