

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

In re Applications of)	
)	
Cumulus Licensing LLC)	NAL/Acct. No. MB-200741410338
)	FRN: 0002834810
For Renewal of License for Stations)	
)	
)	
WHBX(FM), Tallahassee, FL)	Facility I.D. No. 28168
)	File No. BRH-20030930AGP
and)	
)	
)	
WWLD(FM), Cairo, GA)	Facility I.D. No. 38640
)	File No. BRH-20031125AEM
)	
)	
)	

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

Adopted: July 26, 2007

Released: July 27, 2007

By the Chief, Audio Division

I. INTRODUCTION

1. The Commission has before it the captioned applications (the “Applications”) of Cumulus Licensing LLC (the “Licensee”) for renewal of its licenses for FM Stations WHBX(FM), Tallahassee, Florida, and WWLD(FM), Cairo, Georgia (the “Stations”). We also have before us the February 12, 2004, informal objection (“Informal Objection”) to the Applications filed by Peter B. Fulton, Inc.¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),² by the Chief, Media Bureau by authority

¹ We will refer to both Peter B. Fulton, Inc. and Peter B. Fulton as “Fulton.” Also before us are: Opposition to Informal Objection (“Opposition”) filed March 1, 2004, by Cumulus Licensing LLC (“Licensee”); Reply to Opposition to Informal Objection (“Reply”) filed April 15, 2004 by Fulton; Additional Reply to Opposition to Informal Objection (“Additional Reply”) filed August 3, 2004 by Fulton; and Opposition to “Additional Reply to Opposition to Informal Objection” (“Opposition to “Additional Reply””) filed by Cumulus Licensing LLC. Fulton’s Informal Objection pertained to the license renewal applications of Stations WHBX(FM), WBZE(FM), WGLF(FM) and WHBT(AM), Tallahassee, Florida, and WWLD(FM), Cairo, Georgia, all of which are licensed to Cumulus Licensing, LLC. The applications of Stations WBZE(FM), WGLF(FM) and WHBT(AM) had been granted prior to the Commission’s receipt of the Informal Objection on February 10, 2004. Accordingly, we are only considering the Informal Objection with regard to Stations WHBX(FM) and WWLD(FM). See 47 C.F.R. 73.3587 (informal objections must be filed prior to grant of the pertinent application).

² 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

delegated under Section 0.283 of the Rules,³ we find that the Licensee apparently willfully and repeatedly violated Section 1.17 of the Rules by falsely certifying in the captioned license renewal applications that the Stations' public inspection files were complete throughout the license term and by providing in a written statement material factual information that was incorrect without a reasonable basis for believing that such information was correct and not misleading.⁴ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of Twenty Thousand Dollars (\$20,000), and we grant the captioned license renewal applications.

II. BACKGROUND

2. Both petitions to deny and informal objections must, pursuant to Section 309(e) of the Act, 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 Section 309(k) of the Act,⁵ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application 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 Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁶ 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.”⁷

3. Section 1.17(a) of the Rules provides that no person, in any written or oral statement of fact, may provide material factual information that is incorrect or misleading. It also 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.” Recently, the Commission expanded the scope of Section 1.17 of the Rules,⁸ with respect to investigations and adjudications, to prohibit “[w]ritten and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing the statement is correct and not misleading.”⁹ Misrepresentation involves false statements made

³ See 47 C.F.R. § 0.283.

⁴ See 47 C.F.R. § 1.17(a)(1) and (2).

⁵ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 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).

⁶ 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 *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁸ 47 C.F.R. § 1.17.

⁹ *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016 (2003).

with an intent to deceive.¹⁰ Lack of candor involves concealment, evasion, or other failure to be fully forthcoming, accompanied by an intent to deceive.¹¹ However, “a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the rules. . . .”¹²

4. On September 30, 2003, Licensee filed an application for the renewal of the license of Station WHBX(FM), Tallahassee, Florida. On November 25, 2003, Licensee filed an application for renewal of the license of Station WWLD(FM), Cairo, Georgia. Both renewal applications contained a certification asking the applicant to certify that the documentation required by the Commission’s public inspection file rule¹³ had been placed in the station’s public inspection file at the appropriate times. The licensee checked the space “Yes” on both applications certifying that the material had been placed in the public inspection files at the appropriate times.¹⁴ On February 10, 2004, Fulton filed the Informal Objection to those applications alleging, *inter alia*, that Licensee’s public inspection file certifications were false and that the files lacked the required quarterly issues/programs lists.

5. In response to the Informal Objection, Licensee claimed that all issues/programs lists “were timely placed in the public file for as long as” it has been the licensee of the station and that its “certification in the renewal application was accurate and correct.”¹⁵ Licensee also claimed that, at the time Fulton attempted to view the issues/programs lists, all of them for the entire license period were on the desk of Cumulus employee Victor Duncan, who was preparing the issues/programs lists for the Fourth Quarter of 2003.

6. On April 5, 2006, agents from the Commission’s Tampa Office of the Enforcement Bureau conducted an inspection of WHBX(FM) at its main studio in Tallahassee, Florida. The station was unable to produce a complete public inspection file for the agents. The file contained no issues/programs lists from any quarter of the license term. The station engineer and operations manager told the agents that copies of public service announcements (“PSAs”) from 2002 until the 1st Quarter 2006 doubled as the station’s issues/programs lists. In a Notice of Apparent Liability for Forfeiture,¹⁶ however, the Enforcement Bureau determined that copies of PSAs did not qualify as issues/programs lists and that there was no evidence that the lists were ever maintained in the public file. Accordingly, the Enforcement Bureau issued the Notice of Apparent Liability for Forfeiture in the amount of \$15,000 for willful and

¹⁰ *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

¹¹ *Id.*

¹² *See San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13337 (2004).

¹³ 47 C.F.R. § 73.3526.

¹⁴ Licensee amended both applications with regard to this certification on April 17, 2007.

¹⁵ Opposition to Informal Objection at 3. Cumulus acquired Station WHBX(FM) from HVS Partners on January 16, 1998. *See* Application No. BAL-19970826ED, granted on October 28, 1997.

¹⁶ *Cumulus Licensing Corp.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732700006 (Enf. Bur., Tampa Office, released January 3, 2007) (failure to maintain an Emergency Alert System (EAS) capable of transmitting an EAS test, failure to maintain a control system that provided station personnel with the capability to continuously control the transmitter, and violation of public file rules).

repeated violation of Section's 11.35(a),¹⁷ 73.1350(b),¹⁸ and 73.3526(e)(12) of the Rules.¹⁹ Of the proposed forfeiture, \$4,000 was attributable to the public inspection file violation.²⁰ Licensee paid the forfeiture in full.

7. Additionally, on April 13, 2006, agents from the Commission's Tampa Office of the Enforcement Bureau conducted an inspection of WWLD(FM) at its main studio in Tallahassee, Florida. They determined that the station's public inspection file contained no issues/programs lists from any quarter. Station officials told them that copies of PSAs from 2001 until the Fourth Quarter of 2005 doubled as the stations issues/programs lists. The Enforcement Bureau again found that "[c]opies of PSAs do not qualify as Issues/Programs lists," and that [t]here was no evidence that the lists were ever maintained in the public file." Accordingly, it issued a "Notice of Apparent Liability for Forfeiture"²¹ in the amount of \$7,000 for the willful violation of Sections 73.3526 and 73.1350(b)(2) of the Rules.²² Of this, \$4,000 was attributable to the public inspection file violation.²³ Licensee paid the forfeiture in full.

8. As a consequence of the allegations contained in Fulton's informal objection and the findings of the Enforcement Bureau field agents, the Audio Division determined that, on the record before it, it could not find that WHBX(FM) and WWLD(FM) served the public interest, convenience, and necessity during the prior license term. Accordingly, on March 15, 2007, it sent Licensee a letter pursuant to Section 1.88 of the Rules ("Letter of Inquiry").²⁴ In that letter, the staff asked Licensee to explain the apparent discrepancy between the results of the inspection and its certification that the documentation required by the Commission's public inspection file rule had been placed in the stations' public inspection files at the appropriate times and other statements Licensee made in filings with the Commission concerning this matter. Additionally, in the Letter of Inquiry the staff asked on what date Licensee first determined that the stations' public inspection files was missing required documents.

¹⁷ 47 C.F.R. § 11.35(a).

¹⁸ 47 C.F.R. § 73.1350(b).

¹⁹ 47 C.F.R. § 73.3526(e)(12).

²⁰ Pursuant to The Commission's Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines and Section 1.80 of the Rules, the base amount for a public inspection file violation is \$10,000. This amount was reduced to \$4,000 because the public file was partially complete even though it lacked issues/programs lists. Because the Enforcement Bureau has already sanctioned Licensee for its violation of Section 73.3526 of the Rules, we need not consider there an additional sanction for that violation at WHBX(FM) or WWLD(FM). We will instead focus on the ramifications of those and other violations vis-à-vis the Section 309(k) standards for license renewal applications.

²¹ *Cumulus Licensing Corp.*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200732700003 (Enf. Bur., Tampa Office, released October 25, 2006) (violation of transmitter control and metering requirements and violation of public file rules).

²² 47 C.F.R. § 73.1350(b)(2). That rule requires that transmitter control personnel must have the capability to turn the transmitter off at all times. At the time of the inspection, the station's equipment would not allow anyone the capability of turning off the transmitter at any time the station was in operation.

²³ The base amount of such a violation (*i.e.*, \$10,000) was reduced to \$4,000 because the public file was partially complete even though it lacked issues/programs lists.

²⁴ 47 C.F.R. § 1.88.

9. In response, on April 16, 2007, Licensee filed a “Response to March 15, 2007 Letter” (“Response”).²⁵ Licensee asserts that the issue stems from the Enforcement Bureau’s asserted position that PSAs “do not qualify as programs for the purpose of complying with Section 73.3526 of the Commission’s Rules.” It refutes this alleged position stating that ever since the Commission’s 1981 *Radio Deregulation*²⁶ decision, PSAs have been recognized as a means of addressing a community’s issues. Licensee also contends that it supplemented its issue responsive programming efforts with new programs, is now producing more detailed issues/programs lists, and is engaged in an ongoing commitment to community service. In response to the specific questions asked in the Letter of Inquiry, Licensee contends that in September 2001 it performed a thorough internal audit of the WHBX(FM) public file²⁷ and found all required documentation was present. Later, it continues, after the Fulton visit to the station, Licensee found that some issues/programs lists were missing from the file. It states that although copies had been stored on a computer, the computer’s hard drive was destroyed during a lightning storm in the first quarter of 2000 and efforts at reconstructing the lists were unsuccessful. Licensee claims that the discrepancy between the certifications in its license renewal application and pleadings filed in response to the Informal Objection and the findings of the inspection is a result of the agents’ characterization of the “lists” as containing PSAs and the conclusion that PSAs do not qualify as programs. It states that its representations were made in a good faith belief that lists containing predominantly PSAs can be recognized as programs that address community needs. Whether it is correct, Licensee asserts, is a matter of legal interpretation and not truthfulness.

10. With respect to WWLD(FM), Licensee states that the certifications in its renewal application and the pleadings it filed in response to the Informal Objection concerning the completeness of its public inspection file were accurate and correct when made.²⁸ Similarly, Licensee argues that the relevant documents in the WWLD(FM) public inspection file comply with Commission requirements as it believes that the only item missing from that file was the station license. Finally, Licensee asserts that all certifications made in the stations’ license renewal applications were correct when made.²⁹

III. DISCUSSION

11. *Proposed Forfeiture.* Licensee would have us believe that “[t]he truthfulness of the certification relies on Cumulus’ belief that the programs listed should be given consideration as responsive to community needs.”³⁰ This claim is incorrect. For the more than twenty-five years since the Commission’s *Radio Deregulation* decision, it has been clear that PSAs can be listed on a station’s issues/programs lists as issue-responsive programming that can be utilized to address issues facing a licensee’s community.³¹ There is no debate on this issue. The truthfulness of the certification instead

²⁵ On March 12, 2007, Licensee filed a “Supplemental Statement.” The purpose of that filing was to report the issuance of the Notice of Apparent Liability and to discuss the implications of that event.

²⁶ *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 977 (1981), *on recon.*, 87 FCC 2d 797 (1981), *remanded on other grounds sub nom., Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983)(“*Radio Deregulation*”).

²⁷ Licensee did not own WWLD(FM) at that time.

²⁸ Response at 14. Licensee contends that the station license was present in the file at the time it tendered its license renewal application and, accordingly, the certification that its public inspection file was complete was truthful when made. It asserts that the missing license was quickly replaced once Licensee learned of its absence. Response at .

²⁹ Response at 15.

³⁰ *Id.*

³¹ See, e.g., *Radio Deregulation* at 982-83.

must be evaluated on whether: 1) copies of PSAs placed in a public inspection file constitute issues/programs lists; and 2) there was a “reasonable basis” for the Licensee’s stated explanation that it thought that the documentation placed in its public inspection files for WHBX(FM) and WWLD(FM) constituted issues/programs lists within the meaning of Section 73.3526(e)(12) of the Rules.³²

12. Copies of PSAs placed in a public inspection file do not constitute issues/programs lists. Section 73.3526(e)(12) of the Rules requires issues/programs lists to include “a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated.” The PSA texts Licensee placed in its public inspection files contained none of this information. The rule does not permit the station to simply place in the station’s public inspection file the script of a program (including PSAs) and claim that this suffices to constitute compliance with the rule. It is very clear from the rule’s text that additional information must be provided in order for material placed in the public to constitute an issues/programs list. Because Licensee did not include this information, the PSA texts that it placed in the public inspection files for WHBX(FM) and WWLD(FM) did not constitute issues/programs lists within the meaning of the rule. We do not believe that Licensee could have reasonably believed to the contrary. Even a cursory review of the subject rule would have apprised Licensee of the need for additional information on programming documentation in order for that documentation to be considered issues/programs lists. We believe there was no reasonable basis for the Licensee’s certification that the documentation required by Section 73.3526 of the Rules had been placed in the stations’ public inspection files at the appropriate time or its representations that the PSA texts placed in those files constituted issues/programs lists within the meaning of that rule. Accordingly, we find that Cumulus’ certifications in the WHBX(FM) and WWLD(FM) license renewal applications were demonstrably false. Cumulus compounded its errors by arguing in its opposition pleadings that all issues/programs lists “were timely placed in the public file for as long as” it has been the licensee of the station, and by continuing to advance such claims in response to the Letter of Inquiry. Cumulus’ certifications and statements to the Commission were false and constitute willful and repeated violations of Section 1.17 of the Rules.

13. The Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”³³ Full and clear disclosure of all material facts in every application is essential to the efficient administration of the Commission’s licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data which only the applicant can provide. The choice of remedies and sanctions is an area in which we have broad discretion.³⁴ In this case, the Licensee’s certification in its license renewal application was false with regard to whether issues/programs lists had been placed in the stations’ public inspection files at the appropriate times. Additionally, Licensee made false statements concerning the completeness of the public inspection files at the two Stations in its Opposition and other filings in response to the Informal Objection and the Letter of Inquiry. Although it is essential that licensees make full and clear disclosure of all material facts in every application and filing with the Commission, the false certification and statements here do not appear to have been made with the intention of deceiving the Commission. Accordingly, we conclude, based upon the information before us, that no substantial and material question of fact remains with respect to Licensee’s qualifications to remain a Commission licensee. We believe, however, that Licensee should be sanctioned

³² 47 C.F.R. § 73.3526(e)(12).

³³ See *Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006)(citing, e.g., *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000)).

³⁴ See, e.g., *RKO General, Inc. v. FCC*, 670 F. 2d 215, 237 (D.C. Cir. 1981); *Leflore Broadcasting Co. Inc. v. FCC*, 636 F. 2d 454, 463 (D.C. Cir. 1980); *Lorain Journal Co. v. FCC*, 351 F.2d 824, 831 (D.C. Cir. 1965); *USA Broadcasting, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4253, 4256 (2004).

for its false certifications. Accordingly, we will impose a monetary forfeiture for the apparent violations of Section 1.17 of the Commission's Rules.

14. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission 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.³⁵ 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.³⁶ 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,³⁷ and the Commission has so interpreted the term in the Section 503(b) context.³⁸ 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.”³⁹

15. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules and Section 503(b)(2)(A) of the Communications Act of 1934, as amended,⁴⁰ establish a base forfeiture amount of \$32,500 for misrepresentation/lack of candor.⁴¹ 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.”⁴²

16. In this case, the Licensee’s certification in its license renewal application was false with regard to whether issues/programs lists had been placed in the stations’ public inspection files at the appropriate times, and it made additional false statements concerning the completeness of the public inspection files at the two Stations in response to the Informal Objection. Instead of candidly acknowledging the errors in response to the Commission’s Letter of Inquiry, Licensee continued to claim that the certifications were correct, asserting a rule interpretation that has no reasonable basis. Although it is essential that licensees make full and clear disclosure of all material facts in every application, the false certification and other false representations here do not appear to have been made with the intention of deceiving the Commission. Licensee did in fact maintain some documentation of its issue-responsive programming even though it did not constitute the required issues/programs lists. Additionally, no question has been raised about the responsiveness of the Stations’ programming to community issues or whether the Stations consistently produced programming that was responsive to their communities of

³⁵ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

³⁶ 47 U.S.C. § 312(f)(1).

³⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³⁸ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

³⁹ 47 U.S.C. § 312(f)(2).

⁴⁰ 47 U.S.C. § 503(b)(2)(A).

⁴¹ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I. *See also Inflation Adjustment of Maximum Forfeiture Penalties*, Order, 69 FR 47788 (August 6, 2004).

⁴² 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

license.⁴³ Indeed, Licensee has provided ample evidence of the stations' communities' satisfaction with the on and off-air responsiveness of the stations to their communities.⁴⁴ Licensee has supplied us with samples of the issues/programs lists that it is currently using⁴⁵ which appear to comply with the requirements of Section 73.3526(e)(12) of the Rules. Although reform is the anticipated result of enforcement sanctions and it does not mitigate past violations,⁴⁶ it does indicate that the Licensee now acknowledges the requirements of the Rules and is abiding by them. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose to reduce the forfeiture from the base amount to \$10,000 for each Station.⁴⁷ Accordingly, we propose a forfeiture in the total amount of \$20,000.

17. *License Renewal Applications.* As noted above, Section 309(k)(1) provides that in order to grant a renewal application we must find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁴⁸ 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.”⁴⁹ We find that the Licensee’s apparent violations of Section 1.17 of the Rules, and its established violations of Sections 73.3526, 11.35, and 73.1150 of the Rules, do not, under the circumstances present in this case, themselves constitute “serious violations” warranting designation for evidentiary hearing. Although Licensee’s stewardship of these stations was not a model to be emulated, the violation of Section 1.17 of the Rules, and the violations of Section 73.3526, 11.35, and 73.1350 of the Rules, as found by the Enforcement Bureau’s field agents, does not constitute a pattern of abuse.⁵⁰ Further, we find that Stations WBHX(FM) and WWLD(FM) served the public interest, convenience, and

⁴³ See Attachments to “Supplemental Response to March 15, 2007 Letter.”

⁴⁴ Licensee provided, for example, a list of community activities in which the stations had been involved, records of public service announcements that they have broadcast, letters from area organizations that Cumulus had assisted, and copies of certificates of appreciation that Cumulus had received from local organizations.

⁴⁵ Response at Exhibit B.

⁴⁶ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub. nom Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966).

⁴⁷ See, e.g., *WKVE, Semora, North Carolina*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411 (2003).

⁴⁸ 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 *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁴⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵⁰ 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*, Decision, 32 FCC 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 [the stations] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

necessity during the license term. Accordingly, we will grant the Stations' license renewal applications below.

IV. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Cumulus Licensing LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for the apparent willful violations of Section 1.17 of the Commission's Rules.

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

20. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

21. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

22. 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.

23. 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, D.C. 20554.⁵¹

24. IT IS FURTHER ORDERED that the Informal Objection of Peter B. Fulton, Inc., IS GRANTED in part and DENIED in all other respects.

25. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Cumulus Licensing, LLC, for Stations WHBX(FM) (File No. BRH-20030930AGP) and WWLD(FM) (File No. BRH-20031125AEM) ARE GRANTED.

⁵¹ See 47 C.F.R. § 1.1914.

26. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Cumulus Licensing LLC, 3535 Piedmont Road, Building 14, Suite 1400, Atlanta, Georgia 30305, to its counsel, Mark Lipp, Esquire, Wiley Rein LLP, 1776 K Street N.W., Washington, DC 20006, and to Peter B. Fulton, Peter B. Fulton Inc., 3530 NE 25 Terrace, Fort Lauderdale, Florida 33308.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau