

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Cumulus Radio LLC;	)	File No.: EB-IHD-18-00027598
Radio License Holding CBC, LLC;	)	NAL/Acct. No.: 201932080010
Cumulus Licensing LLC; and	)	FRNs: 0024927642; 0019721638;
Radio License Holdings LLC	)	0002834810; 0023190655

**FORFEITURE ORDER**

**Adopted: January 13, 2021**

**Released: January 14, 2021**

By the Commission: Commissioner Rosenworcel concurring; Commissioner Starks dissenting.

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**I. INTRODUCTION**

1. Broadcasters who air paid-for programming without disclosing the program’s sponsor can mislead the public and promote unfair competition. Such non-disclosures foster the perception by the public that a paid announcement is the station’s editorial content, while concealing that the station is being paid by a third party to promote a particular message. That impression can also give undisclosed sponsors an unfair advantage over competitors whose paid programming is properly disclosed as paid-for material. For these reasons, broadcasters are required to disclose information about the sponsors of paid-for programming under the Communications Act of 1934, as amended (Act), and the Federal Communications Commission’s sponsorship identification rules (collectively the Sponsorship Identification Laws). Violations of the Sponsorship Identification Laws may subject broadcasters to

enforcement action. In appropriate cases, the FCC enforces its rules through consent decrees, pursuant to which alleged violators typically agree to pay monetary penalties, take affirmative steps to help ensure their future compliance, and report any further violations to the FCC in a timely manner. Failure to comply with the terms of a consent decree can lead to further enforcement action.

2. Today we impose a \$233,000 penalty against Radio License Holding CBC, LLC (Radio License), Cumulus Licensing LLC (Licensing LLC), Radio License Holdings LLC (Holdings LLC), and Cumulus Radio LLC (Radio LLC), successor-in-interest to Cumulus Radio Corporation (Cumulus) (collectively, Respondent).<sup>1</sup> We previously found that Radio License, Licensing LLC, and Holdings LLC had apparently broadcast paid programming without sponsorship identification announcements a total of 26 times. We also found that Radio License and Cumulus had apparently failed to timely notify the FCC about 13 of these violations, as was required by a 2016 consent decree<sup>2</sup> between Radio License, Cumulus, and the FCC's Enforcement Bureau (Bureau) that resolved earlier sponsorship identification violations. In a Notice of Apparent Liability for Forfeiture issued on August 6, 2019,<sup>3</sup> the Commission proposed a \$233,000 penalty for the 26 new violations and for Radio License's and Cumulus' failure to timely report certain of those violations. Respondent does not contest the Commission's findings but seeks an unspecified reduction or rescission of the proposed forfeiture, arguing it is excessive. After reviewing Respondent's response to the proposed forfeiture, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore impose the \$233,000 forfeiture originally proposed.

3. Our action today advances the Commission's longstanding goals of protecting consumers by ensuring that they know who is attempting to persuade them and protecting compliant broadcasters and sponsors from competitive disadvantage vis-à-vis competitors that fail to abide by our disclosure rules. Our action today also advances the Commission's commitment to ensure that parties fully comply with the Commission's consent decrees.

## II. BACKGROUND

### A. Legal Framework

4. Section 317(a)(1) of the Act and section 73.1212(a) of the Commission's rules require stations to broadcast sponsorship identification announcements. Specifically, section 317(a)(1) of the Act provides in part:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person . . . .<sup>4</sup>

Section 73.1212(a) of the Commission's rules, which implements section 317(a)(1) of the Act, further provides in part:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored,

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<sup>1</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth in this Forfeiture Order.

<sup>2</sup> *Radio License Holding CBC, LLC; Cumulus Radio Corporation*, Order and Consent Decree, 31 FCC Rcd 3, 3-4, para. 3 (EB 2016) (*Consent Decree*).

<sup>3</sup> *Cumulus Radio LLC et al.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7289 (2019) (*NAL*).

<sup>4</sup> 47 U.S.C. § 317(a)(1).

paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied . . . .<sup>5</sup>

5. The Commission has explained that the Sponsorship Identification Laws are “grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them . . . .”<sup>6</sup> The disclosures required by the Sponsorship Identification Laws provide listeners and viewers with information concerning the source of material in order to prevent misleading or deceiving those listeners and viewers.<sup>7</sup>

6. Consent decrees made with the Bureau are enforceable orders.<sup>8</sup> The breach or violation of the terms of a consent decree violates a Bureau order.<sup>9</sup>

## **B. Factual Background**

7. Cumulus, Radio License, Licensing LLC, and Holdings LLC are indirect subsidiaries of Cumulus Media, Inc.<sup>10</sup> Radio License, Licensing LLC, and Holdings LLC are broadcast licensees.

8. On January 7, 2016, Radio License, the former licensee of radio station WOKQ(FM), Dover, New Hampshire (Station), and Cumulus, parent of Radio License, entered into the *Consent Decree* with the Bureau<sup>11</sup> to resolve the Bureau’s investigation into whether the Station had broadcast announcements without adequate sponsorship identification disclosures in violation of section 317 of the Act and section 73.1212 of the Commission’s rules.<sup>12</sup> The *Consent Decree*, which included admissions of liability and compliance conditions, was made binding on Radio LLC as successor-in-interest to

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<sup>5</sup> 47 CFR § 73.1212(a).

<sup>6</sup> See, e.g., *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593, 8593–94 (2005).

<sup>7</sup> See *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686, 18694, para. 15 (2007), *aff’d with reduced forfeiture*, Forfeiture Order, 24 FCC Rcd 14830, 14834, para. 12 (2009) (forfeiture reduced, based on licensee’s history of compliance) (forfeiture paid).

<sup>8</sup> See *A Radio Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6561, 6563, para. 6 (EB 2011) (*A Radio NAL*) (proposing a \$25,000 forfeiture for failure to pay voluntary contribution and submit compliance report), *aff’d*, Forfeiture Order, 27 FCC Rcd 6336, 6337, para. 4 (EB-Field Office 2012) (*A Radio Forfeiture Order*) (rejecting licensee’s ability to pay argument and finding that A Radio willfully and repeatedly violated a Bureau order by failing to comply with the terms of the Order and Consent Decree entered into between the Enforcement Bureau and A Radio).

<sup>9</sup> See, e.g., *A Radio Forfeiture Order*, 27 FCC Rcd at 6337, para. 3.

<sup>10</sup> See Cumulus Media, Inc., Debtor-in-Possession, Applications to Transfer Control of and Assign FCC Authorizations and Licenses, BTC-20180322ABI, *et al.*, Comprehensive Exh. (Mar. 22, 2018) (Reorganization Applications), *granted with conditions*, Cumulus Media, Inc., Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB-AD 2018) (*2018 Transfer of Control*) (granting transfer of control of Commission authorizations, with conditions, in connection with Cumulus Media, Inc.’s reorganization). Cumulus Media, Inc. is the ultimate parent of Radio License, Licensing LLC, and Holdings LLC. Radio License is licensee of WFBE(FM), Flint, Michigan, and WTRX(AM), Flint, Michigan, two of the stations that broadcast the paid-for programming discussed in this Forfeiture Order. Licensing LLC is licensee of WTKA(AM), Ann Arbor, Michigan, WWWW-FM, Ann Arbor, Michigan, and WMAC(AM), Macon, Georgia, which broadcast the paid-for programming discussed in this Forfeiture Order. Holdings LLC is licensee of WDVD(FM), Detroit, Michigan and WDRQ(FM), Detroit, Michigan, which broadcast the paid-for programming discussed in this Forfeiture Order. An organizational chart showing the relevant Cumulus Media, Inc. entities is included in the Appendix to this Forfeiture Order.

<sup>11</sup> *Consent Decree*, 31 FCC Rcd at 3-4, para. 3.

<sup>12</sup> 47 U.S.C. § 317, 47 CFR § 73.1212.

Cumulus.<sup>13</sup> Specifically, for the period January 2016 until January 2019, Radio License and Cumulus were required to report any instances of their stations' failure to comply with the Sponsorship Identification Laws, and also any breach of any terms or conditions of the *Consent Decree*, within 15 calendar days after discovery of such noncompliance.<sup>14</sup>

9. In its January 8, 2018, compliance report, Radio License and Cumulus disclosed that one non-compliant spot<sup>15</sup> had aired on May 16, 2017, collectively thirteen times, on six radio stations (of these six stations, two are licensed to Radio License, two are licensed to Licensing LLC, and two are licensed to Holdings LLC) in Michigan (May 2017 Sponsorship ID Violations).<sup>16</sup> Radio License and Cumulus conceded that the six stations broadcast the spot without the appropriate sponsorship identifications.<sup>17</sup> Radio License and Cumulus did not report these violations to the FCC until nearly eight months after they aired.

10. In a May 29, 2018 filing with the Bureau,<sup>18</sup> Radio License and Cumulus reported that a non-compliant advertisement<sup>19</sup> ran nine times on a Georgia radio station (licensed to Licensing LLC) on May 14, 2018, and four times on May 15, 2018 (May 2018 Sponsorship ID Violations).<sup>20</sup> Radio License

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<sup>13</sup> See *Consent Decree*, 31 FCC Rcd at 6, para. 2(k), 13, para. 23 (in which “Cumulus [which is defined to include Cumulus Radio Corporation] agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees”). The foregoing provision bears on this proceeding because Cumulus Media, Inc., the ultimate parent of Cumulus, Radio License, Licensing LLC, and Holdings LLC, reorganized pursuant to Chapter 11 of the Bankruptcy Code while the *Consent Decree* was in effect. *2018 Transfer of Control* (granting applications to implement the Joint Plan of Reorganization approved by the bankruptcy court and to transfer control of Cumulus Media, Inc., Debtor-in-Possession, and *inter alia*, Radio License, Licensing LLC, Holdings LLC, subject to conditions and certain divestitures). As part of this reorganization, Cumulus was converted to an LLC. Reorganization Applications, Comprehensive Exh., Attach. A (Cumulus Ownership Structure (Post Reorganization)) & Attach. C (Entities to be Converted to LLCs).

Contrary to the mitigating effect given to bankruptcy in similar proceedings, however, the plan of reorganization approved by the bankruptcy court in this case did not operate as a defense against the Commission's exercise of its regulatory or enforcement authority. *Cumulus Media, Inc. et al.*, Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' First Amended Joint Chapter 11 Plan of Reorganization, at 50, para. 105, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. May 10, 2018). Moreover, Cumulus Media, Inc., the reorganized debtor, specifically consented that the Commission may enforce any provision of the *Consent Decree* as if the bankruptcy reorganization had never been filed. *CM Wind Down Topco Inc.*, Stipulation and Order Resolving Reorganized Debtor's Objection to Claims of the Federal Communications Commission, at 3, paras. 1, 3, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. May 20, 2019).

<sup>14</sup> *Consent Decree*, 31 FCC Rcd at 10-11, paras. 13, 15.

<sup>15</sup> The non-compliant spot was paid programming, sponsored by Relevant Sports LLC, that Radio License and Cumulus acknowledged did not comply with the Sponsorship Identification Laws. See Letter from Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau at 3, para. 4, Appx. A (Jan. 8, 2018) (on file in EB-IHD-18-00027598).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at Appx. A.

<sup>18</sup> Letter from Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau (May 29, 2018) (on file in EB-IHD-18-00027598) (May 2018 Filing).

<sup>19</sup> The non-compliant spot was paid programming, sponsored in connection with gubernatorial candidate Casey Cagle, that Radio License and Cumulus acknowledged did not comply with the Sponsorship Identification Laws. See May 2018 Filing at 2.

<sup>20</sup> Declaration of Richard S. Denning, Senior Vice President, General Counsel and Secretary, Cumulus Media, Inc., Attach. to May 2018 Filing, ¶ 2 (Denning Decl.). See Letter from Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus Media, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau at 3, para. 4 (Jan. 29, 2019) (on file in EB-IHD-18-00027598) (referring to the violations and subsequent actions disclosed in the May 2018 Filing).

and Cumulus acknowledged that these thirteen spots did not comply with the Sponsorship Identification Laws.<sup>21</sup>

11. On August 6, 2019, in the *NAL*, we proposed a \$233,000 forfeiture against Respondent,<sup>22</sup> finding that Radio License, Licensing LLC, and Holdings LLC apparently repeatedly violated section 317 of the Act and section 73.1212 of the Commission's rules by broadcasting sponsored programming on seven stations collectively twenty-six times without giving the required sponsorship identifications.<sup>23</sup> The *NAL* proposed an upward adjustment from the base forfeiture for violations of the Sponsorship Identification Laws, given Respondent's history of prior violations.<sup>24</sup> We also found that Radio License and Cumulus apparently violated the *Consent Decree* by failing to timely notify the Bureau about its May 2017 Sponsorship ID Violations within the 15-day time period specified in the *Consent Decree*.<sup>25</sup>

12. On September 5, 2019, Respondent filed its NAL Response.<sup>26</sup> In its NAL Response, Respondent does not dispute liability for having violated the Sponsorship Identification Laws or provisions of the *Consent Decree*. Rather, Respondent argues that the FCC should reduce or rescind the *NAL*'s upward forfeiture adjustment for the sponsorship identification violations and the forfeiture for the *Consent Decree* violation.<sup>27</sup> Respondent claims that the upward adjustment is not justified, arguing that: (1) the past violations cited in the *NAL* involved Respondent licensees prior to its bankruptcy reorganization and the *2018 Transfer of Control* effectuating the reorganization<sup>28</sup> and thus should not be attributed to the current Respondent to justify increasing the forfeiture;<sup>29</sup> (2) the Commission's reliance on the proceeding that resulted in the *Consent Decree* is "misplaced" because Respondent did not play an active role in the actions that resulted in the sponsorship identification violations given the timing and magnitude of the reorganization;<sup>30</sup> (3) the precedent cited in the *NAL* does not support the upward adjustment;<sup>31</sup> and (4) other cases where the violations were more serious support a lesser upward adjustment.<sup>32</sup> Respondent also argues that the precedent cited in the *NAL* does not support the forfeiture proposed for violating the *Consent Decree*.<sup>33</sup> Finally, Respondent claims that mitigating factors, taken together, justify a lower forfeiture.

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<sup>21</sup> Denning Decl. ¶ 2.

<sup>22</sup> *NAL*, 34 FCC Rcd at 7289-93, 7300, paras. 1 & n.2, 4-10, Attach. The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated in this Forfeiture Order by reference.

<sup>23</sup> *Id.* at 7292-93, paras. 8-9.

<sup>24</sup> *Id.* at 7295, para. 16.

<sup>25</sup> *Id.* at 7293, para. 10. The *NAL* did not propose an upward adjustment for the *Consent Decree* violation.

<sup>26</sup> Response of Cumulus Radio LLC et al. to Notice of Apparent Liability (filed Sept. 5, 2019) (on file in EB-IHD-18-00027598) (NAL Response).

<sup>27</sup> *Id.* at i-ii, 4-17, paras. 6-32.

<sup>28</sup> See *NAL*, 34 FCC Rcd at 7289-90, para. 1 n.2; *2018 Transfer of Control*.

<sup>29</sup> NAL Response at i-ii, 4, para. 7.

<sup>30</sup> *Id.* at 5-6, para. 8.

<sup>31</sup> *Id.* at ii, 1, 8-10, paras. 13-16.

<sup>32</sup> *Id.* at 10-13, paras. 16-23.

<sup>33</sup> *Id.* at ii, 14-17, paras. 26-30, 32.

### III. DISCUSSION

13. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Act,<sup>34</sup> section 1.80 of the Commission's rules,<sup>35</sup> and the Commission's *Forfeiture Policy Statement*.<sup>36</sup> In assessing forfeitures, we are required, pursuant to section 503(b)(2)(E) of the Act, to take into account 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>37</sup> As discussed below, we have fully considered the arguments in Respondent's NAL Response, but find none of them to be persuasive. We therefore affirm the \$233,000 forfeiture proposed in the *NAL*.

#### A. Respondent Violated the Sponsorship Identification Laws and the *Consent Decree*

14. Respondent does not contest our conclusion that it apparently violated section 317 of the Act and section 73.1212 of the Commission's rules, as described in the *NAL*.<sup>38</sup> Respondent specifically admits that it violated the *Consent Decree* regarding its notification requirements.<sup>39</sup> Thus, we need not revisit these conclusions made in the *NAL* and affirm that Respondent violated section 317 of the Act, section 73.1212 of the Commission's rules, and the *Consent Decree*.<sup>40</sup>

#### B. The FCC Properly Upwardly Adjusted the Base Forfeiture Amount for the Sponsorship Identification Violations

15. We properly applied the upward adjustment factors for determining a forfeiture amount for the Respondent's sponsorship identification violations. Although Respondent "accepts its responsibility and obligation to inherit the base forfeiture amount of \$104,000" for the sponsorship identification violations specified in the *NAL*,<sup>41</sup> Respondent contends that the FCC misapplied the upward adjustment factors and did not properly consider prior cases.<sup>42</sup> We disagree.

16. In exercising our forfeiture authority, we have discretion to upwardly or downwardly adjust from the base forfeiture, taking into account the particular facts of each individual case.<sup>43</sup> Here, the totality of the circumstances warranted a substantial upward adjustment of the base forfeiture (100%) for

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<sup>34</sup> 47 U.S.C. § 503(b).

<sup>35</sup> 47 CFR § 1.80.

<sup>36</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>37</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>38</sup> See *NAL*, 34 FCC Rcd at 7292-93, paras. 7-10.

<sup>39</sup> NAL Response at 2, 13-14, paras. 2, 24 ("On January 8, 2018, Cumulus reported that one advertisement aired on six (6) stations on . . . May 16, 2017, without the proper sponsorship ID. The [Bureau] was not notified within the 15-day period. . . . Admittedly, the [Consent Decree] violation should have been reported to the Commission within 15 days.").

<sup>40</sup> *NAL*, 34 FCC Rcd at 7292-93, paras. 7-10.

<sup>41</sup> NAL Response at 4, para. 6.

<sup>42</sup> *Id.* at 1, 4-13, paras. 6-23.

<sup>43</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act").

each sponsorship identification violation.<sup>44</sup> This approach yielded a penalty of \$208,000 for the sponsorship identification violations, which we note is below the applicable statutory maximum.<sup>45</sup>

### 1. The FCC Appropriately Considered Past Violations

17. We properly considered the Respondent's prior history of Commission rule violations—particularly, Respondent's prior violations of the Sponsorship Identification Laws—when setting the penalty in this case. Respondent asserts that the *NAL* erred by citing its past violations to upwardly adjust the forfeiture because those violations occurred under the authority of a corporate board different from that which currently governs its operations.<sup>46</sup> Respondent argues that the Commission should not increase the base forfeiture based on prior violations in which its new controlling parties took no active part.<sup>47</sup> With respect to the proceeding that resulted in the *Consent Decree*, Respondent further argues that: (1) most ads at issue in that proceeding aired prior to September 16, 2011, the date on which Respondent's predecessor-in-interest acquired control; (2) Respondent's predecessor-in-interest did not play an active role in the actions which resulted in the sponsorship identification violations at issue in the *Consent Decree*; and (3) the sheer size and scope of the transaction, including numerous stations, precluded it from taking steps to ensure rule compliance.<sup>48</sup> Respondent cites no authority for these propositions.

18. Consideration of a licensee's full enforcement history, including all its prior rule violations, is relevant to the issue of whether upward adjustment is appropriate in a particular proceeding, notwithstanding that those violations occurred prior to that licensee's transfer of control. Such an evaluation is consistent with long-settled Commission precedent that licensees remain liable for rule violations even when the violations occur prior to transfer of control of a licensee's stock.<sup>49</sup> Indeed, Respondent's acknowledgment that it should answer for the May 2017 Sponsorship ID Violations and the May 2018 Sponsorship ID Violations, that are in the process of being adjudicated in this case,<sup>50</sup> is at odds with its contention that it cannot also be held accountable for previously adjudicated violations such as those resolved in the *Consent Decree* in connection with determining the amount of the forfeiture, given that both sets of violations occurred prior to the *2018 Transfer of Control*. When considering forfeitures, the Commission is *required* under the Act to consider a violator's history of prior offenses.<sup>51</sup> Further, the

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<sup>44</sup> *NAL*, 34 FCC Rcd at 7295-96, para. 16.

<sup>45</sup> The statutory maximum here would be \$1,331,772, which is the result of multiplying \$51,222 by 26 for each one of the 26 sponsorship identification violations. See 47 CFR § 1.80(b)(9)(ii); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824, 12828 (EB 2019) (increasing the section 503(b)(2)(A) of the Act forfeiture per violation up to \$51,222 as the maximum penalty after 2020 annual inflation adjustment). See also FCC, *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 85 Fed. Reg. 2318 (Jan. 15, 2020).

<sup>46</sup> *NAL* Response at i-ii, 4, para. 7.

<sup>47</sup> *Id.* at 5-6, para. 8.

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., *EZ Sacramento, Inc. and Infinity Broadcasting Corp. of Washington, D.C.*, Memorandum Opinion and Order, 16 FCC Rcd 4958, 4959, para. 3 (2001) (finding the fact ownership of the company changed hands does not affect the company's liability) (*EZ Sacramento*), *recons. dismissed*, Memorandum Opinion and Order, 16 FCC Rcd 15605 (2001); *Winslow Communications, Inc.*, Memorandum Opinion and Order, 45 FCC2d 662 (1974) (rejecting licensee's argument that it should not be liable for violation when violation occurred prior to transfer of control of licensee's stock).

<sup>50</sup> *NAL* Response at i.

<sup>51</sup> 47 U.S.C. § 503(b)(2)(E) ("In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account 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.") (emphasis added).

Commission has held that when determining the amount of a forfeiture, it is not significant that control of a company was acquired after the violation occurred.<sup>52</sup>

19. Moreover, the Respondent's implication that it is a drastically different organization post-transfer is belied by the fact that its core senior management remained unchanged by the transfer of control. As the *2018 Transfer of Control* noted, Cumulus Media, Inc.'s President and Chief Executive Officer, Mary G. Berner, continued to serve in the same capacity upon the company's emergence from bankruptcy.<sup>53</sup> Likewise, the transfer of control left the company's chief financial officer and general counsel in place.<sup>54</sup> In fact, the attorney who signed the *Consent Decree* in 2016, Richard Denning, is still the company's general counsel.<sup>55</sup>

20. Even if we were to disregard or discount a company's prior history of violations as a general matter in forfeiture proceedings, as Respondent suggests, the upward adjustment here remains justified by the fact that the violations Radio License and Cumulus admitted to in the *Consent Decree* specifically implicate the very same rule that was implicated in the *NAL*.<sup>56</sup> The *Consent Decree* was intended to help deter future violations of the Sponsorship Identification Laws, yet Respondent's entities repeatedly continued to violate the same Sponsorship Identification Laws while operating under the *Consent Decree*. Our interest in ensuring compliance with consent decrees and deterring the recurrence of violations of the very same rule at issue supports the upward adjustment in this case. Accordingly, we properly took into account prior violations when determining the upward adjustment in the *NAL*.

## 2. Commission Precedent Supports the Upward Adjustment

21. We properly justified the upward adjustment in the *NAL* by relying on relevant cases. In those cases, the Bureau determined an upward adjustment was warranted, at least in part, based on the licensee's prior history of rule violations.<sup>57</sup> Respondent nonetheless argues that the precedent cited in the *NAL*—*Clear Channel Communications, Inc.*, *Citicasters Licenses, L.P.*, and *Union Broadcasting, Inc.*—do not support any upward adjustment to the base forfeiture amount for the sponsorship identification violations, but instead warrant a much lower amount.<sup>58</sup> Respondent suggests that *Clear Channel Communications, Inc.* and *Citicasters Licenses, L.P.* do not support the Commission's assessment of the forfeiture on a per-station basis.<sup>59</sup> However, those cases do not involve sponsorship identification

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<sup>52</sup> See, e.g., *EZ Sacramento* 16 FCC Rcd at 4959, para. 3.

<sup>53</sup> See, e.g., *2018 Transfer of Control*, 33 FCC Rcd at 5244, para. 2.

<sup>54</sup> See *Emerging From Chapter 11, Cumulus Turns Page On New Chapter*, Inside Radio (June 5, 2018), [http://www.insideradio.com/emerging-from-chapter-11-cumulus-turns-page-on-new-chapter/article\\_b6193d3c-6882-11e8-85d1-0b7d91a4acdb.html?utm\\_medium=social&utm\\_source=email&utm\\_campaign=user-share](http://www.insideradio.com/emerging-from-chapter-11-cumulus-turns-page-on-new-chapter/article_b6193d3c-6882-11e8-85d1-0b7d91a4acdb.html?utm_medium=social&utm_source=email&utm_campaign=user-share).

<sup>55</sup> See *Consent Decree* at 14 (signature of Richard Denning as General Counsel of Cumulus and Radio License), and *NAL Response* (declaration of Richard Denning as Executive Vice President, General Counsel and Secretary of Cumulus).

<sup>56</sup> See, e.g., *Roadrunner Transportation, Inc. et al.*, Forfeiture Order, 15 FCC Rcd 9669, 9672-73, paras. 11-12 (2000) (finding that admitted prior violation of same rule is aggravating factor when considering present day forfeiture amount).

<sup>57</sup> See *NAL*, 34 FCC Rcd at 7295-96, para. 16 & n.43; *Clear Channel Communications, Inc. et al.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343, 347-48, para. 9 (EB-IHD 2012) (forfeiture paid) (proposing a 450% upward adjustment of the base forfeiture amount, due, in part, to negative prior history); *Citicasters Licenses, L.P.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1633, 1635-36, paras. 9-10 (EB-IHD 2007) (forfeiture paid) (proposing a 150% upward adjustment of the base forfeiture amount due, in part, to negative prior history); *Union Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 18588, 18590-91, paras. 10, 13 (EB 2004) (affirming proposed forfeiture that included a 100% upward adjustment of the base forfeiture due to, among other factors, a negative prior history).

<sup>58</sup> *NAL Response* at ii, 4, 8-10, 17, paras. 6, 13-16, 32.

<sup>59</sup> *Id.* at 8-9, paras. 13-14.

violations, which are at issue here. For sponsorship identification violations, the Commission has in recent years calculated the forfeiture by multiplying the base forfeiture by the number of violations.<sup>60</sup> Additionally, Respondent claims that in *Clear Channel Communications, Inc., Citicasters Licenses, L.P.* and *Union Broadcasting, Inc.*, escalation of the penalty was based on prior violations of the same rule, whereas here, the Commission relied not only on the same type of prior violation but also other types of prior rule violations.<sup>61</sup> However, the Commission is not required to consider only the same type of violations when assessing upward adjustments. Based on the Commission's rules, the Commission should consider an adjustment for a prior violation of any Commission requirement, even if the prior violation does not relate to the type of violation at issue in the current matter.<sup>62</sup> In any event, contrary to Respondent's claims, an upward adjustment is warranted in the present case under cited precedent because the apparent rule violations described in the *NAL* involved the very same rules that Radio License and Cumulus admitted to violating in the *Consent Decree*. We are concerned that anything less is unlikely to serve as a sufficient deterrent to Respondent against future violations of the Sponsorship Identification Laws because the \$540,000 civil penalty and imposition of a compliance plan in the *Consent Decree* did not deter Respondent from again violating the Sponsorship Identification Laws, as discussed in the *NAL* and in this Forfeiture Order.

22. None of the cases cited by Respondent as examples of mitigating circumstances involve violations of the same rule that was the subject of a prior consent decree, as was the case here. Respondent cites cases in which the Commission imposed lesser upward forfeiture adjustments for what Respondent claims were more serious violations.<sup>63</sup> Those cases, however, involved rules that are not

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<sup>60</sup> See, e.g., *Radio License Holding XI, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 930 (2012), *aff'd*, Forfeiture Order, 29 FCC Rcd 1623, 1628, para. 12 (2014) (forfeiture paid) (where Commission found that eleven deficient broadcasts that failed to include required sponsorship disclosures constituted eleven discrete violations, not a single violation).

<sup>61</sup> *NAL* Response at 8-10, paras. 13-15.

<sup>62</sup> See 47 CFR § 1.80, note to para. (b)(9) sec. II (listing “[p]rior violations of any FCC requirements” as one upward adjustment factor for section 503 forfeitures).

<sup>63</sup> *NAL* Response at 10-13, paras. 16-23. Three of the cases cited by Respondent involved Unlicensed National Information Infrastructure violations. See *WinPR, Inc., San Juan, Puerto Rico*, Notice of Apparent Liability for Forfeiture and Order, 34 FCC Rcd 7250 (EB-Field 2019), *aff'd*, Forfeiture Order, 34 FCC Rcd 10463 (EB-Field 2019); *CA Solutions, Inc. (d/b/a Boom Solutions), Caguas, Puerto Rico, Boom Net, LLC (d/b/a Boom Solutions), Caguas, Puerto Rico*, Notice of Apparent Liability for Forfeiture and Order, 34 FCC Rcd 7236 (EB-Field 2019), *aff'd*, Forfeiture Order, 35 FCC Rcd 1549 (EB-Field 2020); and *Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless), San Juan, Puerto Rico*, Notice of Apparent Liability for Forfeiture and Order, 34 FCC Rcd 7243 (EB-Field 2019), *forfeiture reduced*, Forfeiture Order, 35 FCC Rcd 1552 (EB-Field 2020). One case cited by Respondent concerned cellular phone jamming (*Ravi's Import Warehouse Inc., Dallas, Texas*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 5606 (EB-Field 2017), *aff'd*, Forfeiture Order, 33 FCC Rcd 3913 (EB-Field 2018)); and another case involved private land mobile radio violations (*Global Paratransit Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 1961 (EB-Field 2017), *aff'd*, Forfeiture Order, 32 FCC Rcd 6781 (EB-Field 2017)). Other cases cited by Respondent involved technical or operational issues. See *Drew Buckley, Bay Shore, New York*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 7586 (EB-Field 2014), *aff'd*, Forfeiture Order, 30 FCC Rcd 165 (EB-Field 2015) (operation of a radio transmitter without a license and interference with the licensed radio communications system of the Melville Fire District of New York); *Estevan J. Gutierrez*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12542 (EB-Field 2011), *aff'd*, Forfeiture Order, 28 FCC Rcd 15486 (EB-Field 2013) (operation on a frequency without authorization and willful and malicious interference with licensed operations); *Gabriel A. Garcia*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3750 (EB-Field 2011), *aff'd*, Forfeiture Order, 27 FCC Rcd 2335 (EB-Field 2012) (operation of an unlicensed broadcast station on various FM broadcast band frequencies); and *Clear Channel Broadcasting Licenses, Inc., Licensee of Station WRUM(FM), Orlando, Florida*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6808 (EB-IHD 2006) (broadcast of information about a contest without fully and accurately disclosing all material terms thereof and failure to conduct the contest substantially as announced or advertised) (forfeiture paid).

similar to the matters at issue in this case. Respondent fails to demonstrate how these factually disparate cases apply here, and we find that they do not.

**C. The Forfeiture Amount Proposed for Violation of a Commission *Consent Decree* Is Fully Justified**

23. We properly justified the forfeiture for Radio License's and Cumulus' violation of the *Consent Decree*. Respondent argues that the cases cited in the *NAL*<sup>64</sup> do not support the \$25,000 forfeiture for violation of the *Consent Decree* because the violations in those cases are more severe than the *Consent Decree* violation here, which only involved delayed reporting.<sup>65</sup> We disagree.

24. Our reasons are twofold. First, the Commission has broad discretion to issue forfeitures on a case-by-case basis.<sup>66</sup> Second, and of considerable significance here, the Commission expects parties to honor agreements made in consent decrees, and when parties fail to do so, it is a very serious matter.<sup>67</sup> The 2016 *Consent Decree* plainly required Radio License and Cumulus to report any noncompliance with the Sponsorship Identification Laws and with the terms and conditions of the *Consent Decree* within 15 calendar days after discovery of such noncompliance.<sup>68</sup> Excusing Radio License's and Cumulus' failure to do so in this case would undermine the efficacy of the Commission's use of consent decrees as a means of resolving investigations, and render meaningless measures designed to ensure licensees' future compliance with the Act and the Commission's rules, without further expenditure of public resources.<sup>69</sup> The *Consent Decree* is binding on Radio LLC as successor-in-interest to Cumulus.<sup>70</sup> In addition, Cumulus Media, Inc., the reorganized debtor, specifically accepted the Commission's authority to enforce the *Consent Decree* without interposing any bankruptcy defense,<sup>71</sup> and Respondent does not dispute this point in its *NAL* Response. In this case, the forfeiture amount for violation of the *Consent Decree* is appropriate.

**D. No Mitigating Factors Justify a Downward Adjustment of the Forfeiture**

25. In its *NAL* Response, Respondent argues that we should downwardly adjust the forfeiture due to mitigating factors. None of the factors cited by Respondent, however, supports such an adjustment.

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<sup>64</sup> See *NAL*, 34 FCC Rcd at 7294-95, para. 14 n.38; *A Radio NAL*, 26 FCC Rcd at 6562-63, paras. 5-6 (proposing a \$25,000 forfeiture for apparent failure to pay voluntary contribution and submit compliance report), *aff'd*, *A Radio Forfeiture Order*, 27 FCC Rcd at 6337, para. 4; *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2533, paras. 27-28 (2015) (proposing \$25,000 forfeiture for apparently failing to fully respond to an LOI), *aff'd*, Forfeiture Order, 30 FCC Rcd 7814 (2015); *BigZoo.com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437, 24440-41, paras. 12-13 (EB 2004), *aff'd*, Order of Forfeiture, 20 FCC Rcd 3954 (EB 2005) (imposing \$20,000 penalty for target's failure to respond to an LOI).

<sup>65</sup> *NAL* Response at ii, 14-17, paras. 26-30, 32.

<sup>66</sup> *NAL*, 34 FCC Rcd at 7294-95, para. 14 & n.36 (citing *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22).

<sup>67</sup> See *A Radio Forfeiture Order*, 27 FCC Rcd at 6337, para. 4 (“[A] consent decree violation, like misrepresentation, is particularly serious.”).

<sup>68</sup> *Consent Decree*, 31 FCC Rcd at 10-11, paras. 13, 15.

<sup>69</sup> See *A Radio Forfeiture Order*, 27 FCC Rcd at 6337, para. 4.

<sup>70</sup> See *Consent Decree*, 31 FCC Rcd at 6, para. 2(k), 13, para. 23 (stating that “Cumulus [which is defined to include Cumulus Radio Corporation] agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees”).

<sup>71</sup> See *NAL*, 34 FCC Rcd at 7289-90, para. 1 n.2 (citing *CM Wind Down Topco Inc.*, Stipulation and Order Resolving Reorganized Debtor's Objection to Claims of the Federal Communications Commission, at 3, paras. 1, 3, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. May 20, 2019)).

## 1. Respondent's Industry Standing Does Not Support Forfeiture Reduction

26. Contrary to its assertion, Respondent's alleged record of overall rule compliance does not support a forfeiture reduction. Respondent argues that when considering the forfeiture here, the FCC should take into account Respondent's overall level of rule compliance,<sup>72</sup> which it contends is "as good as or better than any other large broadcaster in the industry."<sup>73</sup> In support, Respondent claims that its current management has focused on adherence to and respect for Commission rules;<sup>74</sup> that it enjoys a "stellar" reputation in the industry;<sup>75</sup> and that out of approximately 135 million ads aired during the three-year period covered by the *Consent Decree*, there were only two occasions of sponsorship identification noncompliance.<sup>76</sup>

27. Respondent fails to cite any authority for the proposition that the Commission must apply a forfeiture calculus that weighs instances of licensee misconduct against its overall opportunities to violate the rules. Nor does Respondent demonstrate that we are obligated to consider a licensee's claims about its industry reputation before imposing a forfeiture or to prorate forfeitures based on the licensee's record as compared with that alleged for other broadcast group owners. We also reject the notion that we should take a company's overall size into account as a mitigating factor. To the contrary, if a corporate entity chooses to acquire many stations, it must ensure that it scales up its compliance efforts accordingly. We know of no precedent supporting a reduction on those bases, and Respondent provides none. The relevant Commission rule, section 1.80, provides that a history of overall compliance is among the factors that the FCC may consider when determining whether reduction of a proposed monetary penalty is appropriate.<sup>77</sup> However, Respondent in this case has not only violated FCC rules in the past but, with respect to sponsorship identification, it has violated the exact same Commission rule.<sup>78</sup> As such, we decline to reduce the forfeiture on these bases.

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<sup>72</sup> NAL Response at 7, para. 11.

<sup>73</sup> *Id.* Citing a recent magazine article, Respondent notes that it was "singled out as one of the very broadcasters that 'distances themselves from play for pay, mostly by refusing to work with Indie promoters.'" *Id.* at 7-8, para. 12, Exh. 1 (citing Elias Leight, *Want to Get on the Radio? Have \$50,000?* (Aug. 6, 2019), <https://www.rollingstone.com/music/music-features/radio-stations-hit-pay-for-play-867825/>).

<sup>74</sup> NAL Response at 6, 8, paras. 9, 12.

<sup>75</sup> *Id.* at ii.

<sup>76</sup> *Id.* at 7, 16, paras. 11, 31.

<sup>77</sup> 47 CFR § 1.80, note to para. (b)(9) sec. II (listing "[history of overall compliance]" as one downward adjustment factor for section 503 forfeitures). *See, e.g., KGB, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 13 FCC Rcd 16396, 16398, para. 8 (1998) (forfeiture paid) (reducing the proposed forfeiture from \$11,500 to \$9,200 for airing indecent material due to the broadcast licensee's "history of overall compliance prior to these broadcasts, and its apparent lack of violations in the period since these broadcasts"); *South Central Communications Corp.*, Forfeiture Order, 18 FCC Rcd 700, 702-03, para. 9 (EB 2003) (reducing the proposed forfeiture from \$10,000 to \$8,000 for antenna structure lighting violations due to the licensee's history of overall compliance).

<sup>78</sup> *See, e.g., Consent Decree*, 31 FCC Rcd at 9, para. 10 (Cumulus and Radio License admitting that their actions with respect to the broadcast of the 178 announcements referenced in the Consent Decree violated the Sponsorship Identification Laws); *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1667 (EB-IHD 2009) (forfeiture paid) (imposing \$6,000 forfeiture for Cumulus Licensing LLC's apparent violation of section 73.1206 of the Commission's rules); *Cumulus Licensing Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 5286, 5292, para. 17 (2008) (affirming Memorandum Opinion and Order's conclusion that Cumulus Licensing Corporation willfully and repeatedly violated section 17.50 of the Commission's rules and that it is not entitled to a reduction in the assessed forfeiture amount); *Cumulus Licensing Corp.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 2753 (EB 2004) (forfeiture paid) (imposing \$4,000 forfeiture for Cumulus Licensing Corp.'s apparent violation of section 73.1206 of the Commission's rules).

## 2. Respondent's Overall Compliance Efforts During the *Consent Decree* Term Do Not Justify Forfeiture Reduction

28. Respondent's claims that it complied with the *Consent Decree* in other respects do not justify a lower forfeiture. In its NAL Response, Respondent describes efforts it made to comply with the *Consent Decree*, including actions that it argues go beyond the requirements of the *Consent Decree*, and that these steps justify mitigation.<sup>79</sup> Respondent, however, fails to demonstrate how such efforts justify a downward forfeiture adjustment—particularly because its claimed efforts, even if true, did not prevent it from violating the Sponsorship Identification Laws at issue here as well as the *Consent Decree*. Moreover, the Commission expects errant licensees to implement self-corrective actions to bring its conduct into compliance, and, therefore, such actions, even when successful, do not nullify or mitigate past violations.<sup>80</sup> Here, Respondent's claimed compliance with the Sponsorship Identification Laws and terms of its *Consent Decree* simply corresponds with our minimum expectation,<sup>81</sup> and it therefore does not justify a forfeiture reduction.

## 3. Respondent's Correction of the Allegedly Unintentional Violation Does Not Justify Reducing the Forfeiture Amount

29. The *Consent Decree* expressly required Radio License and Cumulus to report any noncompliance with the Sponsorship Identification Laws within 15 calendar days after discovery of such noncompliance.<sup>82</sup> Respondent's argument that it did not intentionally violate the *Consent Decree* disregards the plain terms of the *Consent Decree* and therefore provides no support for lowering the forfeiture.

30. Respondent explains that its failure to report the May 2017 Sponsorship ID Violations to the FCC within 15 days in accordance with the *Consent Decree* was “neither intentional nor deceptive.”<sup>83</sup> Respondent further explains that such failure was “an oversight due to the mistaken belief, by Cumulus' internal regulatory counsel, that the Commission was to be notified in connection with the next annual report.”<sup>84</sup> According to Respondent, the violation was voluntarily corrected in the next compliance report.<sup>85</sup> Our precedent, however, shows that such circumstances do not mitigate a forfeiture penalty. The Commission has not downwardly adjusted forfeitures in cases where violators claim their actions or omissions were either (1) due to lack of knowledge or erroneous belief,<sup>86</sup> or (2) attributable to agents, contractors, or employees.<sup>87</sup> Respondent admits that it immediately was aware of the May 2017

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<sup>79</sup> NAL Response at ii, 6-7, 16, paras. 9-10, 31.

<sup>80</sup> *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994). See also *BASF Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17303, para. 10 (EB 2010) (forfeiture paid) (declining to reduce forfeiture based on post-investigation remedial efforts).

<sup>81</sup> *Consent Decree*, 31 FCC Rcd at 9, para. 12 (stating for its compliance plan, “[w]ith respect to the Sponsorship Identification Laws, Cumulus will implement, at a minimum, the following procedures . . .”).

<sup>82</sup> *Id.* at 10-11, paras. 13, 15.

<sup>83</sup> NAL Response at 13-14, para. 24.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 16, para. 30.

<sup>86</sup> See *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (denying mitigation based on claim of ignorance of law); *Lakewood Broadcasting Service, Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (same).

<sup>87</sup> See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a licensee's reliance on independent contractors to ensure FCC rule compliance does not excuse licensee from liability in the event of breach); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (continued....)

Sponsorship ID Violations, and that it should have reported them to the Commission within 15 days, but did not do so.<sup>88</sup> A failure to comply with the unambiguous terms of a consent decree, as in this case, reflects a disregard of a Commission order.<sup>89</sup>

31. It is well established that administrative oversight or inadvertence are not mitigating factors.<sup>90</sup> We note that “willfulness,” as that term has been construed, rests on a finding that the violator knowingly acted or failed to act—not a finding that the violator intentionally set out to violate the Act or the Commission’s rules. Section 312(f)(1) of the Act, which likewise applies to 503(b) 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>91</sup> Thus, even if Radio License and Cumulus did not intend to violate the *Consent Decree*, that mindset does not negate the willful nature of its violations or warrant a reduced forfeiture.

32. In addition, we decline to reduce the forfeiture based on Radio License’s and Cumulus’ disclosure of violations of their January 2018 compliance report. We recognize that forfeitures have been reduced where violators have demonstrated that they initiated measures to correct or remedy violations or voluntarily disclosed violations prior to the FCC’s involvement.<sup>92</sup> However, under the *Consent Decree*, Radio License’s and Cumulus’ disclosure of the noncompliance in its next required compliance report was not voluntary, as Respondent contends. Rather, the *Consent Decree*’s terms *required* Radio License and Cumulus to report sponsorship identification violations in their compliance reports to the FCC.<sup>93</sup> As such, when Radio License and Cumulus reported the May 2017 Sponsorship ID Violations in their January 2018 compliance report, they were simply adhering to compliance reporting requirements under the *Consent Decree*. Based on the circumstances here, we find that Radio License’s and Cumulus’ disclosure of *Consent Decree* violations in its next required compliance report does not justify a reduced forfeiture.

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(1972) (same); *Petracom of Joplin, L.L.C.*, Forfeiture Order, 19 FCC Rcd 6248 (EB 2004) (holding a licensee liable for its employee’s lapses).

<sup>88</sup> NAL Response at 13-14, para. 24.

<sup>89</sup> See *A Radio Forfeiture Order*, 27 FCC Rcd at 6337, para. 3 (finding that A Radio willfully and repeatedly violated a Bureau order by failing to comply with the terms of the Order and Consent Decree entered into between the Enforcement Bureau and A Radio).

<sup>90</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991) (*Southern Cal. Broad.*) (finding that “inadvertence,” even if deemed “ignorance of the law,” is not mitigating), *recons. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992); *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (same), *recons. dismissed in part, denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013) (rejecting argument that unintentional nature of the violation, even if true, justifies mitigation of the forfeiture amount).

<sup>91</sup> 47 U.S.C. § 312(f)(1). 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. H.R. Rep. No. 97-765, at 51 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 2261, 2295. The Commission has so interpreted the term in the section 503(b) context. See, e.g., *Southern Cal. Broad.*, 6 FCC Rcd at 4387-88, para. 5.

<sup>92</sup> See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (finding that the Commission may reduce a forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122-23, para. 5 (EB 2014) (same); *cf. Bold Gold Media WBS, L.P.*, Forfeiture Order, 29 FCC Rcd 6016 (EB 2014) (granting a reduction where good faith efforts to comply were taken prior to Commission inspection).

<sup>93</sup> *Consent Decree*, 31 FCC Rcd at 11, para. 14(a) (stating “[e]ach Compliance Report shall include a detailed description of Cumulus’ efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Sponsorship Identification Laws”).

#### IV. CONCLUSION

33. Based on the record before us and in light of the applicable statutory factors, we conclude that Cumulus, Radio License, Licensing LLC, and Holdings LLC willfully and repeatedly violated section 317 of the Act and section 73.1212 of the Commission's rules by failing repeatedly to air sponsorship identifications and/or for failing to timely notify the FCC about certain of these violations, as required by the *Consent Decree*. We further conclude that Cumulus, Radio License, Licensing LLC, and Holdings LLC are jointly and severally liable for the \$233,000 proposed in the *NAL*. We decline to reduce the \$233,000 forfeiture proposed in the *NAL*.

#### V. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,<sup>94</sup> and section 1.80 of the Commission's rules,<sup>95</sup> Cumulus Radio LLC, Radio License Holding CBC, LLC, Cumulus Licensing LLC, and Radio License Holdings LLC **ARE LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred thirty-three thousand dollars (\$233,000) for willfully and repeatedly violating section 317 of the Act<sup>96</sup> and section 73.1212 of the Commission's rules,<sup>97</sup> and/or violation of the *Consent Decree*.

35. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.<sup>98</sup> Cumulus Radio LLC, Radio License Holding CBC, LLC, Cumulus Licensing LLC, and Radio License Holdings LLC shall send electronic notification of payment to Jeffrey J. Gee, Christopher J. Sova, Frederick W. Giroux, and Melissa A. Marshall, Enforcement Bureau, Federal Communications Commission, at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), [Frederick.Giroux@fcc.gov](mailto:Frederick.Giroux@fcc.gov), and [Melissa.Marshall@fcc.gov](mailto:Melissa.Marshall@fcc.gov) on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.<sup>99</sup>

36. Payment of the forfeiture 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),<sup>100</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:

- 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](mailto: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 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). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>94</sup> 47 U.S.C. § 503(b).

<sup>95</sup> 47 CFR § 1.80.

<sup>96</sup> 47 U.S.C. § 317.

<sup>97</sup> 47 CFR § 73.1212.

<sup>98</sup> 47 CFR § 1.80.

<sup>99</sup> 47 U.S.C. § 504(a).

<sup>100</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

- 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 \$24,999.99 limit on credit card transactions.
- 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.

37. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.<sup>101</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

38. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Richard S. Denning, Esq., Executive Vice President, General Counsel, and Secretary, Cumulus Media, Inc., Cumulus Radio LLC, and Radio License Holding CBC, LLC, 3280 Peachtree Road NW, Suite 2200, Atlanta, Georgia 30305, and to Mark Lipp, Esq., Fletcher Heald & Hildreth PLC, 1300 N. 17<sup>th</sup> Street, Suite 1100, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

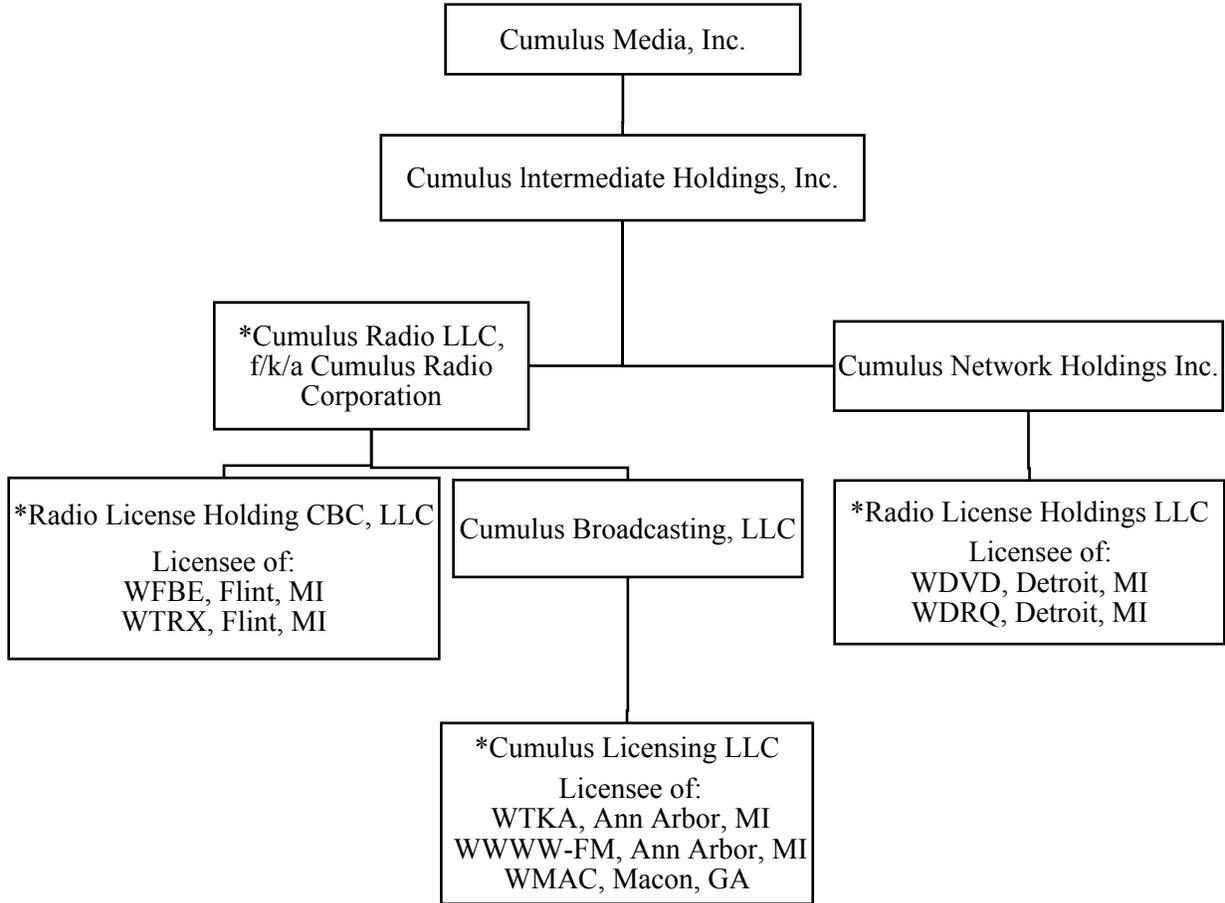
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<sup>101</sup> See 47 CFR § 1.1914.

APPENDIX

**Cumulus Media, Inc. Organizational Chart**

(For clarity, certain intermediate entities are not shown)



Entities marked with an asterisk (\*) are parties to this Forfeiture Order.

Source: Cumulus Media, Inc., Debtor-in-Possession, Applications to Transfer Control of and Assign FCC Authorizations and Licenses, BTC-20180322ABI, *et al.*, Comprehensive Exh. (Mar. 22, 2018), *granted with conditions*, Cumulus Media, Inc., Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB-AD 2018) (granting transfer of control of Commission authorizations, with conditions, in connection with Cumulus Media, Inc.’s reorganization).