



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

December 2, 2008

DA 08-2626

In Reply Refer to:

1800B3-KV

NAL/Acct No.: MB20051810026

FRN: 0002834810

Released: December 2, 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mark Lipp, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

In re: WDUZ-FM, Brillion, WI
Cumulus Licensing, LLC
Facility ID: 6861
File No. BRH-20040802BJW

Dear Mr. Lipp:

The Chief, Audio Division, has before him the June 20, 2005, letter,¹ as supplemented on November 12, 2008,² filed on behalf of Cumulus Licensing, LLC (“Cumulus”), licensee of Station WDUZ-FM, Brillion, Wisconsin (the “Station”). The Response requests reduction or cancellation of the May 20, 2005, Notice of Apparent Liability for a Forfeiture (“NAL”)³ in the amount of nine thousand dollars (\$9,000) for violations of Section 73.3526 of the Commission's Rules (the “Rules”) regarding Cumulus’s failure to maintain the Station’s public inspection file.⁴ By this action, we cancel the NAL and admonish Cumulus for violating Section 73.3526 of the Rules.

On August 2, 2004, Cumulus filed the above-referenced application to renew the license of the Station (the “Application”). Section III, Item 3, of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 of the Rules has been placed in the station’s public inspection file at the appropriate times. Cumulus indicated “No” to that certification, indicating in its amended application that “the WDUZ-FM public file is missing the following issues-programs lists: the 4th quarter of 1998; all of 1999; all of 2000; the 1st and 2nd quarters of 2001; the 1st – 3rd quarters of 2002; and the 1st and 3rd quarters of 2003. The licensee attempted to re-create all of these lists, but was unsuccessful in this endeavor.”⁵ On May 20, 2005, the Bureau issued the

¹ Response to Notice of Apparent Liability for Forfeiture, filed by Cumulus Licensing, LLC, on June 20, 2005 (“Response”).

² Supplement to Response to Notice of Apparent Liability for Forfeiture, filed by Cumulus Licensing, LLC, on November 12, 2008 (“Supplement”).

³ 47 C.F.R. § 73.3526.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. MB20051810026 (MB May 20, 2005).

⁵ See Amended Application, Exhibit 11 (filed Feb. 14, 2005).

NAL for a violation of Section 73.3526 of the Rules for Cumulus's failure to maintain issues/programs lists for the Station.

In its Response, Cumulus states that it subsequently discovered that all but one of the Station's quarterly issues/programs lists in fact were timely filed and placed in the public file at the Station's then main studio location in Neenah, Wisconsin, within the geographical parameters specified in Section 73.1125 of the Rules.⁶ Specifically, Cumulus reports that:

The main studio for Station WDUZ-FM was shared by several stations in Neenah, Wisconsin, until the Fall of 2003, when it moved to a new location in Green Bay, while certain other of the stations relocated to a new studio in Oshkosh, Wisconsin. During the time the studio was shared, Station WDUZ-FM simulcast the programming of Station WWWX(FM). Thus, the issues/ programs lists for both stations were prepared at the same time. Cumulus later realized that the issues/ programs lists for Station WDUZ-FM had been transferred to the Oshkosh studio along with Station WWWX's public file instead of to the Green Bay studio location.

The simulcasting occurred from April 1, 1999 until October 6, 2003 . . . On October 6, 2003, Station WDUZ-FM moved to the new location in Green Bay . . . From that point on, issues/ programs lists were timely prepared and placed in the Station's public file.

[Therefore due to its new information] Cumulus was able to account for the previously [reported] missing lists and to certify that during the period from April 1, 1999 until October 6, 2003, all issues/ programs lists for Station WDUZ-FM were timely prepared and placed in the public file and available for public inspection. Furthermore, Cumulus has previously certified that except for the 4th quarter 1998 (just after it became licensee) it complied with Section 73.3526 of the Commission's Rules concerning all other quarterly issues/ programs lists.⁷

The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁸ Section 1.80 of the Rules,⁹ and The Commission's *Forfeiture Policy Statement*.¹⁰ In examining Cumulus's Response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.¹¹

⁶ 47 C.F.R. § 73.1125 requires that a broadcast station's main studio be located (1) within the station's community of license; (2) within the principal community contour of any station licensed to the station's community of license; or (3) within 25 miles of the reference coordinates of the station's community of license. Cumulus indicates, and we have confirmed, that the Neenah studio location was within 25 miles of Brillion.

⁷ Supplement at 1-2.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹¹ 47 U.S.C. § 503(b)(2)(D).

The "issues/programs" lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.¹² The Commission's public information file rule also safeguards the public's ability to assess the station's service and to meaningfully participate at the station's renewal process, and ensure the station's accessibility to and nexus with its community, to serve and respond to community programming needs.¹³ As such, the public information requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations.¹⁴ In the *Forfeiture Policy Statement*, the Commission found that the omission of even a single item (the issues/programs list) from the public inspection file is a serious violation because it "diminishes the public's ability to determine and comment on whether the station is serving the community."¹⁵

At the time we issued the NAL, the forfeiture amount was based on Cumulus's statements that the Station's public file was missing sixteen issues/programs lists. Now, however, based on Cumulus's new information, we believe that only one issues/programs list was, in fact, missing from the Station's file. In adopting the forfeiture guidelines and implementing rules, the Commission stated that it "will initially assess . . . violations [of the Act and the Commission's Rules] at the statutory amount," but, as appropriate, will adjust the base amount upward or downward based on the factors set out in Section 503 of the Act and particular facts presented in each case.¹⁶ Although the Commission has rejected arguments that characterize violations of the public file rule as minor and deserving of reduced forfeitures,¹⁷ considering the record as a whole, and staff practice in similar cases, we believe that an admonishment, rather than a forfeiture, is appropriate for the violations in this case.¹⁸ Thus, in light of our determination that the correct number of missing issues/programs lists for the Station is one, rather than sixteen, we will cancel the forfeiture and issue an admonishment.

¹² See *Normandy Broadcasting Corp. and Lawrence N. Brandt*, Initial Decision, 8 FCC Rcd 1, 14 (ALJ 1992), citing *Formulation of Policies and Rules to Broadcast Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365 (1989).

¹³ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁴ See 47 U.S.C. § 307(a).

¹⁵ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 26.

¹⁷ *Id.* at 17104-05 ¶ 39.

¹⁸ See note to 47 C.F.R. § 1.80(b)(4). See also, *EZ New Orleans, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7164 (1999) (renewal granted and licensee admonished for failure to comply with public file rule); *American Family Association*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (EB 2003) (NAL cancelled and licensee admonished based on response to NAL).

In view of the foregoing, Cumulus's June 20, 2005, the \$9,000 Notice of Apparent Liability (NAL/Acct. No. MB20051810026) for violations of the public inspection file rule is HEREBY CANCELLED. Cumulus Licensing, LLC is instead hereby ADMONISHED for its violation of 47 C.F.R. § 73.3526.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Cumulus Licensing, LLC