

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

In re Application of	)	
	)	
<b>Cumulus Licensing LLC</b>	)	Facility I.D. No. 59490
	)	NAL/Acct. No. MB-201841410004
For Renewal of License for	)	FRN: 0002834810
Station WDAI(FM)	)	File No. BRH-20110801APB
Pawleys Island, South Carolina	)	

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

**Adopted: February 7, 2018**

**Released: February 8, 2018**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. The Media Bureau (Bureau) has before it the application of Cumulus Licensing LLC (Licensee) for renewal of its license for Station WDAI(FM), Pawleys Island, South Carolina (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,<sup>1</sup> we find that the Licensee apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to retain all required documentation in the WDAI(FM) public inspection file.<sup>2</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 twelve thousand dollars (\$12,000).

**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>3</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>4</sup>

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 its station's public inspection file at the appropriate times. Licensee answered "No" to that certification and attached

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<sup>1</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 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the Rules. *See* 47 CFR § 0.283.

<sup>2</sup> *See* 47 CFR § 73.3526.

<sup>3</sup> *See WEZB(FM)*, Letter Order, 13 FCC Rcd 4102, 4105 (MMB 1997), citing *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993).

<sup>4</sup> *See* 47 CFR § 73.3526.

an Exhibit explaining, in pertinent part:

The Licensee is unable to locate the issues/programs lists for 4Q2003 - 1Q2007. Also missing are the reports for 1Q2008, 4Q2009 and two quarters in 2010. Due to numerous personnel changes during the license term, at all levels of management and staff, there is no one employed currently at the station or available to the Licensee who has knowledge of the reports prepared for the early years of the term -- prior to 2008. In addition, due to changes in software and computer systems prior to 2008, the Licensee has been unable to locate any documentation regarding the programming carried during those years that dealt with issues of local concern. Therefore, the Licensee cannot recreate the missing reports for 2003-1Q2007. However, missing reports for the years 2008, 2009, and 2010 have been recreated and the file is complete for the period from 2Q2007 to date with regard to quarterly issues/programs lists.<sup>5</sup>

### III. DISCUSSION

4. *Proposed Forfeiture.* As Licensee has acknowledged, at the time of 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 this regard, where lapses occur in maintaining the public file, neither the negligent acts 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>6</sup>

5. Under Section 503(b)(1)(B) of the Act, a person who is found 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>7</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>8</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>9</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>10</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>11</sup>

6. 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.<sup>12</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

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<sup>5</sup> Application, Exh. 12.

<sup>6</sup> See *Padre Serra Commc'ns, Inc.*, Letter Order, 14 FCC Rcd 9709 (MMB 1999).

<sup>7</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>10</sup> See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

<sup>11</sup> 47 U.S.C. § 312(f)(2).

<sup>12</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 CFR § 1.80(b)(4), note to paragraph (b)(4), Section I.

offenses, ability to pay, and such other matters as justice may require.”<sup>13</sup>

7. In this case, although Licensee 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 nearly the entire license term and involving at least 21 issues/programs lists. Additionally, although Licensee has a history of compliance with the Rules, a downward adjustment is not appropriate here considering the extensive violations that occurred. Considering the record as a whole, we believe that a \$12,000 forfeiture is appropriate for the Section 73.3526 violations in this case.<sup>14</sup>

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.<sup>15</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>16</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>17</sup>

9. It is clear to us that Licensee’s conduct has fallen far short of the standard of compliance with the Act and the Rules that would warrant a routine license renewal. Licensee apparently failed to timely prepare and file 21 issues/programs lists for most of the license period. The issues/programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.<sup>18</sup> The Commission’s public information file rule also safeguards the public’s ability to assess the station’s service and to meaningfully participate in the station’s renewal process, and ensure the station’s accessibility to and nexus with its community, to serve and respond to community programming needs.<sup>19</sup> As such, the public information requirements are integral components of a licensee’s obligation to serve the public interest and meet its community service obligations.

10. We believe that Licensee’s apparent violations of Section 73.3526 were serious violations,<sup>20</sup> as it denied both the public and the Commission any opportunity to review and comment on the Station’s programming during the past license term. The record here further indicates that Licensee’s willful and repeated violations of Section 73.3526 at the Station, when considered together, constitutes a pattern of abuse over a period of years by Licensee.<sup>21</sup> However, although we are concerned with Licensee’s failure to create and retain quarterly issues/programs lists, we find that Licensee’s violations of

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<sup>13</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(4).

<sup>14</sup> *See, e.g. Icicle Broad., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 29 FCC Rcd 2135 (MB 2014) (\$12,000 forfeiture proposed for violation of Section 73.3526 occurring over five years and involving 20 missing issues/programs lists) (*Icicle*).

<sup>15</sup> 47 U.S.C. § 309(k).

<sup>16</sup> 47 U.S.C. § 309(k)(1).

<sup>17</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>18</sup> *See Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365, para. 17 (1989).

<sup>19</sup> *See Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, para. 39.

<sup>20</sup> *See* 47 U.S.C. § 309(k)(1)(b).

<sup>21</sup> *See* 47 U.S.C. § 309(k)(1)(c).

the Rules do not rise to such a level that designation for evidentiary hearing on the issue of whether to deny renewal for the Station is warranted.<sup>22</sup>

11. On the facts presented here, the new license term ordinarily would be limited to a period of four years,<sup>23</sup> as such a limited renewal period would afford the Commission an opportunity to review the Station's compliance with the Act and the Rules and to take whatever corrective actions, if any, that may be warranted at that time. However, given that the Station's next license renewal application is due on August 1, 2019, a four-year short-term renewal would serve no purpose here.

#### 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(f)(4) of the Commission's Rules, that Cumulus Licensing LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violation of Section 73.3526 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*, Cumulus Licensing LLC SHALL FORFEIT to the United States Government twelve thousand dollars (\$12,000) or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. For collection, the Commission will file a proof of claim at the appropriate time in the Cumulus Licensing LLC bankruptcy action.

14. Payment of the proposed forfeiture must be made by check or similar instrument, wire transfer or credit card, and must include the *NAL*/Acct. No. and FRN referenced herein. Regardless of the form of payment, a completed FCC Form 159 must be submitted. When completing the FCC Form 159, enter the *NAL*/Acct. No. 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 Karen Workeman at [Karen.Workeman@fcc.gov](mailto:Karen.Workeman@fcc.gov) and to Victoria McCauley at [Victoria.McCauley@fcc.gov](mailto:Victoria.McCauley@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

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<sup>22</sup> We do not find that Licensee's operation of the Station "was conducted in an exceedingly careless, inept and negligent manner and that Licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (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, para. 10. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

<sup>23</sup> See, e.g., *Icicle*, 29 FCC Rcd at 2138, para. 11 (MB 2014) (four-year renewal proposed for violation of Section 73.3526 occurring over five years and involving 20 missing issues/programs lists).

(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.

15. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Albert Shuldiner, 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>24</sup>

18. 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, 3280 Peachtree Road, NW, Suite 2300, Atlanta, GA 30305, and its counsel, Andrew S. Kersting, Esq., Cumulus Media Inc., 3280 Peachtree Road, NW, Suite 2300, Atlanta, GA 30305, and to Mark N. Lipp, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>24</sup> See 47 CFR § 1.1914.