

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

In re Application of)	
)	
SEAVIEW COMMUNICATIONS)	NAL/Acct. No. MB-201941410006
INC.)	FRN: 0009008608
)	Facility ID No. 59528
For Renewal of License for)	File No. 0000075458
Station WPEX(FM))	
Kenbridge, Virginia)	

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

Adopted: October 8, 2019

Released: October 8, 2019

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application, as amended (Application),¹ of Seaview Communications Inc. (Licensee), for renewal of license for Station WPEX(FM), Kenbridge, Virginia (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² we find that Licensee apparently willfully violated: (1) Section 73.3526(e)(12)³ of the Rules by failing to prepare required quarterly issues and programs lists; and (2) Section 73.3526(b)(2)⁴ of the Rules by failing to upload this information into the Station's online public inspection file (OPIF). Based upon 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) and that the captioned license renewal application should be granted for a period of two years instead of a full term of eight years.

II. BACKGROUND

2. Section 73.3526 of the Rules requires commercial broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. Section 73.3526(e)(12) requires every commercial broadcast radio licensee to place in its public file, on a quarterly basis, an issues and programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three-month period and must include a brief narrative of the issue addressed, as well as the time, date, duration, and title of each program that addressed the issue.⁵ The issues and programs lists must be placed in the Station's public file by the tenth

¹ File No. 0000075458, as amended on July 2, 2019.

² 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 FCC'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 FCC's rules. See 47 CFR § 0.283.

³ See 47 CFR § 73.3526(e)(12).

⁴ See 47 CFR § 73.3526(b)(2).

⁵ See 47 CFR § 73.3526(e)(12).

day of the succeeding calendar quarter and must be retained until final action on the station's next license renewal application.⁶

3. In 2012, the Commission amended section 73.3526(b)(2) of the Rules (OPIF Rule) to require broadcast television stations to upload public file documents to the Commission's online public inspection file database.⁷ The Commission adopted the OPIF Rule to modernize the way television broadcasters inform the public about their service to their community, increase accessibility of this information to the public, and reduce the cost of compliance with the public file requirements.⁸ In 2016, the Commission expanded the OPIF Rule to require all broadcast radio licensees to transition their public inspection files to the Commission's OPIF database.⁹ By March 1, 2018, all broadcast radio stations were required to post all public file material, except political file material created before March 1, 2018.¹⁰ Thereafter, in public notices, the Bureau has reminded broadcast radio licensees of their OPIF obligation.¹¹

4. Section III, Item 3 of the license renewal application form requires that the licensee certify that the documentation required by section 73.3526 has been placed in the station's public inspection file at the appropriate times. Licensee answered "No" to that certification and attached an amended exhibit explaining that:

"The Licensee had some difficulties in navigating the new on-line public inspection file and as such, certain deadlines were not meet with respect to the "upload" of Issues-Programs Lists. The Licensee has retained the services of FCC Counsel, and with Counsel's assistance, the Public File upload problems will be resolved."¹²

A Commission staff review has confirmed that Licensee has failed to place any issues and programs lists into the Station's OPIF.

⁶ *Id.*

⁷ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012) (*Second R&O*).

⁸ *Id.* at 4536, para. 1.

⁹ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online Public File Order*).

¹⁰ Between June 2016 and March 1, 2018, broadcast radio licensees were phased into compliance with the OPIF Rule. All non-commercial educational radio broadcast stations, commercial radio broadcast stations in the top 50 markets with fewer than five fulltime employees, and all commercial radio broadcast stations in markets below the top 50 or outside all markets were required to place public file materials in the OPIF for any material created after March 1, 2018. These stations may voluntarily upload political file material created before March 1, 2018 or retain them locally for the mandatory two-year retention period. *Id.* at 537-539. All other stations were required to begin using the public file by June 24, 2016. See *Effective Date Announced for Expanded Online Public Inspection File Database*, Public Notice, 31 FCC Rcd 4699 (MB 2016). Because these stations have been required to use the OPIF for more than three years, all political file material for these stations should now be in their OPIF.

¹¹ See e.g. *Media Bureau Reminds Radio Broadcasters of Online Public File Requirements Media Bureau Will Activate All Remaining Accounts on November 15, 2018*, Public Notice, 33 FCC Rcd 11059 (MB 2018); *Media Bureau Reminds Broadcast Licensees of Upcoming Radio Station License Renewal Cycle*, Public Notice, 34 FCC Rcd 1344 (MB 2019), and *Media Bureau Announces Procedures for 2019-2022 Radio Renewal Cycle*, Public Notice, 34 FCC Rcd 2304 (MB 2019).

¹² Application, Exhibit to Section III, Question 1, as amended on July 2, 2019.

III. DISCUSSION

5. *Proposed Forfeiture.* As Licensee has acknowledged, issues and programs lists were not prepared and uploaded into the Station's OPIF as required by sections 73.3526(e)(12) and 73.3526(b)(2)¹³ of the Rules. Where such lapses occur, 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.¹⁴

6. 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so interpreted the term in the section 503(b) context.¹⁸ 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."¹⁹

7. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(5) of the Rules establish a base forfeiture amount of \$10,000 for failure to maintain a station's public file and \$3,000 for failure to file required information.²⁰ In determining the appropriate forfeiture amount, we may adjust the 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."²¹

8. Based on our review of the facts and circumstances, we find that a \$15,000 forfeiture is appropriate. We find that a forfeiture in the amount of \$12,000 is appropriate for the Licensee's failure to prepare any quarterly issues and programs lists during the license term as required by section 73.3526(e)(12) of the Rules.²² In this case, although Licensee admitted to violating section 73.3526(e)(12), it did so only in the context of the question contained in the Application that compelled

¹³ See 47 CFR §§ 73.3526(e)(12) and 73.3526(b)(2).

¹⁴ See *Padre Serra Commc'ns, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999).

¹⁵ 47 U.S.C. § 503(b)(1)(B). See also 47 CFR § 1.80(a)(1).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁸ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para.5 (1991).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ 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)(8), note to paragraph (b)(8), Section I.

²¹ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-17101, para. 27; 47 CFR § 1.80(b)(4).

²² See, e.g., *Cumulus Licensing, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 33 FCC Rcd 1201 (MB 2018) (\$12,000 forfeiture proposed for failure to prepare 22 issues and programs lists).

such disclosure. Moreover, the licensee's violations were extensive and apparently encompassed the entire license term. In addition, we find that a forfeiture in the amount of \$3,000 is appropriate for Licensee's failure to upload issues and programs lists into the Station's OPIF as required by section 73.3526(b)(2)²³ of the Rules.²⁴ It is a licensee's responsibility to comply with Commission Rules. Accordingly, we find that, considering the record as a whole, a \$15,000 forfeiture is appropriate for the violations in this case.

9. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.²⁵ 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 FCC'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.²⁶ 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.”²⁷

10. It is clear to us that Licensee's conduct has fallen far short of the standard of compliance with the Act and the FCC's rules that would warrant a routine license renewal. Licensee apparently failed to timely prepare and file any issues and programs lists and to upload this information into the Station's OPIF. The issues and programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.²⁸ In addition, the Commission's OPIF Rule 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.²⁹ 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.

11. We believe that Licensee's violations of sections 73.3526(e)(12) and 73.3526(b)(2) of the Rules³⁰ were “serious” violations,³¹ as they 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 these willful and repeated violations, when considered together, constitute a pattern of abuse over a number of years – apparently the full license term – by Licensee.³² However, although we are concerned with Licensee's failure to create required quarterly issues and programs lists, and to upload

²³ See 47 CFR § 73.3526(b)(2).

²⁴ See, e.g., *Pollack/Belz Broad. Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 32 FCC Rcd 4105 (MB 2017) (\$3,000 forfeiture proposed for failure to upload required public file documents into Station's OPIF).

²⁵ 47 U.S.C. § 309(k).

²⁶ 47 U.S.C. § 309(k)(1).

²⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁸ 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).

²⁹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, para. 39.

³⁰ See 47 CFR § 73.3526(b)(2).

³¹ See 47 U.S.C. § 309(k)(1)(b).

³² See 47 U.S.C. § 309(k)(1)(c).

these lists into the Station's OPIF, we find that Licensee's violations of 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.³³

12. On the facts presented here, we conclude that a short-term license renewal is the appropriate sanction. We believe that additional measures are necessary in order to ensure that Licensee endeavors in the future to provide the broadcast service it is licensed to provide and comply with its obligations as a licensee. Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Station a short-term license renewal by separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than the apparent violations addressed herein that would preclude such a grant of the Application.³⁴ The new license term will be limited to a period of two years.³⁵ This limited renewal period will afford the Commission an opportunity to review the Station's compliance with the Act and the FCC's rules and to take whatever corrective actions, if any, that may be warranted at that time.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC's rules, that Seaview Communications Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for its apparent willful violations of sections 73.3526(e)(12) and 73.3526(b)(2) of the Rules.

14. IT IS FURTHER ORDERED, pursuant to section 1.80 of the FCC's rules, that, within thirty (30) days of the release date of this *NAL*, Seaview 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.

15. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),³⁶ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as

³³ 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.

³⁴ See 47 U.S.C. § 309(k)(2).

³⁵ See, e.g., *Rama Commc'ns, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 6939 (MB 2016) (two-year renewal granted for failing to prepare issues and programs lists during the license term).

³⁶ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded. – and then choose the “Pay by Credit Card” option. Please note that there is a dollar limitation on credit card transactions, which cannot exceed \$24,999.99.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

16. 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.

17. 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.

18. 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 20554.³⁹

19. IT IS FURTHER ORDERED that a copy of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Licensee, Seaview Communications Inc. c/o John Hart, P.O. Box 177, Blackstone, Virginia, 23824.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁹ See 47 CFR. § 1.1914.