
Federal Communications Commission

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

In the Matter of)	
)	
Multicultural Radio Broadcasting Licensee, LLC)	File Numbers EB-09-NY-0307
)	EB-09-NY-0308
Licensee of)	
WZRC, New York, New York, Facility ID #27398)	NAL/Acct. No. 201032380007
WKDM, New York, New York, Facility ID #71137)	
)	FRN 0010215812
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 4, 2010

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Multicultural Radio Broadcasting Licensee, LLC (“Multicultural”), licensee of commercial AM radio stations WZRC, New York, New York, and WKDM, New York, New York, apparently willfully and repeatedly violated Section 73.3526(c) and Section 73.3526(e)(6) of the Commission's Rules (“Rules”)¹ by failing to maintain and make available a political file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Multicultural is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. On October 15, 2009, an agent from the Enforcement Bureau’s New York Office (“New York Office”) inspected the co-located main studios of stations WZRC and WKDM, which are located at 449 Broadway, New York, New York. The inspection was conducted during normal business hours with the stations’ Chief Engineer, Vice President, and General Manager. The agent reviewed each station’s public inspection file and found that Multicultural did not maintain a political file for either station. When the agent asked if any requests had been made for broadcast time from candidates for public office, the Vice President searched the office and found four invoices, two for each station, showing that requests for broadcast time from local political candidates had been made and granted in September 2009. The General Manager stated to the agent that he believed only requests for broadcast time from candidates for federal office needed to be retained in the political file.

3. On October 29, 2009, the New York Office sent a Letter of Inquiry (LOI) to Multicultural seeking additional information regarding the stations’ political files. In its November 18, 2009, response, Multicultural admitted that it did not maintain a political file with requests for broadcast time from candidates for public office. Multicultural also stated, as did the stations’ general manager during the inspection, that it believed the political file requirements applied only to requests for time from candidates for federal office and that all requests they received came from candidates for local political

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

office. They further reported that they immediately located all documentation regarding requests for time from political candidates and placed them in a political file that afternoon.

III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁴

5. Section 73.3526(a)(2) of the Rules requires every licensee in the commercial broadcast services to maintain for public inspection a file containing materials listed in that section.⁵ Sections 73.3526(b) and 73.3526(c)(1) of the Rules require that the public inspection file be available during regular business hours at the main studio of the station.⁶ Section 73.3526(e)(6) of the Rules requires all AM and FM broadcast stations to place in the public files such records as are required by Section 73.1943 to be kept concerning broadcasts by candidates for public office.⁷ On October 15, 2009, in response to a request made during regular business hours at the stations’ main studio, station employees were unable to make available a political file for either station WZRC or station WKDM. Station employees, however, provided the agent invoices that showed the station had in fact received and granted requests for time from political candidates in 2009. In response to the October 29, 2009 LOI, Multicultural admitted that it did not maintain a political file; we therefore find that the violation was willful.⁸ Because the violation occurred for more than one day, the violation was repeated. Based on the evidence before us, we find that Multicultural apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain and make available a political file.

6. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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.”

⁵ 47 C.F.R. § 73.3526(a)(2).

⁶ 47 C.F.R. §§ 73.3526(b) and (c)(1).

⁷ 47 C.F.R. § 73.3526(e)(6) and 47 C.F.R. § 73.1943. Section 73.1943(a) of the Rules provides that every licensee shall keep and permit public inspection of all requests for broadcast time made by or on behalf of a candidate for public office. The rule further provides that the documentation in the public file must include an appropriate notation showing the disposition made by the licensee of such request, and the charges made, if any, if the request is granted. Such records must be maintained for a period of two years. See 47 C.F.R. § 73.1943(c).

⁸ Multicultural submits that it did not maintain a political file because all of its requests for broadcast time were from local political candidates and that they believed, albeit mistakenly, that the rules applied only to federal candidates. We note that the Commission consistently has stated that ignorance of the law is not a mitigating factor. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), citing *Vernon Broadcasting, Inc.*, Memorandum Opinion and Order, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, Memorandum Opinion and Order, 19 FCC 2d 829 (1969).

1.80 of the Rules, the base forfeiture amount for violation of the public inspection file rule is \$10,000 per station.⁹ Because the public inspection file for stations WZRC and WKDM was largely complete, a downward adjustment of the base forfeiture amount to \$4,000 per station is warranted. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Multicultural is apparently liable for a \$8,000 forfeiture.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Multicultural Radio Broadcasting Licensee, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 73.3526 of the Rules.¹¹

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Multicultural Radio Broadcasting Licensee, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹² Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. If payment is made, Multicultural Radio Broadcasting Licensee, LLC shall send electronic notification on the date said payment is made to NER-Response@fcc.gov.

10. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014 and must include the NAL/Acct. No. referenced in the caption.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 47 C.F.R. § 73.3526.

¹² See 47 C.F.R. § 1.1914.

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current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Multicultural Radio Broadcasting Licensee, LLC at its address of record and to counsel for Multicultural at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office
Northeast Region
Enforcement Bureau