

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

In re Application of
Access.1 New York License
Company LLC
For Renewal of License for
AM Station
WWRL(AM), New York, NY
Facility I.D. No. 68906
NAL/Acct. No. MB-200741410345
FRN: 0008296550
File No. BR-20060131ACS

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 14, 2007

Released: August 15, 2007

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the captioned application (the "Application") of Access.1 New York License Company LLC (the "Licensee") for renewal of its license for Station WWRL(AM), New York, New York (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, Audio Division, Media Bureau by authority delegated under Section 0.283 of the Rules,2 we find that the Licensee apparently willfully violated Section 1.17 of the Rules by falsely certifying in the WWRL(AM) license renewal application that the Station's public inspection file was complete throughout the license term.3 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 license renewal application.

II. BACKGROUND

2. Broadcast station license renewals are governed by Section 309 of the Communications Act of 1934, as amended (the "Act"). Section 309(k)(1) provides that, in order for the Commission to grant a broadcast station renewal of its license, the Commission must find, upon consideration of the application and pleadings, that, during the preceding license term: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together,

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. §1.17(a)(1) and (2).

constitute a pattern of abuse.⁴ 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.”⁵

3. Section 1.17(a) of the Rules provides that no person, in any written or oral statement of fact, may provide material factual information that is incorrect or misleading. It also provides that no person may provide in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁶ Any applicant for a Commission authorization is subject to this rule.⁷ Recently, the Commission expanded the scope of Section 1.17,⁸ with respect to investigations and adjudications, to prohibit written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made without a reasonable basis for believing the statement is correct and not misleading.⁹ Misrepresentation involves false statements made with an intent to deceive.¹⁰ Lack of candor involves concealment, evasion, or other failure to be fully forthcoming, accompanied by an intent to deceive.¹¹ However, “a false statement, even absent an intent to deceive, may constitute an actionable violation of Section 1.17 of the Rules.”¹²

4. On September 20, 2005, an agent from the Commission’s New York, Northeast Region, Enforcement Bureau Office (“New York Office”) conducted an inspection of the Station’s main studio and found that its public inspection file did not contain any issues/programs lists. A Licensee is required to place these lists in the station’s public inspection file on a quarterly basis.¹³ After further inquiry by the agent, the Licensee produced a list of religious programs previously broadcast on the station. This program list did not comply with Section 73.3526(e)(12), which requires the licensee to provide a list of the programs’ titles, a brief narrative describing those issues that were given significant treatment, and the programming that provided this treatment.¹⁴ The narrative must include the time, date, duration and title

⁴ 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).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁶ 47 C.F.R. § 1.17(a)(2).

⁷ See 47 C.F.R. § 1.17(b)(1).

⁸ 47 C.F.R. § 1.17.

⁹ *In the Matter of Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016 (2003).

¹⁰ *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129 (1983).

¹¹ *Id.*

¹² See e.g., *Southern Skies Corporation*, Memorandum Opinion and Order, 11 FCC Rcd 19176, 19182 (1996).

¹³ 47 C.F.R. § 73.3526(e)(12).

¹⁴ *Id.*

of each program in which each listed issues was treated.¹⁵ Thereafter, on January 26, 2006, the Commission's New York Office issued a Letter of Inquiry ("LOI") concerning this and another violation discovered by the agent. In its response, which was received by the Commission's New York Office on February 14, 2006, the Licensee stated that it had misunderstood the requirements of the public inspection file rule and had corrected all of the violations identified by the agent during the inspection. On July 12, 2006, the New York Office issued a Notice of Apparent Liability for Forfeiture¹⁶ which was paid on July 26, 2006.

5. On January 31, 2006, Licensee filed the captioned application for the renewal of the Station's license. The renewal application contained a certification asking the applicant to certify that the documentation required by the Commission's public inspection file rule had been placed in the Station's public inspection file at the appropriate times.¹⁷ The Licensee checked "Yes" to that certification.¹⁸ After the Audio Division received the license renewal application and questioned the Licensee concerning the discrepancy between its certification in the application and the findings of the Station inspection, Licensee, on October 25, 2006, amended the certification to "No" and attached an Exhibit "clarifying" that it had a "mistaken understanding" of the Commission's Rules which led it to believe that the a list of religious programs that it supplied to the New York Office's agent during the inspection complied with the Commission's issues/programs list requirement.¹⁹ The Exhibit further states that the Station's public inspection file was, at the time it made the certification in the renewal application, complete in all other respects, the Licensee has rectified the deficiency, and that the issues/programs lists and other required documentation are being maintained in the file.²⁰

III. DISCUSSION

6. *Proposed Forfeiture.* The truthfulness of the certification in the renewal application as originally filed must be evaluated on whether: 1) a list of religious programs placed in a public inspection file constitute issues/programs lists within the meaning of Section 73.3526(e)(12) of the Rules;²¹ and 2) there was a "reasonable basis" for the Licensee's stated explanation that it mistakenly believed that such a list constituted issues/programs lists within the meaning of Section 73.3526(e)(12) of the Rules.

7. While religious programming can constitute issue-responsive programming, Section 73.3526(e)(12) specifically states that issues/programs list "shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. As noted above, 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 list of religious programs Licensee placed

¹⁵ *Id.*

¹⁶ *Access.1 New York License Company LLC*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200632380006 (Enf. Bur., New York Office, released July 12, 2006) (\$4,000 Notice of Apparent Liability for Forfeiture for violation of Section 73.3526 of the Rules and admonition for violation of Section 73.62 of the Rules requiring licensee to terminate operation or reduce power when the field strength exceeds limits set forth in the station's authorization).

¹⁷ See FCC Form 303-S, "Application for Renewal of Broadcast Station License," Section III, Item 3.

¹⁸ Licensee subsequently amended the application with regard to this certification on October 25, 2006.

¹⁹ Amended Application, Exhibit 1, at 1.

²⁰ *Id.*

²¹ 47 C.F.R. § 73.3526(e)(12).

in its public inspection file contained none of this information. Because Licensee did not include that information, the list of religious programs that it placed in the public inspection file for WWRL(AM) did not constitute issues/programs lists within the meaning of the rule and its certification in its license renewal application that all documentation required by the public inspection file rule had been placed in the station's public inspection file at the appropriate times was incorrect. Even a cursory review of the subject rule would have apprised Licensee of the need for additional information on programming documentation in order for that documentation to be considered an issues/programs list. Moreover, the Licensee's Vice President for Operations and the Station's Chief Engineer were advised specifically during the September 20, 2005 inspection that the station's public inspection file contained no issues/programs lists and that a proffered program list would not satisfy this requirement. We believe there was no reasonable basis for the Licensee's certification that the documentation required by Section 73.3526 of the Rules had been placed in the station's public inspection file at the appropriate time. Accordingly, find that Licensee's certification in the WWRL(AM) license renewal application to the contrary was demonstrably false.

8. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."²² Full and clear disclosure of all material facts in every application is essential to the efficient administration of the Commission's licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data which only the applicant can provide. The choice of remedies and sanctions is an area in which we have broad discretion.²³ While Licensee falsely certified compliance with the public inspection file rule, our consideration of all of the facts lead us to conclude that Licensee's actions in this regard do not rise to such a level or pattern of misconduct so as to warrant designation for evidentiary hearing. In particular, we find nothing in the record that evidences an intent to mislead the Commission. Accordingly, we conclude, based upon the information before us, that no substantial and material question of fact remains with respect to Licensee's qualifications to remain a Commission licensee. We believe, however, that Licensee should be sanctioned for its false certification. Accordingly, we will impose a monetary forfeiture for the apparent violation of Section 1.17 of the Commission's Rules.

9. 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 United States for a forfeiture penalty.²⁴ 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.²⁵ 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,²⁶ and the Commission has so interpreted the term in the Section 503(b) context.²⁷

²² See *Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006)(citing, e.g., *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000).

²³ See, e.g., *RKO General, Inc. v. F.C.C.*, 670 F.2d 215, 237 (D.C. Cir. 1981); *Leflore Broadcasting Co. Inc. v. F.C.C.*, 636 F.2d 454, 463 (D.C. Cir. 1980); *Lorain Journal Co. v. F.C.C.*, 351 F.2d 824, 831 (D.C. Cir. 1965); *USA Broadcasting, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4253, 4256 (2004).

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

²⁵ 47 U.S.C. § 312(f)(1).

²⁶ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁷ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

10. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules and Section 503(b)(2)(A) of the Communications Act of 1934, as amended,²⁸ establish a base forfeiture amount of \$32,500 for misrepresentation/lack of candor.²⁹ 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."³⁰

11. In this case, the Licensee's certification in its license renewal application was false with regard to whether issues/programs lists had been placed in the stations' public inspection files at the appropriate times. Although it is essential that licensees make full and clear disclosure of all material facts in every application, the false certification here was not made with the intention of deceiving the Commission. Licensee did in fact maintain some documentation of its issue-responsive programming even though it did not constitute an issues/programs list. Additionally, no question has been raised about the responsiveness of the Station's programming to community issues. Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we propose to reduce the forfeiture from the base amount to \$10,000 for the false certification.³¹

12. *License Renewal Applications.* As noted above, Section 309(k)(1) provides that in order to grant a renewal application we must 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.³² 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.”³³ We find that the Licensee's apparent violation of Section 1.17 of the Rules, and its established violations of Sections 73.3526 and 73.62 of the Rules, do not, under the circumstances present in this case, themselves constitute “serious violations” warranting designation for evidentiary hearing. Neither do the Licensee's violation of Section 1.17 of the Rules, and the violations of Sections 73.3526(e)(12) and 73.62(b)(3) of the Rules, as found by the Enforcement Bureau's field agent, constitute a pattern of abuse.³⁴ Further, we find that Station WWRL(AM) served the public interest, convenience,

²⁸ 47 U.S.C. § 503(b)(2)(A).

²⁹ 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. See also *Inflation Adjustment of Maximum Forfeiture Penalties*, Order, 69 FR 47788 (August 6, 2004).

³⁰ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

³¹ See, e.g., *WKVE, Semora, North Carolina*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411 (2003).

³² 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).

³³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³⁴ 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

and necessity during the license term. Accordingly, we will grant the WWRL(AM) license renewal application below.

IV. ORDERING CLAUSES

13. 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 Access.1 New York License Company LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for the apparent willful violation of Section 1.17 of the Commission's Rules.

14. 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*, Access.1 New York License Company LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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 Number 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.

16. 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.

17. 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.

18. 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. 20554.³⁵

19. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Access.1 New York License Company LLC for Station WWRL(AM) (File No. BR-20060131ACS) IS GRANTED.

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 stations] 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).

³⁵ See 47 C.F.R. § 1.1914.

20. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Access.1 New York License Company LLC, 333 Seventh Avenue, 14th Floor, New York, New York 10001, and to its counsel, James L. Winston, Esquire, Rubin, Winston, Diercks, Harris & Cooke, LLP, 1155 Connecticut Avenue, N.W., Sixth Floor, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau