

Federal Communications Commission

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

In the Matter of)	
)	
Cumulus Licensing, LLC)	File Number EB-05-NY-238
)	
Licensee of Station WZAD)	NAL/Acct. No. 200632380005
Wurtsboro, New York)	
Facility ID #74285)	FRN 0002 8348 10

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 29, 2006

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("*NAL*"), we find that Cumulus Licensing, LLC ("Cumulus"), the licensee of FM Broadcast Radio station WZAD in Wurtsboro, New York, apparently willfully and repeatedly violated Section 73.1125(a) of the Commission's Rules ("*Rules*")¹ by failing to maintain a management or staff presence at WZAD's main studio. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("*Act*")², that Cumulus is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On September 9, 2005, in preparation for a routine broadcast inspection, an agent from the Commission's New York Office contacted WZAD's station manager and business manager to obtain the address and telephone number for WZAD's main studio. The station manager stated that the main studio is a small studio in Wurtsboro, but that all the station's activities, including program origination, are conducted from Cumulus's studio facilities in Poughkeepsie, New York. The agent called the local phone number received from WZAD's station manager several times during regular business hours on September 9, 2005, and each time there was no answer. The agent made arrangements with WZAD's contract engineer to inspect the main studio in Wurtsboro, New York.

3. On September 13, 2005, the agent conducted an inspection of WZAD's main studio located at 139 Sullivan Street, Wurtsboro, New York, 12790, with WZAD's contract engineer. The agent and the contract engineer arrived at the studio together during regular business hours. The agent observed that the door was locked and the lights were off. The contract engineer went to the business next door and returned with a woman who had the key to the studio. Both the contract engineer and the woman from the business next door stated that there had been no presence at the studio since some time in 2004. The agent observed minimal studio broadcast equipment and a transmitter for a studio-to-transmitter link that would allow the studio to go on the air if necessary. All equipment was powered off and it did not

¹ 47 C.F.R. § 73.1125.

² 47 U.S.C. § 503(b).

appear to the agent that anyone had been in the studio recently.³ To confirm that the telephone number he had called on September 9, 2005 was correct, the agent, using a cell phone, called the number he previously had called for the main studio and he heard the phone in the studio ring. The agent advised Cumulus's contract engineer of the violation for failure to maintain a staff presence at the main studio.

4. On October 11, 2005, the agent spoke by telephone with WZAD's station manager and advised him of Cumulus's violation for failure to maintain a staff presence at WZAD's main studio. In response to questions from the agent, the station manager stated that the Wurtsboro studio is not currently staffed, but that he believed there was a sufficient presence at the studio because the woman from the business next door had a key. He stated, however, that he would make arrangements to provide staff for that location.

5. On October 17, 2005, the agent spoke by telephone with WZAD's business manager, who stated that she believed that the last time someone worked at the Wurtsboro studio was November or December of 2004.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

7. Section 73.1125(a) of the Rules generally requires broadcast stations to maintain a main studio at one of the following locations: (i) within the station's community of license; (ii) at any location within the principal community contour of any AM, FM, TV broadcast station licensed to the station's community of license; or (iii) within twenty-five miles from the reference coordinates of the center of its community of license. The station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful management and staff presence at its main studio.⁶ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁷ In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and...use the studio as a 'home base.'"⁸

³ The agent found, however, a complete public inspection file, including a copy of a waiver permitting Cumulus to maintain WZAD's EAS equipment at its Poughkeepsie studio.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ See *Main Studio and Program Origination Rules*, 3 FCC Rcd 5024, 5026 (1988).

⁷ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 and n.2 (1992), clarified, 7 FCC Rcd 6800 (1992).

⁸ *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd 6800, 6802 (1992).

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8. An investigation by an FCC agent showed that there was no staff or management presence at the WZAD main studio in Wurtsboro, NY during normal business hours. There was no answer at the main studio when the agent called during normal business hours on September 9, 2005. During the September 13, 2005 inspection, which took place during normal business hours, the studio was locked, the lights were out, and all of the equipment was powered off. In addition, the station manager, the business manager, and the contract engineer for Cumulus admitted to the agent that no one had been stationed at the Wurtsboro studio since some time in 2004. Based on the evidence before us, we find that Cumulus apparently willfully and repeatedly violated Section 73.1125(a) of the Rules by failing to maintain a management and staff presence at the WZAD main studio.

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for violation of the main studio rule is \$7,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Cumulus is apparently liable for a (\$7,000) forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Cumulus Licensing, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 73.1125(a) of the Rules.¹¹

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, 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.

12. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

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

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period;

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

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1125(a).

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(2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹²

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Cumulus Licensing, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² See 47 C.F.R. § 1.1914.