



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

May 14, 2008

DA 08-1145

In Reply Refer to:

1800B3-JWR

NAL/Acct No.: MB20031810053

FRN: 0002013944

Released: May 14, 2008

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. R. Shane Southern
Southern Communications Corp.
306 South Kanawha
Hinton, WV 25801

In re: WMTD-FM, Hinton, WV
Southern Communications Corp.
Facility ID: 6012
File No. BRH-20030602BEZ

Dear Mr. Southern:

The Audio Division, has before it the November 7, 2003, letter filed on behalf of Southern Communications Corp. ("SCC"), licensee of Station WMTD-FM, Hinton, West Virginia.¹ The letter requests reduction or cancellation of an October 8, 2003, Notice of Apparent Liability for a Forfeiture ("NAL") in the amount of three thousand dollars (\$3,000) for violations of Section 73.3526² of the Commission's Rules (the "Rules") regarding SCC's failure to maintain station WMTD-FM's public inspection file.³ By this action, we cancel the NAL and admonish SCC for violating Section 73.3526 of the Rules.

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 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times. SCC indicated "No" to that certification, attaching an Exhibit explaining that the issues/programs list for the second quarter of 2001 and the biennial ownership reports for 1996 and 1998 were not timely placed in the public file. In its Exhibit, SCC acknowledges that it has corrected all omissions in the public inspection file.

On October 8, 2003, the Bureau issued an NAL for violation of Section 73.3526 of the Rules. On November 7, 2003, SCC submitted its Response. In its Response, SCC seeks cancellation of the

¹ "Request for Reduction or Cancellation of Forfeiture" filed by Southern Communications Corp. on November 7, 2003 ("Response").

² 47 C.F.R. § 73.3526.

³ Notice of Apparent Liability for Forfeiture, NAL/Acct. No. MB-AD 20031810040 (rel. Oct. 8, 2003).

proposed forfeiture. SCC asserts that the forfeiture amount is excessive. SCC also asserts that its failure to place one issues/programs list in a public file should be treated as a “minor violation” for which the Commission in past cases has merely issued an “admonishment.” In addition, SCC argues that it is entitled to an admonishment rather than a forfeiture based on its record of overall compliance.⁴

The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁵ Section 1.80 of the Rules,⁶ and The Commission's *Forfeiture Policy Statement*.⁷ In examining SCC’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.⁸

Section 73.3526 of the Rules requires commercial broadcast stations to maintain a public inspection file containing, among other things, “ownership reports and related materials” and “radio issues/programs lists.”⁹ It is undisputed that the issues/programs list for the second quarter of 2001 and the 1996 and 1998 biennial ownership reports were missing from the WMTD-FM public inspection file. Although SCC contends that “for some reason” this list was not placed in the file, we find that this one omission constitutes a “repeated” violation of Section 73.3526(a) of the Rules. A continuing violation is “repeated” if it lasts more than one day.¹⁰ Furthermore, where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation.¹¹

SCC also asserts that even though one issues/programs list was missing from the public file, no harm occurred because “since 1975 . . . no member of the public has ever asked to see [WMTD-FM’s] Public Inspection File.”¹² We strongly disagree. The “issues/programs” lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of

⁴ See Response at 5.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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*”).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 C.F.R. §§ 73.3526(a), 73.3526(e)(5), 73.2526(e)(12).

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

¹¹ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (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).

¹² Response at 2.

its community.¹³ 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.¹⁴ 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.¹⁵ 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."¹⁶ Therefore, the violation is not mitigated by the licensee's perception that no harm was committed by the omission of the list.

Moreover, notwithstanding SCC's argument that the omission of one issues/programs list is of minor importance, the Commission has levied forfeitures for relatively minor omissions from the public file.¹⁷ In addition, the Media Bureau has recently engaged in an effort to enforce the public file rules more forcefully in connection with license renewal applications. For instance, the former Media Bureau Chief has stated: "Our decision to fine . . . stations reflects the seriousness of the violations. . . . The public file provides citizens with important information about broadcasters' service to their communities. . . . [and] the FCC will not tolerate less than diligent efforts to ensure the accuracy and timeliness of that information."¹⁸

While SCC admits that it failed to maintain its public inspection file, SCC contends that the Commission's assessed forfeiture amount is excessive. SCC argues that the \$3,000 forfeiture assessed for its failure to place one issues/programs list in the public file is contrary to Commission policy.¹⁹ 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.²⁰ The Commission has rejected arguments that characterize violations of certain Rules, such as the public information file rule, as minor and deserving of reduced forfeitures.²¹ However, in this case the violation was admitted to the Commission in the context

¹³ 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).

¹⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁵ See 47 U.S.C. § 307(a).

¹⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05 ¶ 39.

¹⁷ See, e.g., *Richard Hildreth, Esq.*, Letter, 7 FCC Rcd 6292 (MMB 1992) (forfeiture of \$1000 levied for omission of one ownership report); *Barry D. Wood, Esq.* Letter, 7 FCC Rcd 6262 (FOB 1992) (forfeiture of \$3,500 levied for violating Section 73.3526(a)).

¹⁸ See "FCC Fines 28 Radio Stations for Public File Violations," News Release, (Oct. 8, 2003).

¹⁹ Response at 5.

²⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100 ¶ 26.

²¹ *Id.* at 17104-05 ¶ 39. See also the cases cited in Note 17, *supra*.

of the license renewal application, and the licensee stated that it corrected the violation as soon as it became aware of the infraction. 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 relatively minor violation in this case.²²

In view of the foregoing, SCC's November 7, 2003, response to our October 8, 2003, NAL in the amount of \$3,000 IS GRANTED, and the Notice of Apparent Liability (MB-20031810053) for violation of the public inspection file rule is HEREBY CANCELLED. Southern Communications Corp. is instead hereby ADMONISHED for its violation of 47 C.F.R. § 73.3526.²³

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: George Borsari, Esq.

²² See note to 47 C.F.R. § 1.80(b)(4). See also *WS Communications, LLC*, Forfeiture Order, 15 FCC Rcd 10384 (EB 2000); *Sarkes Tarzian, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 127 (1977).

²³ See, e.g., *American Family Association*, Memorandum Opinion and Order, 18 FCC Rcd 16530 (EB 2003) (NAL cancelled and licensee admonished based on response to NAL).