

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, DC 20554
June 9, 2004

In Reply Refer to:
1800B3-SC
NAL/Acct No: MB20041810055
FRN: 0008049959

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Peter Gutmann, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1401 I St. NW 7th Floor
Washington, D.C. 20005

In re: **WZRH(AM), Dallas, NC**
Facility ID No. 8503
Zybek Media Group, LLC
File No. BR-20030917ABZ

Dear Mr. Gutmann:

This letter refers to the captioned application of Zybek Media Group, LLC (“Zybek”) for renewal of license for station WZRH(AM), Dallas, North Carolina. For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to Zybek for violation of 47 C.F.R. Section 73.3539, the Commission’s rule regarding the timing for filing license renewal applications, and we grant the WZRH(AM) license renewal application.

Section 73.3539 violation. Zybek’s renewal application for the current WZRH(AM) license term, was due on August 1, 2003, four months prior to the December 1, 2003 expiration date.¹ The application was not filed until September 17, 2003. Zybek provides no explanation for the untimely filing of the renewal application, however, Zybek does acknowledge the late-filing.

The guidelines contained in the Commission’s *Forfeiture Policy Statement*² specify a base forfeiture amount of \$3,000 for a failure to file a required form. Section 503(b)(2)(D) of the Act requires the Commission to 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, ability to pay, and such other matters as justice may require.” In this case, Zybek failed to timely file the WZRH(AM) renewal application, File No. BR-20030917ABZ. Taking into consideration these facts, including the fact that the WZRH(AM) renewal application was filed prior to expiration of the station’s license, and all of the factors required by Section 503(b)(2)(D) of the Act and the

¹ See 47 C.F.R. §§ 73.1020, 73.3539(a).

² *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997) (“*Forfeiture Policy Statement*”).

Forfeiture Policy Statement, we will reduce the forfeiture to \$1,500 for the late filing.³ We will not excuse the violation, because licensees are responsible for the timely submission of required forms, and untimely renewal applications disrupt the orderly processing of renewal applications orchestrated by the staggering of license renewal terms in Section 73.1020 of the Commission's rules.

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁵

We find that Zybek's violation of Section 73.3539 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.⁶ Further, we find that station WZRH(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.⁷

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503 (b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission's Rules, 47 U.S.C. Sections 0.283 and 1.80, Zybek is hereby advised of his apparent liability for a forfeiture of \$1,500 for willfully and repeatedly violating Section 73.3539.

Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Zybek SHALL PAY to the United States the full

³ See *Discussion Radio, Inc.*, 19 FCC Rcd 7433 (2004).

⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁶ For example, we do not find here that the licensee's station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate WJJS-FM in the future in accordance with the requirements of its licenses and the Commission's Rules.” *Heart of the Black Hills Stations*, 32 F.C.C.2d at 200. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

⁷ See 47 U.S.C. § 309(k).

amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture may be made by credit card through the Commission's Revenue and Receivables Operations Group at 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the NAL/Acct. No. (MB20041810055) and the FCC Registration Number (0008049959) referenced in the caption of this document.

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the NAL/Account number (MB20041810055) and the FCC Registration Number (0008049959) referenced in the caption of this document.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

Finally, IT IS ORDERED, that the application (File No. BR-20030917ABZ) of Zybek Media Group, LLC for renewal of license for station WZRH(AM), Dallas, North Carolina, IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Zybek Media Group, LLC

⁸ See 47 C.F.R. § 1.1914.