

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

In re Application of)	
)	
WTRI Holding, LLC)	Facility I.D. No. 67755
)	NAL/Acct. No. MB-201441410019
For Renewal of License for)	FRN: 0012801213
Station WTRI(AM))	File No. BR-20110624ABD
Brunswick, Maryland)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: March 28, 2014

Released: March 31, 2014

By the Chief, Audio Division:

I. INTRODUCTION

1. The Media Bureau (“Bureau”) has before it: 1) the application (“Application”) of WTRI Holding, LLC (“Licensee”), for renewal of its license for Station WTRI(AM), Brunswick, Maryland (“Station”); and 2) the Petition to Deny (“Petition”) the Application filed by John J. Mullaney (“Mullaney”) of Mullaney Engineering, Inc.¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”)² we find that Licensee apparently willfully and repeatedly violated Section 73.1740 of the Rules³ by discontinuing operation of the Station without timely requesting special temporary authority (“STA”).⁴ Based upon our review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of five thousand dollars (\$5,000) and deny the Petition.

II. BACKGROUND

2. Section 73.1740 of the Rules requires that stations adhere to minimum operating requirements and, pursuant to Section 73.1740(a)(4) of the Rules, if they are unable to do so for more than 30 days, they must request authorization to remain silent. Section III, Item 4 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that during the preceding license term, the station has not been silent (or operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Licensee indicated “No” in response to this question, and explained that the Station was silent from January 28, 2005,⁵ to March 22, 2005;⁶ and again from February 11, 2009, to March 25, 2009.⁷

¹ Mullaney filed the Petition on September 28, 2011. Licensee filed a response dated November 30, 2011, on December 2, 2011.

² This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.1740.

⁴ See 47 C.F.R. §73.1740(a)(4).

3. According to Commission records, Licensee filed a request for STA to remain silent on March 16, 2009, indicating that it had gone silent February 11, 2009,⁸ and notified the Commission on April 20, 2009, that it had resumed operations on April 15, 2009. On March 6, 2012, Licensee notified the Commission that it had been silent since July 15, 2011, and on July 9, 2012, notified the Commission that it had resumed operations on June 30, 2012.

4. In its Petition, Mullaney alleges that the Application should be denied because the Station has had extended periods of unauthorized silence. Specifically, Mullaney alleges that he visited the WTRI site on August 28, 2011, to view the public file, but the Station was not operating, its offices were closed and the area around the station was not maintained.⁹ Based upon these observations, Mullaney further opines that the Station is not operating within its licensed parameters.¹⁰

5. Mullaney further alleges that since May 5, 2011, he monitored the Station “on at least 25 separate days” but no operation was ever detected.¹¹ He also states that observations were made on July 15, August 1, August 15, and September 1, 2011, but no transmission was detected from the Station. Mullaney also believes that the required renewal announcements were not made on those dates. Mullaney also notes that the Application discloses unauthorized periods of silence in 2005 and 2009.¹² Accordingly, Mullaney requests that we deny the Application.

6. In its Opposition, Licensee states that although the Station was on the air at the time the Application was filed, it was forced to go silent shortly thereafter due to financial hardship. Licensee states that it filed a notification on November 7, 2011,¹³ and that while it does “not dispute all assertions made by [Mullaney] with regard to the on-air status, we feel that there are inaccuracies and misrepresentations.”¹⁴ Licensee does not provide further explanation.

III. DISCUSSION

7. *Proposed Forfeiture.* 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so interpreted the term in

⁶ Commission records indicates that the Station resumed operations on February 23, 2005. *See Letter to Marlene H. Dortch from Gregory L. Masters* (Feb. 23, 2005).

⁷ Application, Exhibit 13.

⁸ *See* File No. BLSTA-20090316AAR. The staff dismissed this request on January 7, 2010.

⁹ Petition at 1. Mullaney includes photographs showing overgrown foliage around the Station. *Id.* at Appendix A.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2.

¹² *Id.* at 1-2.

¹³ Commission records do not indicate that such a notification was ever received.

¹⁴ Opposition at 1.

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

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

the Section 503(b) context.¹⁸ 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.”¹⁹

8. Section 73.1740(a)(4) of the Rules requires licensees to request permission to remain off the air for more than 30 days. Licensee indicated in Application that it was silent from July 15, 2011 until June 30, 2012. An STA request for this silent period should have been filed by August 15, 2011, but was not filed until March 6, 2012.

9. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$5,000 for the unauthorized discontinuance of service.²⁰ Here, the Station was silent for over seven months without the required STA.²¹ Moreover, Licensee has not provided an explanation for its failure to timely request STA.²² Accordingly, we will impose the full \$5,000 forfeiture for this period of unauthorized silence.

10. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.²³ 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 the renewal application.²⁴ 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.”²⁵

11. We find that Mullaney has failed to raise a substantial and material question of fact which established a *prima facie* case for denial of the Application. Mullaney’s allegations regarding the Station’s renewal announcements, public file, and operations within licensed parameters all relate to observations made on July 15, August 1, August 15, and September 1, 2011, and Mullaney’s visit to the Station on August 28, 2011. These were days which Licensee has informed the Commission – albeit

¹⁸ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California*”).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ 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.

²¹ Licensee’s two-month silent period in 2009 was authorized by the March 16, 2009, STA Request. However, we note that the STA Request should have been filed on Friday, March 13, 2009, but was not filed until Monday, March 16, 2009. See 47 C.F.R. § 73.1740(a)(4).

²² Assuming Licensee did indeed file a silent notification on November 7, 2011, as it claims to have, that notification would have still been untimely because it was not filed within 30 days of the station ceasing operations on July 15, 2011.

²³ 47 U.S.C. § 309(k).

²⁴ 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).

²⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

untimely – that the Station was silent.²⁶ Additionally, while Mullaney claims he monitored the Station “on at least 25 separate days”, he does not provide specific dates, and there is no reason to believe that any of those dates fall outside the periods in which Licensee admits the Station was silent.

12. Additionally, we find that the Station’s periods of silence do not warrant a short-term renewal.²⁷ Licensee acquired the Station’s license on January 28, 2005,²⁸ and Station’s license term ended on October 1, 2011. The Station was only silent for a total of 6 months during the 80 month period in which Licensee held the Station’s license. We will renew the Station’s license for the full term ending on October 1, 2019.

13. We also find that Licensee’s apparent violation of Section 73.1740 of the Rules does not constitute a “serious” violation warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²⁹ Further, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violation that would preclude grant of the application.

IV. ORDERING CLAUSES

14. 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 WTRI Holding, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of five thousand dollars (\$5,000) for the apparent willful and repeated violation of Section 73.1740 of the Commission’s Rules.

15. 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*, WTRI Holding, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed

²⁶ To the extent that Licensee was unable to provide timely on-air renewal announcements due to the Station’s silence, we expect that Licensee aired such announcements upon returning to normal operation. We will require Licensee to confirm that this has happened.

²⁷ See, e.g., *LKCM Radio Group, LP*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 14-122 (MB Feb. 3, 2014) (short-term renewal of two years granted where station was silent for nearly half its license term).

²⁸ See File No. BAL-20040728ABX (consummated on January 28, 2005).

²⁹ For example, we do not find here that Licensee’s operation of the Station “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.” *Id.*, 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).

on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Alexander.Sanjenis@fcc.gov.

17. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

18. 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.

19. 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, DC 20554.³⁰

20. IT IS FURTHER ORDERED, that the Petition to Deny filed by Mullaney Engineering, Inc., on September 28, 2011, IS DENIED.

21. IT IS FURTHER ORDERED, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WTRI Holdings, LLC, 214 13th Avenue, Brunswick, MD 21716-1830.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁰ See 47 C.F.R. § 1.1914.