



**FEDERAL COMMUNICATIONS COMMISSION**  
Enforcement Bureau  
Investigations and Hearings Division  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

October 13, 2017

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**  
**AND EMAIL at [espainhour@brookspierce.com](mailto:espainhour@brookspierce.com)**

Elizabeth E. Spainhour, Esq.  
Counsel to Gulf-California Broadcast Company  
Brooks, Pierce, McLendon, Humphrey & Leonard LLP  
1600 Wells Fargo Capitol Center  
150 Fayetteville Street  
Raleigh, North Carolina 27601

**Re: Station KESQ-TV, Palm Springs, California**  
**Facility ID No. 25577**  
**File No. EB-IHD-16-00021742**

Dear Ms. Spainhour:

The Enforcement Bureau (Bureau) has been investigating whether Gulf-California Broadcast Company (Gulf-California) violated the sponsorship identification requirements of Sections 317 and 507 of the Communications Act of 1934, as amended (Act), and Section 73.1212 of the Commission's rules (Rules) by failing to make sponsorship identification announcements for program material promoting individuals and businesses that provided payments or other valuable consideration to KESQ-TV employees in exchange for such on-air promotion.<sup>1</sup>

The Bureau has now completed its review of the record in this case. This letter is to inform you that, at this time, the Bureau is not planning to take further action regarding this matter. You should not construe the closing of the investigation as a determination that a violation did not occur. Moreover, the Bureau may reopen this case and take future action on this matter, as appropriate, if new evidence becomes available or if the public interest so requires.

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<sup>1</sup> 47 U.S.C. §§ 317, 508; 47 C.F.R. § 73.1212.

As a separate matter, however, Gulf-California's conduct in connection with this investigation raised serious questions concerning Gulf-California's compliance with the Bureau's letters of inquiry (LOIs)<sup>2</sup> and Section 73.1015 of the Rules.<sup>3</sup> The Bureau directed Gulf-California to provide certain information and documents related to (i) broadcasts aired on KESQ-TV and (ii) Gulf-California's current financial status.<sup>4</sup> This information was relevant to the Bureau's investigatory function.

*First*, Gulf-California's response to the Nov. 22, 2016 LOI did not provide the requested written accounts of oral agreements between Bianca Rae Goutos and vendors that loaned clothing and provided other items to Ms. Goutos.<sup>5</sup> Gulf-California offered no justification for this omission.

*Second*, Gulf-California repeatedly refused to provide the information and documents related to Gulf-California's current financial status.<sup>6</sup> Instead, Gulf-California argued that production of such documents and information were unwarranted.<sup>7</sup>

We disagree with Gulf-California's arguments concerning the obligation to produce financial information. The Commission has broad investigatory authority under the Act.<sup>8</sup>

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<sup>2</sup> Letter from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Mr. J. Timothy Hannan, Executive Vice President, News-Press & Gazette Company, Parent of Gulf-California Broadcast Company, and Elizabeth E. Spainhour, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard LLP, Counsel to Gulf-California Broadcast Company (Nov. 22, 2016) (Nov. 22, 2016 LOI) (on file in EB-IHD-16-00021742); Letter from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Mr. J. Timothy Hannan, Executive Vice President, News-Press & Gazette Company, Parent of Gulf-California Broadcast Company (July 25, 2016) (July 25, 2016 LOI) (on file in EB-IHD-16-00021742).

<sup>3</sup> 47 CFR § 73.1015; *see, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599-600, paras. 23-28 (2002) (*SBC*) (forfeiture paid) (stating that failure to respond fully to an LOI constitutes a violation of a Commission Order).

<sup>4</sup> Nov. 22, 2016 LOI at Attachment A, Inquiry No. 2, Request for Documents Nos. 5(f), (9); July 25, 2016 LOI at Attachment A, Inquiry No. 10, Request for Documents No. 32.

<sup>5</sup> Response of Gulf-California Broadcast Company to the November 22, 2016, Letter of Matthew L. Conaty at 23-24, Answer No. 5(f) & Attachment A, Second Declaration of Bianca Rae Goutos at 2, para. 8 (Jan. 4, 2017) (Jan. 4, 2017 LOI Response) (on file in EB-IHD-16-00021742).

<sup>6</sup> Jan. 4, 2017 LOI Response at 25-28, Answer No. 9; Response of Gulf-California Broadcast Company to the July 25, 2016, Letter of Matthew L. Conaty at 56, Answer No. 32 (Aug. 23, 2016) (Aug. 23, 2016 LOI Response) (on file in EB-IHD-16-000217420).

<sup>7</sup> Jan. 4, 2017 LOI Response at 25, Answer No. 9.

<sup>8</sup> Section 403 of the Act provides in part:

The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter . . . relating to the enforcement of any of the provisions of this chapter. 47 U.S.C. § 403.

Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i).

Furthermore, pursuant to Section 73.1015 of the Rules, the Commission may require from a broadcast licensee written statements of fact relevant to any matter within its jurisdiction.<sup>9</sup> A broadcast licensee must provide truthful and accurate statements to the Commission in any adjudicatory or investigatory matter within the Commission's jurisdiction.<sup>10</sup> The Commission delegated to the Enforcement Bureau the authority to investigate potential violations of the Act and the Rules in Section 0.111(a)(17) of the Rules.<sup>11</sup>

Commission precedent affirms the Bureau's broad authority to request information and documents in connection with investigations similar to those here.<sup>12</sup> The Commission has consistently held that, objections notwithstanding, a licensee must provide timely and complete responses to an Enforcement Bureau inquiry.<sup>13</sup> Accordingly, licensees that receive LOIs must timely file complete and accurate responses to the Bureau's questions regardless of objections that responding would be unduly burdensome or outside the scope of the Bureau's authority.<sup>14</sup>

Moreover, Gulf-California incorrectly asserted that the production of such information is a matter solely within a licensee's discretion and that the Bureau may not appropriately request such information prior to issuing a Notice of Apparent Liability for Forfeiture (NAL). Before issuing an NAL proposing a monetary forfeiture, Section 503(b)(2)(E) of the Act and the Commission's *Forfeiture Policy Statement* require the Bureau to consider, among other things, the licensee's ability to pay.<sup>15</sup> The Bureau and the Commission routinely consider financial information in connection with proposing a forfeiture in an NAL.<sup>16</sup> Thus, Gulf-California had no basis to argue that the Bureau is not entitled to financial information and documents.

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Section 4(j) of the Act provides in part: "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j)

<sup>9</sup> 47 CFR § 73.1015.

<sup>10</sup> 47 CFR § 1.17.

<sup>11</sup> 47 CFR § 0.111(a)(17) (granting the Enforcement Bureau authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to section[] . . . 403 . . . of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office"); see 47 C.F.R. § 0.311 (general delegated authority for Enforcement Bureau).

<sup>12</sup> See, e.g., *SBC*, 17 FCC Rcd at 7598, para. 20; *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 3684, 3688, para. 11 (EB 2008) (forfeiture paid).

<sup>13</sup> See *SBC*, 17 FCC Rcd at 7598, para. 20.

<sup>14</sup> See, e.g., *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (forfeiture paid), *recons. denied*; Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015); *SBC*, 17 FCC Rcd at 7598, para. 20.

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E); *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, 17100-01, para. 27 (1997), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

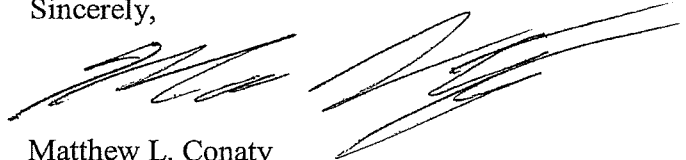
<sup>16</sup> See, e.g., *Viacom, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2548, 2566-67, para. 39 (2014) *aff'd sub nom. Viacom, Inc. ESPN, Inc.*, Forfeiture Order, 30 FCC Rcd 797 (2015) (forfeitures paid).

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As noted above, the Bureau is not planning to take further action regarding this investigation. We therefore no longer require the requested information. Nevertheless, we strongly caution Gulf-California that failures to fully respond to the Commission's inquiries may be construed as a violation of the Commission's rules, separate and apart from the subject matter of the investigation at issue. The Bureau may give enhanced scrutiny to any evidence of future violations and may consider past conduct in the calculation of any proposed penalties.

Should you have any questions concerning the foregoing, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew L. Conaty', with a stylized flourish extending to the right.

Matthew L. Conaty  
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Enforcement Bureau