

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

In re Application of	)	
	)	
<b>LARKO COMMUNICATIONS, INC.</b>	)	Facility I.D. No. 36577
	)	NAL/Acct. Nos. MB-201541410029
For Renewal of License for	)	FRN: 0010680106
Station WMYQ(FM)	)	File No. BRH-20120402ADK
South Whitley, Indiana	)	

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

**Adopted: July 23, 2015**

**Released: July 23, 2015**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (“Bureau”) has before it the application, as amended, (“Application”) of Larko Communications, Inc., (“Larko” or “Licensee”) for renewal of license for Station WMYQ(FM), South Whitley, Indiana (“Station”).<sup>1</sup> In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),<sup>2</sup> we find that Larko apparently willfully and repeatedly violated Section 73.3526 of the Rules<sup>3</sup> by failing to retain all required documentation in the Station’s public inspection file and Section 73.1740 of the Rules<sup>4</sup> by discontinuing operation of the Station without receiving special temporary authority (“STA”) to do so.<sup>5</sup> Based upon our review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of fifteen thousand dollars (\$15,000).

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information about the station at regular intervals throughout the license period.<sup>6</sup> Among the materials required for inclusion in the file are the station’s quarterly issues/programs lists, which must be retained until final Commission action on the station’s next license renewal application.<sup>7</sup>

<sup>1</sup> Larko amended the Application on May 12, 2015.

<sup>2</sup> This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s Rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3526.

<sup>4</sup> See 47 C.F.R. § 73.1740.

<sup>5</sup> See 47 C.F.R. § 73.1740(a)(4).

<sup>6</sup> Cf. *Letter to Kathleen N. Benfield*, 13 FCC Rcd 4102 (MMB 1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993).

<sup>7</sup> See 47 C.F.R. § 73.3526(e)(12).

3. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 has been placed in each station's public inspection file at the appropriate times. Larko answered "No" to that certification and attached an Exhibit stating, in pertinent part, that:

Licensee's majority shareholder and General Manager, Christopher Larko, died February 19, 2010, after an extended illness.

Because he was the only full-time employee . . . quarterly lists of community problems and responsive programs . . . were not placed in the public file during his final illness and as described below.

Quarterly lists of community problems and responsive programs were not placed in the public file for the fourth quarter of 2009 through the time the station suspended operation on March 29, 2011.

Station resumed operation under a time brokerage agreement from March 2, 2012, until November 20, 2013, and quarterly lists were placed in the public file [through the end of the current license term] . . . .

In sum, Licensee failed to place nine quarterly lists in its public file, including those for at least three quarters in which [the] Station operated for only part of the quarter.<sup>8</sup>

4. Section 73.1740 of the Rules<sup>9</sup> requires that stations adhere to minimum operating requirements. Pursuant to Section 73.1740(a)(4) of the Rules, if they are unable to do so for more than 30 days, the licensee must request authorization to remain silent. Section III, Item 4 of the license renewal application form, FCC Form 303-S, requires that the licensee certify that, during the license term, the radio station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. If the licensee is not able to so certify, then it must submit an exhibit specifying the exact dates on which the station was silent or operating for less than its prescribed hours. Larko answered "No" to that certification and attached an Exhibit stating that it ceased broadcast operations without authorization on March 29, 2011, and returned to the air on January 26, 2012.<sup>10</sup> Licensee subsequently explained that:

No STA request was submitted because the Licensee was subject to the Commission's red light policy due to the Licensee's unpaid annual regulatory fees. Those delinquent fees were paid in March 2012 . . . .<sup>11</sup>

### III. DISCUSSION

5. *Proposed Forfeiture. Public File Violations.* As Licensee has acknowledged, at the time of the filing of the Station's license renewal application, and during periods within the license term, the Station's public inspection file did not contain many of the items required to be retained in the file by Section 73.3526 of the Rules. In particular, Licensee failed to place in the Station's public file nine issues and programs lists during the license term, and as such the public file was not in compliance with Section 73.3526(e)(8). In this regard, where lapses occur in maintaining the public file, neither the negligent acts

<sup>8</sup> Application, Exhibit 12, as amended on May 12, 2015. Due to Mr. Larko's death, Licensee filed an involuntary transfer of control application (File No. BTCH-20120402ACQ) that was granted on April 30, 2012.

<sup>9</sup> 47 C.F.R. § 73.1740.

<sup>10</sup> Application, Exhibit 13, as originally filed.

<sup>11</sup> Application, Exhibit 13, as amended on May 12, 2015.

or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.<sup>12</sup>

6. Unauthorized Silent Period. Section 73.1740(a)(4) of the Rules requires licensees to request permission to remain off the air for more than 30 days. Here, Larko stated in the Application that the Station was silent from March 29, 2011, and until January 26, 2012, without Commission authorization. Licensee claims that it did not file the required STA because it was delinquent in its annual regulatory fees, but it fails to present any evidence that it attempted to file the STA, but was unable to do so because of the outstanding fees. Indeed, as Larko acknowledges, during the same period, on July 14, 2011, the Commission's database accepted a late-filed ownership report "notwithstanding Licensee's delinquent regulatory fees."<sup>13</sup> Under the Commission's "red light" policy, the Commission withholds action on applications from any entity that is delinquent in its regulatory fees, and if unresolved, ultimately dismisses such applications.<sup>14</sup> The red light policy does not, however, prohibit the filing of applications or STA requests.<sup>15</sup>

7. Proposed Forfeiture Assessment. Under Section 503(b)(1)(B) of the Act, 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.<sup>16</sup> 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.<sup>17</sup> 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,<sup>18</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>19</sup> 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."<sup>20</sup>

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526 and \$5,000 for unauthorized

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<sup>12</sup> See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

<sup>13</sup> Application, Exhibit 9, as amended on May 12, 2015. See also File No. BOA-20110714ACB. Larko erroneously claims that this ownership report was late because it was previously blocked by the Commission's red light policy. It is clear, however, that report's tardiness is due entirely to Larko because it did not execute the report until July 8, 2011.

<sup>14</sup> See 47 C.F.R. §§ 1.1910(b)(2), (b)(3). See also *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6638 (2012) ("under its 'red light rule' the Commission withholds action on applications . . . and ultimately dismisses . . . if the delinquencies are not resolved.").

<sup>15</sup> See, e.g., 47 C.F.R. § 1.1910(a) (applications "will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed the Commission . . ."); see also *Jerry Russell d/b/a the Russell Company and Hanszen Broadcasting*, Memorandum Opinion and Order, 27 FCC Rcd 8323, 8331, n.18 (renewal filed without filing fee accepted but "staff was unable to grant the application due to a 'red light' hold for failure to pay regulatory fees.").

<sup>16</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(1).

<sup>17</sup> 47 U.S.C. § 312(f)(1).

<sup>18</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>19</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California*").

<sup>20</sup> 47 U.S.C. § 312(f)(2).

discontinuance of service.<sup>21</sup> 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.”<sup>22</sup>

9. In this case, with respect to the public file violation, although Larko has admitted to violating Section 73.3526, it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Moreover the violations were extensive, occurring over more than two years and involving nine issues/programs lists. Regarding the Station’s unauthorized discontinuance of service, here the Station was silent for over ten months without the required STA. Moreover, Licensee has not provided a valid justification for its failure to file an STA requesting Commission consent to the Station’s silence. Considering the record as a whole, we believe that a forfeiture of \$10,000 for the public file violations<sup>23</sup> and \$5,000 for the unauthorized silent period,<sup>24</sup> is appropriate in this case. Accordingly, we find that Larko is apparently liable for a total proposed forfeiture in the amount of \$15,000.

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>25</sup> 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 Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>26</sup> 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.”<sup>27</sup>

11. We find that Larko’s apparent violations of Sections 73.3526 and 73.1740 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing and that the proposed forfeiture constitutes a sufficient penalty for these apparent violations. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.<sup>28</sup> Further, we find that the Station

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<sup>21</sup> 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.

<sup>22</sup> 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).

<sup>23</sup> See, e.g., *Adelante Media of California License, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 16896 (MB 2013) (proposing a \$10,000 forfeiture for nine missing issues and programs lists).

<sup>24</sup> See, e.g., *WTRI Holding, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture. 29 FCC Rcd 3236 (MB 2014) (proposing \$5,000 forfeiture for a seven month unauthorized discontinuance of service). (“*WTRI*”).

<sup>25</sup> 47 U.S.C. § 309(k).

<sup>26</sup> 47 U.S.C. § 309(k)(1).

<sup>27</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>28</sup> For example, we do not find here that 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 Station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. See also *Center for Study and Application of Black Economic Development*,

served the public interest, convenience, and necessity during the subject license term.<sup>29</sup> We will therefore grant the license renewal application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the Application.

#### IV. ORDERING CLAUSES

12. 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 Larko Communications, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for its apparent willful and repeated violation of Sections 73.3526 and 73.1740 of the Commission's Rules.

13. 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*, Larko Communications, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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 No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Kim.Varner@fcc.gov. 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, 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

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Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>29</sup> In particular, we find that the Station's silent period does not warrant a short-term renewal as the Station was only silent for ten months out of its 8-year license term. See e.g., *WTRI*, 29 FCC Rcd 3236 (granting full term renewal where station was silent for over seven months); cf. *LKCM Radio Group, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 1045 (MB 2014) (two year short-term renewal issued where station was silent for nearly half of its license term).

U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza,  
St. Louis, MO 63101.

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

16. 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.

17. 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, DC 20554.<sup>30</sup>

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ms. Kelli Richards, President, Larko Communications, Inc., 1301 N. Detroit Street, Warsaw, IN 46580 and to its counsel, James Cooke, Esq., Law Offices of James Cooke, 2821 Beechwood Circle, Arlington, VA 22207.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>30</sup> See 47 C.F.R. § 1.1914.