

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

In the Matter of )
Cumulus Licensing LLC ) File No.: EB-IHD-20-00031223
Former Licensee of Stations ) NAL Acct. No.: 202132080015
WEGC(FM), Sasser, GA ) FRN: 0002834810
Facility ID Number: 40463; )
WJAD(FM), Leesburg, GA )
Facility ID Number: 57782; )
WKAK(FM), Albany, GA )
Facility ID Number: 831; )
WQVE(FM), Albany, GA )
Facility ID Number: 54704; and )
WALG(AM), Albany, GA )
Facility ID Number: 54703 )

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 25, 2022

Released: February 25, 2022

By the Commission:

I. INTRODUCTION

1. The Federal Communication Commission’s equal employment opportunity (EEO) rules prohibit broadcasters from discriminating in hiring on the basis of race, color, religion, national origin or gender, and require most broadcasters to conduct and document broad recruitment efforts. Here, we find that Cumulus Licensing LLC (Cumulus or Licensee), former licensee of WEGC(FM), Sasser, Georgia; WJAD(FM), Leesburg, Georgia; WKAK(FM), Albany, Georgia; WQVE(FM), Albany, Georgia; and WALG(AM), Albany, Georgia (Stations), apparently violated the Commission’s EEO rules by failing to (i) upload its annual EEO public file report (Annual Report) in the Stations’ online public inspection files; (ii) upload its Annual Report to the Stations’ websites; and (iii) analyze its EEO program. Therefore, we propose a penalty of \$32,000 against Cumulus for its apparent violation of these rules.

II. BACKGROUND

2. Legal Framework. Section 73.2080(c)(6) of the Commission’s rules requires a licensee to place its station’s Annual Report in its public inspection file and on its website, if it has one.1 A station’s Annual Report includes information concerning its full-time vacancies over the prior year; the recruitment sources utilized to fill full-time vacancies; the recruitment source that referred the hiree for each full-time vacancy; data reflecting the total number of persons interviewed for full-time vacancies, the total number of interviewees referred by each recruitment source; and a list and brief description of its recruitment initiatives.2 Section 73.2080(c)(3) of the Commission’s rules requires a licensee to analyze its EEO recruitment program for its employment unit on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.3 In addition, section 73.3526(e)(7) of the Commission’s rules requires that a licensee place

1 47 CFR § 73.2080(c)(6).

2 Id.

3 47 CFR § 73.2080(c)(3).

required information, including EEO files such as its Annual Report, in its station's public inspection file.<sup>4</sup>

3. *Factual Background.* Cumulus is an indirect subsidiary of Cumulus Media, Inc., which, on its website, reports that it owns and operates 410 broadcast stations across 86 media markets,<sup>5</sup> as well as Westwood One, an audio network that syndicates sports, news, talk, and entertainment programming.<sup>6</sup> In the Stations' most recent renewal applications (Renewal Applications), Cumulus indicated that it had not uploaded its EEO files to the Stations' public inspection files as and when required by the Commission's rules.<sup>7</sup> In response to a Letter of Inquiry issued by the Enforcement Bureau's Investigations and Hearings Division,<sup>8</sup> Cumulus acknowledged that the Stations' 2018 Annual Report had not been added to the Stations' public inspection files and websites until September 11, 2019<sup>9</sup>—more than

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<sup>4</sup> 47 CFR § 73.3526(e)(7).

<sup>5</sup> See Cumulus Media, Inc., [www.cumulusmedia.com](http://www.cumulusmedia.com) (last visited Jan. 24, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> 47 CFR § 73.3526. See Form 303-S Applications for Renewal of Broadcast Station License, WEGC(FM), Sasser, GA (Facility ID Number 40463), Renewal File No. 0000098498 (filed Aug. 25, 2020), <https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b0174271ea2051252&id=25076ff37414384b0174271ea2051252&goBack=N>; WJAD(FM), Leesburg, GA (Facility ID Number 57782), Renewal File No. 0000098499 (filed Aug. 25, 2020), <https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b017427295ecb1271&id=25076ff37414384b017427295ecb1271&goBack=N>; WKAK(FM), Albany, GA (Facility ID Number 831), Renewal File No. 0000098501 (filed Aug. 25, 2020), <https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b0174272d723c128e&id=25076ff37414384b0174272d723c128e&goBack=N>; WQVE(FM), Albany, GA (Facility ID Number 54704), Renewal File No. 0000098500 (filed Aug. 25, 2020), <https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b01742730ae1e12ad&id=25076ff37414384b01742730ae1e12ad&goBack=N>; WALG(AM), Albany, GA (Facility ID Number 54703), Renewal File No. 0000098497 (filed Aug. 25, 2020), <https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b0174271781c61234&id=25076ff37414384b0174271781c61234&goBack=N>.

<sup>8</sup> Letter from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC (July 23, 2020) (on file in EB-IHD-20-00031223) (LOI).

<sup>9</sup> Letter from Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC and Mark Lipp, Esq., Fletcher, Heald & Hildreth, counsel to Cumulus Licensing LLC, to EEO Staff, Investigations and Hearings Division, FCC Enforcement Bureau, at Response to Questions 3, 5 (Aug. 20, 2020) (on file in EB-IHD-20-00031223) (LOI Response). The anniversary filing date for Georgia radio station renewal applications is December 1, and stations must generally upload their Annual Report on this date. In 2018, however, December 1 fell on a Saturday. The 2018 Annual Report was therefore due on the next business day, i.e., December 3, 2018.

nine months after the December 3, 2018 deadline for doing so.<sup>10</sup> Cumulus explained that this failure was due to a “routine administrative change” and the loss of a former employee.<sup>11</sup>

### III. DISCUSSION

#### A. Cumulus Apparently Violated the EEO Rules

4. We find that Cumulus apparently willfully and repeatedly violated sections 73.2080(c)(6), 73.2080(c)(3), and 73.3526(e)(7) of the Commission’s rules.<sup>12</sup> Cumulus apparently violated section 73.2080(c)(6) by failing to timely upload the Stations’ 2018 Annual Report in the Stations’ public inspection files, and by failing to upload the Annual Report on the Stations’ websites. These failures reveal a continuing lack of EEO assessment, in apparent violation of section 73.2080(c)(3).

##### 1. Cumulus Did Not Timely Upload Its EEO Public File Report Into Its Stations’ Online Public Inspection Files and Websites

5. Cumulus apparently violated section 73.2080(c)(6) of the Commission’s rules in two separate ways: (1) by failing to timely upload its 2018 Annual Report in its Stations’ public inspection files; and (2) by failing to timely upload its 2018 Annual Report to the Stations’ websites.<sup>13</sup> The Annual Report must be added to a station’s public inspection file and on a station’s website, if it has one, on the anniversary of the date that the station’s renewal application was due.<sup>14</sup> In this case, Cumulus was required to upload the Stations’ 2018 Annual Report into the Stations’ public inspection files and on their websites by December 3, 2018. In its LOI Response, Cumulus reported that it had not uploaded its 2018 Annual Report to the Stations’ public inspection files or to the Stations’ websites until September 11, 2019.<sup>15</sup> By its own admission, therefore, Cumulus was over nine months late in placing its 2018 Annual Report in the Stations’ public inspection files and on their websites.

6. In its LOI Response, Cumulus explained that it did not timely upload its 2018 Annual Report in the Stations’ public inspection files because the Stations’ business manager had “simply overlooked this requirement” due to a routine administrative change and the loss of a former employee.<sup>16</sup> Cumulus further explained that the business manager “immediately corrected this oversight” as soon as it was discovered.<sup>17</sup> In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the

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<sup>10</sup> On November 24, 2020, the Commission and Cumulus executed a tolling agreement which, among other things, preserved the Commission’s legal rights to issue one or more NALs and initiate collection proceedings, as applicable, with respect to the potential violations, while allowing for the grant of the Renewal Applications and for the consummation of the assignment of the licenses for the Stations in connection with Cumulus’ sale of the Stations to a third party. *See* Agreement Regarding Assignment Applications executed by Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, and Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC (Nov. 24, 2020) (on file in EB-IHD-20-00031223). Cumulus sold the Stations to First Media Services, LLC on Dec. 15, 2020 pursuant to assignment applications BAL-20200429AAB, and BALH-20200429AAC-F; Consummation Notice of Cumulus Licensing LLC, File Nos. BAL-20200429AAB et al. (filed Dec. 17, 2020). Pursuant to the tolling agreement, Cumulus agreed to waive any right it might otherwise have to assert that it is no longer a holder of the Commission-issued licenses for the Stations.

<sup>11</sup> LOI Response at 4.

<sup>12</sup> 47 CFR §§ 73.2080(c)(6), 73.3526(e)(7), and 73.2080(c)(3).

<sup>13</sup> 47 CFR § 73.2080(c)(6). While both Section 73.3526(e)(7) and Section 73.2080(c)(6) require the EEO Annual Report to be placed in a station’s public inspection file, Section 73.2080(c)(6) also requires the EEO Annual Report to be placed on a station’s website, if it has one.

<sup>14</sup> *Id.*

<sup>15</sup> LOI Response, Response to Questions 3, 5.

<sup>16</sup> LOI Response, Response to Question 6.

<sup>17</sup> *Id.*

licensee, excuse or nullify a licensee's rule violation,<sup>18</sup> and correcting the oversight nine months after the fact, and only three months before the next Annual Report was due to be placed in the public inspection file, does not mitigate the violation.

7. We further find that by failing to timely upload its 2018 Annual Report into its public inspection files, Cumulus apparently violated section 73.3526(e)(7) of the Commission's rules, which requires licensees of commercial stations to keep certain information, including EEO information such as the Annual Report, in their stations' public inspection files.<sup>19</sup>

## 2. Cumulus Did Not Analyze its EEO Program

8. By virtue of the deficiencies discussed above, we further find that Cumulus also apparently violated section 73.2080(c)(3) of the Commission's rules by failing to analyze the Stations' EEO program. Section 73.2080(c)(3) requires a licensee to analyze its station's EEO recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and to address any problems found as a result of such analysis.<sup>20</sup> The Commission has previously recognized the importance of monitoring broadcaster compliance with the EEO rules, including the role played by the public in doing so, stating that "[t]he EEO public file report is designed to facilitate meaningful public input."<sup>21</sup> Cumulus' failure to timely upload the Stations' Annual Reports to the Stations' online public inspection files and websites deprived the public of its right to participate in monitoring and providing input on Cumulus' EEO programs at the Stations, thus preventing the Stations from fulfilling their obligation to analyze their EEO recruitment program.

9. Further, Cumulus states that its Business Manager for the Stations in the Albany, Georgia market, had previously prepared the Stations' annual EEO reports with the assistance of the market's Assistant Business Manager, but that in December 2018, the Assistant Business Manager left the company. Cumulus states that "[b]eing accustomed to a different routine for years..." the Business Manager "simply overlooked this requirement and, as a result, the 2018 EEO report was not uploaded in a timely fashion."<sup>22</sup> Cumulus further states that the Business Manager did not realize until September 2019 that the EEO reports had not been uploaded to the public inspection files or websites.<sup>23</sup> We find that, at least beginning from the time that the Assistant Business Manager left the company in December 2018, Cumulus could not have adequately analyzed or self-assessed its Stations' EEO program on an ongoing basis because for nine months it failed to even realize that it had not reviewed and uploaded its 2018 Annual Report to the Stations' public inspection files and websites.

## B. Proposed Forfeiture

10. Section 503(b) of the Communications Act of 1934, as amended (Act), authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"<sup>24</sup> Here, section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture against Cumulus of up to \$55,052 for each day of a continuing violation, up to a statutory maximum of \$550,531 for a

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<sup>18</sup> See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999).

<sup>19</sup> 47 CFR § 73.3526(e)(7). See also *Emmis Television License, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (MB 2005) (licensee violated both the EEO rules and consequently, the public inspection file rules because it failed to place required EEO information in its stations' public inspection files).

<sup>20</sup> 47 CFR § 73.2080(c)(3).

<sup>21</sup> *Review of the Commission's Broadcast and Cable EEO Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd. 24018, 24062 (2002).

<sup>22</sup> LOI Response, Response to Question 6.

<sup>23</sup> *Id.*

<sup>24</sup> 47 U.S.C. § 503(b).

single act or failure to act.<sup>25</sup> In exercising our forfeiture authority, we must consider 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>26</sup> In addition, the Commission has established forfeiture guidelines which establish base penalties for certain violations, and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>27</sup> Under these guidelines, the Commission may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>28</sup>

11. *Failure to Timely Upload EEO Public File Report to Public Inspection Files and Websites.* Cumulus apparently violated section 73.2080(c)(6)<sup>29</sup> of the Commission’s rules in two separate ways by failing to timely upload the Stations’ 2018 Annual Reports for a period of over nine months to either their public inspection files or the Stations’ websites. Section 1.80(b) of the Commission’s rules sets a base forfeiture of \$10,000 for each violation of public file rules.<sup>30</sup> We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.<sup>31</sup>

12. In this case, the factors set forth in section 503 of the Act and the Commission’s forfeiture guidelines support a higher forfeiture amount. In particular, we note Cumulus’ prior history of rule violations, including violations of the EEO rules. In 2008, the Media Bureau issued a \$14,000 proposed forfeiture to Cumulus for violating the EEO rules by failing to perform an EEO recruitment initiative, analyze its EEO program, maintain EEO recruitment records, report EEO recruitment sources, report interviewee data, and maintain required EEO information in its stations’ public inspection files.<sup>32</sup> In 2017, the Media Bureau proposed a \$20,000 forfeiture against Cumulus for violating the EEO rules by failing to recruit for vacancies, provide notification of vacancies to a requesting organization, analyze its EEO program, retain EEO records, report interviewee data, and maintain required EEO information in its stations’ public inspection files.<sup>33</sup> This forfeiture included an upward adjustment because the Bureau found that Cumulus had engaged in a history of prior EEO offenses.<sup>34</sup>

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<sup>25</sup> See 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). See also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 87 Fed. Reg. 396 (Jan. 5, 2022). The effective date of these inflation adjusted forfeiture penalties was January 15, 2022.

<sup>26</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>27</sup> 47 CFR § 1.80(b)(10), Note to paragraph (b)(10), Table 1.

<sup>28</sup> *Id.*

<sup>29</sup> 47 CFR § 73.2080(c)(6); see also 47 CFR § 73.3526(e)(7).

<sup>30</sup> 47 CFR § 1.80(b)(10), Table 1. Although the Commission’s forfeiture guidelines do not establish a base forfeiture for the separate web site posting requirement of section 73.2080(c)(6), Section 1.80(b) of the Commission’s rules sets a base forfeiture of \$3,000 for failure to file required information, which we find to be analogous.

<sup>31</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, 17098–99, para. 22 (1997) (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”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>32</sup> *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18433 (MB 2008) (forfeiture paid) (*2008 Cumulus Licensing LLC*).

<sup>33</sup> *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10285 (MB 2017) (forfeiture paid) (*2017 Cumulus Licensing LLC*).

<sup>34</sup> *2017 Cumulus Licensing LLC*, 32 FCC Rcd at 10288-9.

13. We further note that Cumulus has a prior history of non-EEO rule violations.<sup>35</sup> Indeed, the Commission recently sanctioned Cumulus for its repeated violations of the Commission's sponsorship identification rules. In that Forfeiture Order, the Commission emphasized that repeated violations of the Commission's rules warranted upward adjustment – even if the prior violations do not relate to the type of violations at issue in the current matter.<sup>36</sup>

14. While Cumulus' history of repeatedly violating the Commission's rules would be problematic under any circumstances, its apparent disregard of the Commission's EEO rules is particularly troubling. Cumulus, in its own words, is “an audio-first media company delivering premium content to over a quarter billion people every month...”<sup>37</sup> Cumulus owns and operates several hundred radio stations in dozens of markets across the nation. In short, it is a highly sophisticated broadcaster with extensive operations that employs thousands of people and routinely fills scores of job openings annually. The Commission's EEO rules ensure that broadcasters take concrete and thoughtful steps to seek and attract diverse employees. Repeated disregard of these rules by a broadcaster of Cumulus' size and scope is contrary to the public interest.

15. Accordingly, consistent with the *Forfeiture Policy Statement*, we have considered the licensee's history of prior offenses, as well as the other factors as indicated by section 503 of the Act, and determined that an upward adjustment of the base forfeiture is warranted with respect to these apparent violations.<sup>38</sup> We therefore propose a \$26,000 forfeiture for Cumulus's apparent violations of section 73.2080(c)(6) for failing to timely upload and maintain the Stations' 2018 Annual Reports in their public inspection files and on the Stations' websites for over nine months.<sup>39</sup>

16. *Failure to Analyze.* The Commission's forfeiture guidelines do not establish a base forfeiture for specific EEO rule violations, such as a failure to analyze EEO performance in accordance with section 73.2080(c)(3). Thus, we look to forfeitures issued in analogous cases for guidance. The Media Bureau previously issued Notices of Apparent Liability (NALs) against Cumulus in 2008 and 2017

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<sup>35</sup> See *Cumulus Radio LLC, et al.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7289 (2019), *aff'd*, *Forfeiture Order*, 36 FCC Rcd 738 (2021) (sponsorship ID violations; violation of Consent Decree); *Cumulus Media New Holdings Inc.*, Order and Consent Decree, 2020 WL 4282110 (MB 2020) (political file violations); *Radio License Holding CBC, LLC*; *Cumulus Radio Corporation*, Order and Consent Decree, 31 FCC Rcd 3 (EB 2016) (sponsorship ID); *Radio License Holding XI, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 930 (2012), *aff'd*, *Forfeiture Order*, 29 FCC Rcd 1623 (2014) (sponsorship ID); *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2102 (EB 2011) (failure to maintain and make available quarterly issues/programs lists in public inspection file); *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1667 (EB 2009) (broadcast of telephone conversations); *Cumulus Licensing Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 5286 (2008), *aff'd* *Cumulus Licensing Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 1032 (EB 2006), *aff'd* *Cumulus Licensing Corp.*, Forfeiture Order, 19 FCC Rcd 24815 (EB 2004) (antenna painting); *Cumulus Licensing LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13711 (MB 2007) (false certification in renewal application); *Cumulus Licensing Corp.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 2753 (EB 2004) (broadcast of telephone conversations); *Cumulus Licensing Corp.*, Forfeiture Order, 18 FCC Rcd 21234 (EB 2003) (failure to maintain fencing around AM antenna).

<sup>36</sup> *Cumulus Radio, LLC, Forfeiture Order*, 36 FCC Rcd 738, 746 (2021).

<sup>37</sup> <https://www.cumulusmedia.com/about-us/>.

<sup>38</sup> See *2017 Cumulus Licensing LLC*, 32 FCC Rcd at 10288 (finding that Cumulus “has a history of violations relating to the EEO rules”).

<sup>39</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note to paragraph (b)(10) (articulating criteria for upward adjustments such as egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation). See also *2017 Cumulus Licensing LLC*, 32 FCC Rcd at 10288-89 (FCC added an upward adjustment of \$4000 for Cumulus' history of prior offenses).

for EEO rule violations of section 73.2080(c)(3).<sup>40</sup> In both NALs, the Media Bureau issued a \$2,000 forfeiture against Cumulus for failing to adequately analyze its stations' EEO program.<sup>41</sup> We agree that this is an appropriate base forfeiture for violations of this rule. Again, considering the circumstances of this case, including Cumulus' history of prior EEO offenses,<sup>42</sup> we determine that an upward adjustment to the base forfeiture is warranted with respect to this apparent violation. Consistent with this precedent and the circumstances of this particular case, we propose a forfeiture of \$6,000 against Cumulus for failing to adequately analyze its stations' EEO program in apparent violation of section 73.2080(c)(3) of the Commission's rules.<sup>43</sup>

17. *Public Inspection File Rule Violation.* Section 73.3526(e)(7) of the Commission's rules requires that a licensee place required information, including EEO files such as its Annual Report, in its station's public inspection file.<sup>44</sup> We note that Cumulus' failure to keep required EEO information in its Stations' public inspection files therefore also apparently violates section 73.3526(e)(7) of the Commission's rules.<sup>45</sup> While we decline to issue a separate forfeiture for the apparent violation of section 73.3526(e)(7) in this case, the Commission has previously done so,<sup>46</sup> and reserves the right to do so when considering future such violations.

18. *Other Factors.* In applying the applicable statutory factors, we also consider whether there may be any basis for a downward adjustment of the proposed forfeiture. Here, we find none. Cumulus argued that the forfeiture penalty should be adjusted downward as Cumulus' parent emerged from bankruptcy in 2018, and because the COVID-19 pandemic has negatively impacted its 2020 advertising revenue.<sup>47</sup> However, Cumulus failed to submit any evidence of inability to pay a forfeiture,<sup>48</sup> and moreover, Cumulus' parent reported on its website that, for the third quarter of 2020, "[d]espite the extraordinary challenges of operating through a pandemic, we have reduced debt by \$269 million and increased cash by \$316 million since emerging from bankruptcy...."<sup>49</sup> Accordingly, we propose a total forfeiture of \$32,000 for Cumulus' apparent violations of the EEO rules in this case.

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<sup>40</sup> *2008 Cumulus Licensing LLC*, 23 FCC Rcd at 18436 (FCC proposed a \$2,000 forfeiture for Cumulus' violation of section 73.2080(c)(3) for failing to analyze its EEO program for two years); *2017 Cumulus Licensing LLC*, 32 FCC Rcd at 10288 (FCC proposed a \$2,000 forfeiture for Cumulus' violation of section 73.2080(c)(3) for failing to analyze its EEO program for two years).

<sup>41</sup> *Id.*

<sup>42</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>43</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>44</sup> 47 CFR § 73.3526(e)(7).

<sup>45</sup> 47 CFR § 73.3526(e)(7).

<sup>46</sup> *See Cumulus Licensing L.L.C.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd. 18433, 18436-37 (2008) (forfeiture paid).

<sup>47</sup> LOI Response, Response to Question 12.

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

<sup>49</sup> *See* Cumulus Media Reports Operating Results for the Third Quarter 2020, Nov. 5, 2020 at <https://www.cumulusmedia.com/wp-content/uploads/2020/11/CMLS-2020.09.30-Earnings-Release-FINAL-V2.pdf> (last visited Jan. 24, 2022). *See also* Cumulus Media Reports Operating Results for 2019, Feb. 21, 2020, at [https://www.cumulusmedia.com/wp-content/uploads/2020/02/CMLS\\_12312019\\_Earnings\\_Release\\_Final-1.pdf](https://www.cumulusmedia.com/wp-content/uploads/2020/02/CMLS_12312019_Earnings_Release_Final-1.pdf) (last visited Jan. 24, 2022), in which Cumulus Media reported net revenue of \$1.1 billion for fiscal year 2019.

#### IV. CONCLUSION

19. For the reasons set forth above, we find that Cumulus apparently willfully and repeatedly violated sections 73.3526(e)(7), 73.2080(c)(3) and 73.2080(c)(6).<sup>50</sup> As such, Cumulus is apparently liable for a forfeiture of \$32,000.<sup>51</sup>

#### V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>52</sup> and section 1.80 of the Commission's rules,<sup>53</sup> Cumulus Licensing LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty-two thousand dollars (\$32,000) for willful and repeated violations of sections 73.2080(c)(3) and 73.2080(c)(6) of the Commission's rules.<sup>54</sup>

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>55</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Cumulus Licensing LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 24 below.

22. Cumulus Licensing LLC shall send electronic notification of payment to Jeffrey J. Gee, Chief, Hearings and Investigations Division, Enforcement Bureau, Federal Communications Commission, at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), with a copy to [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), [Elizabeth.Goldin@fcc.gov](mailto:Elizabeth.Goldin@fcc.gov) and [Estella.Salvatierra@fcc.gov](mailto:Estella.Salvatierra@fcc.gov), on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission's FRN Management and Financial system.<sup>56</sup> 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:<sup>57</sup>

- 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.<sup>58</sup> 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>50</sup> 47 CFR §§ 73.2080(c)(3), and 73.2080(c)(6).

<sup>51</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, 72 Stat. 384 (codified as amended at 15 U.S.C. §§ 631 *et seq.* (2010))) 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 herein.

<sup>52</sup> 47 U.S.C. § 503(b).

<sup>53</sup> 47 CFR § 1.80.

<sup>54</sup> 47 CFR §§ 73.2080(c)(3), 73.2080(c)(6), and 73.3526(e)(7).

<sup>55</sup> 47 CFR § 1.80.

<sup>56</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>57</sup> 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](mailto:ARINQUIRIES@fcc.gov).

<sup>58</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.



- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. 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 “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.

23. 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, D.C. 20554.<sup>59</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.<sup>60</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Hearings and Investigations Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Christopher J. Sova at [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), Elizabeth Goldin at [Elizabeth.Goldin@fcc.gov](mailto:Elizabeth.Goldin@fcc.gov) and Estella Salvatierra at [Estella.Salvatierra@fcc.gov](mailto:Estella.Salvatierra@fcc.gov). The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data’s source. The statement and any accompanying documentation, affidavits, and attachments, including recordings, exceeding 5MB must be sent to the Commission’s secure online file system by e-mailing such documents as attachments to: [Cumulus.wnddpiej1wkdg22s@u.box.com](mailto:Cumulus.wnddpiej1wkdg22s@u.box.com), consistent with the following parameters:

- Upload documents and supporting documentation as e-mail attachments only. Only the attachments will be uploaded to the secure folder. **E-mails and any accompanying text used for the purpose of uploading attachments, will NOT be uploaded to the secure folder.**

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<sup>59</sup> See 47 CFR § 1.1914.

<sup>60</sup> 47 CFR §§ 1.16, 1.80(g)(3).

- Each e-mail upload of documents and supporting documentation must not exceed 50MB. Multiple e-mails may be necessary to upload attached files that exceed a total of 50MB.
- Copies of e-mails containing text that are responsive to this Notice of Apparent Liability for Forfeiture must be uploaded separately as .PDF or .ZIP file attachments.
- Both designated Commission staff and the sender will receive a notification e-mail that files were uploaded successfully.
- If you need help or have questions about how to provide electronic copies of the response or any accompanying documents or recordings, please contact [Estella.Salvatierra@fcc.gov](mailto:Estella.Salvatierra@fcc.gov) or 202-418-1789 **no later than two business days prior to the response due date to ensure timely transmission of the response.**

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.<sup>61</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of section 503(b)(2)(E) of the Act support that result.<sup>62</sup>

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC, 3280 Peachtree Road, NW, Suite 2200, Atlanta, GA 30305 and to Kathleen A. Kirby, Esq., Counsel for Cumulus Licensing LLC, Wiley Rein LLP, 2050 M Street, NW, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>61</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>62</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).