

DA 04-331
Released: February 9, 2004

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, DC 20554
February 9, 2004

In Reply Refer to:
1800B3-SS
NAL/Acct No.: MB20041810013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Dorann Bunkin, Esquire
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006

In re: WMJA-FM, Appomattox, VA
Facility No. 36094
File No. BRH-20030602CME

Dear Ms. Bunkin:

This letter refers to the captioned application of Capstar TX Limited Partnership (“Capstar”) for renewal of license for station WMJA-FM, Appomattox, Virginia. For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to Capstar for violation of the Commission’s rule regarding a broadcast station’s public inspection file, 47 C.F.R Section 73.3526, and we grant the WMJA-FM license renewal application.

Public file rule violation. 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 has been placed in the station’s public inspection file at the appropriate times. In its original application, Capstar marked “Yes” to that certification. However, Capstar amended the application on September 9, 2003, changing its response to that certification to “No.” Capstar attached an Exhibit explaining that a station audit revealed that, during the period of August of 2000 (when Capstar acquired the station) through the second quarter of 2003, issues/programs lists were not placed in the public file because management was “unaware” of the requirements of Section 73.3526.¹

¹ Capstar indicates that prior to filing the renewal application, “a senior manager in the Capstar Roanoke-Lynchburg market reviewed the station’s public inspection file,” and Capstar made an affirmative certification based on this review. September 9, 2003 amendment at 1. However, a routine audit of station operations by a Capstar regional manager revealed that local management was unaware of the quarterly issues/programs list requirement.

Capstar states that station management has attempted to recreate the missing lists using the information contained in the pertinent section of the public file (letters of thanks regarding station support of community events and various awareness campaigns), but it cannot recreate all of the lists for the missing quarters because of the passage of time. Capstar asserts that it has taken steps to ensure that future issues/programs lists are prepared and filed correctly.

Section 73.3526 of the Commission's Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.² 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 licensee, excuse or nullify a licensee's rule violation.³

Section 503(b) of the Communications Act, 47 U.S.C. Section 503(b) and Section 1.80(a) of the Commission's rules, 47 C.F.R. Section 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.⁴ A continuing violation is "repeated" if it lasts more than one day.⁵

The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the violations were admitted to the Commission in the context of the license renewal application, and the licensee has attempted to correct the violation and instituted measures to prevent its recurrence. On the other hand, the violation occurred from August 2000 to the second quarter of 2003, therefore, the public file was not complete for a period of over two years. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the violation in this case.⁷ We will, however, reduce the forfeiture to \$3,000 due to the licensee's

² Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (Apr. 3, 1997), 13 FCC Rcd 4102 (1997) citing *License Renewal Applications of Certain Commercial Radio Stations*, 8 FCC Rcd 6400 (1993).

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999)(citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 F.C.C. 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

⁴ See *Capstar California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991).

⁵ *Id.*, 6 FCC Rcd at 4388.

⁶ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997), recon. denied FCC 99-407 (released December 28, 1999).

⁷ See, *KLDT-TV 55, Inc.*, 10 FCC Rcd 3198 (1995); see also *Barry D. Wood, Esq.*, 7 FCC Rcd 6262 (FOB 1992).

voluntary disclosure of the violation.⁸

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁰

The public inspection file rule serves the critical function of making available to the public important information regarding programs that provided a station's most significant treatment of community issues during the license term. On balance, however, we find that Capstar's violation of Section or 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹¹ Further, we find that station WMJA-FM served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹²

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503 (b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission's Rules, 47 U.S.C. Sections 0.283 and 1.80,

⁸ See *Surrey Front Range Limited Partnership*, 7 FCC Rcd 6361 (FOB 1992) (voluntary disclosure constitutes a downward adjustment criterion).

⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

¹⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹¹ For example, we do not find here that the licensee's station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate WJJS-FM in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 F.C.C.2d at 200. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹² See 47 U.S.C. § 309(k).

Capstar TX Limited Partnership is hereby advised of its apparent liability for a forfeiture of \$3,000 for willfully and repeatedly violating Section 73.3526.

Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Capstar SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the NAL/Account number referenced in the caption of this document (MB20041810013).

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

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. Section 1.1914.

Finally, IT IS ORDERED, that the application (File No. BRH-20030602CME) of Capstar TX Limited Partnership for renewal of license for station WMJA-FM, Appomattox, Virginia, IS GRANTED.

Sincerely,

W. Kenneth Ferree
Chief, Media Bureau

cc: Capstar TX Limited Partnership