

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

In re Application of)	
)	
Cumberland Communities Communications Corporation)	Facility I.D. No. 14724
)	NAL/Acct. No. MB-200741410295
)	FRN: 0007421530
For Renewal of License for)	File No. BRED-20040331ANB
Station WDVX(FM))	
Clinton, Tennessee)	

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 26, 2007

Released: March 28, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application of Cumberland Communities Communications Corporation (the "Licensee") for renewal of its license for noncommercial educational Station WDVX(FM), Clinton, Tennessee (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ by the Chief, Media Bureau by authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently willfully and repeatedly violated Section 73.3527 of the Rules,³ by failing to retain all required documentation in the WDVX(FM) public inspection file. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000), and we grant the captioned WDVX(FM) renewal application.

II. BACKGROUND

2. Section 73.3527 of the Rules requires a noncommercial broadcast licensee 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.⁴

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3527.

⁴ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

3. Section III, Item 3 of the WDVX(FM) license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3527 has been placed in the Station's public inspection file at the appropriate times. The Licensee indicated "No" to that certification and attached an Exhibit 11 to the application, which, as amended on October 17, 2005, states as follows:

WDVX has recently discovered that the quarterly issues programs reports were not placed in the public inspection file in the proper format and that reports were missing for the first two and one-half years that the station was on the air. This problem came to the General Manager's attention after he attended a seminar on the local public file after the renewal application was filed.

WDVX went on the air at the beginning of 1997. At that time, all programming was live, and no quarterly issues programs reports were in the public file from January 1997 through June 1999. Because the programming was broadcast live, the station cannot accurately reconstruct those reports.

From July 1999, the station prepared Public Service Posts, a daily listing of live announcements relating to the community. These Posts were placed in the public file on a weekly basis. The Posts were not organized on a quarterly basis, nor organized by issue (although the content is apparent from the scripts of the announcements in the Public Service Posts), and the actual date and time period during which the programming aired was not on each daily Post in the public file (but is available in the station's logs). The station reconstructed the quarterly issues programs reports based on the information contained in the daily Public Service Posts that were in the public file and from the program logs so that the quarterly issues programs reports are in the proper format and contain all the required content elements as set forth in the FCC's public file rule. The reconstructed reports were placed in the public file in mid-August 2004.

The station has taken steps to ensure that future quarterly issues programs reports containing all information required will be timely placed in the public file on a quarterly basis. In addition, the station will send its quarterly issues programs reports to counsel for review until WDVX is confident that it is preparing the reports properly.⁵

III. DISCUSSION

4. *Proposed Forfeiture.* As the Licensee has acknowledged, at the time of filing of the WDVX(FM) license renewal application and during periods within the license term, the Station's public inspection file did not contain a substantial number of the items required to be retained in the file by Section 73.3527 of the Rules. 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.⁶

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the

⁵ Application at Exhibit 11.

⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ Section 312(f)(2) 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.”¹¹

6. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3527.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “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.”¹³

7. In this case, although the Licensee admitted to the violations, it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Moreover, the violations were extensive, occurring over a three-year period between 1997 and 1999 and involved ten missing issues/programs lists. Moreover, even after 1999, the weekly Public Service Posts that the Licensee placed in the file did not include the information required to be maintained in quarterly issues/programs lists by Section 75.3527.¹⁴ Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violation of Section 73.3527.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁵ 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 Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant

⁷ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

¹² *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹³ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

¹⁴ Section 73.3527(e)(8) states, in pertinent part, that each issues/programs “list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated.” The lists must be prepared and placed in the file on a quarterly basis. 47 C.F.R. § 73.3527(e)(8).

¹⁵ 47 U.S.C. § 309(k).

the renewal application.¹⁶ 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.”¹⁷

9. We find that the Licensee’s violations of Section 73.3527 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁸ Further, we find that Station WDVX(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Cumberland Communities Communications Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$10,000 for its apparent willful and repeated violation of Section 73.3527 of the Commission’s Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, Cumberland Communities Communications Corporation 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 proposed 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, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 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 Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

¹⁶ 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 *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ 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*, Decision, 32 FCC 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 [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent’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 full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹

16. IT IS FURTHER ORDERED, that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the license renewal application of Cumberland Communities Communications Corporation for Station WDVX(FM), Clinton, Tennessee (File No. BRED-20040331ANB) IS GRANTED.

17. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Cumberland Communities Communications Corporation, O. Box 27568, Knoxville, Tennessee 37927, and to its counsel, John Crigler, Esquire, Garvey, Schubert Barer, 1000 Potomac Street, N.W., Washington, D.C. 20007-3501.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

¹⁹ See 47 C.F.R. § 1.1914.