

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

In the Matter of)	
)	Facility ID No. 73913
Rama Communications, Inc.)	NAL/Acct. No. MB-201541410016
)	FRN: 0005023643
Licensee of WQBQ(AM))	File No. BR-20110929AES
Leesburg, Florida)	

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

Adopted: June 16, 2016**Released: June 16, 2016**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us the captioned application for license renewal (Application) of Rama Communications, Inc. (Licensee), licensee of WQBQ(AM), Leesburg, Florida (Station). Also before us is a December 27, 2011, Petition to Deny (Petition) filed by Robert E. Boris (Boris).¹ This *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,² finds that Licensee apparently violated Section 73.3526 of the Commission's rules (Rules)³ regarding maintenance of and access to the Station's public inspection file. Based upon our review of the facts and circumstances before us, we grant the Petition in part, admonish Licensee for violating Section 1.17 of the Rules,⁴ and conclude that Licensee is apparently liable for forfeiture in the amount of fifteen thousand dollars (\$15,000) and that the Application should be granted for a period of two years.

II. BACKGROUND

2. On November 3, 2010, the Enforcement Bureau issued a \$25,000 Notice of Apparent Liability for Forfeiture (NAL) for violations of the main studio and public file rules (*2010 NAL*).⁵ The Enforcement Bureau warned that "future violations...may result in more severe enforcement penalties, including significantly larger forfeitures...."⁶ On September 20, 2011, Licensee filed the Application. In

¹ Licensee filed an Opposition to Petition to Deny on January 26, 2012 (Opposition).

² This *NAL* is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934 (Act), and Section 1.80 of the Rules. See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under Section 0.283 of the Rules. See 47 CFR § 0.283.

³ 47 CFR § 73.3526.

⁴ 47 CFR § 1.17.

⁵ See *Rama Comm'cns, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 15246 (EB 2010). WRHB(AM) became WQBQ(AM) on December 10, 2010. Licensee entered into an installment payment plan to pay the *2010 NAL* over a period of two years.

⁶ *2010 NAL* at 15249, n.18.

response to Section III, Question 3, Licensee certified that its public file was complete and disclosed the public file violation that was the subject of the 2010 NAL.⁷

3. On December 27, 2011, Boris timely filed the Petition. He states that he visited the Station on the morning of December 5, 2011, and was both denied immediate access to the public file and treated disrespectfully by Station staff. He reports that he returned that afternoon, as requested, reviewed the file, found it deficient in many significant respects, and states that he was denied the opportunity to copy it.⁸ In the Opposition, Licensee disputes these claims, stating that: (1) the Petition is “payback” for not hiring Boris as a Station employee; (2) Station staff asked Boris to return at a later time because they were “on the air,” and Boris was granted access to the public file at a mutually convenient time that day;⁹ and (3) the public file is “in order.”¹⁰

III. DISCUSSION

4. *Petition to Deny.* Section 309(d)(1) of the Act¹¹ provides that any party in interest may file a petition to deny an application. In the context of a license renewal application, a petitioner must, pursuant to Section 309(d) of the Act,¹² provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,¹³ which governs our evaluation of an application for license renewal.

5. Boris claims that he was denied immediate access to and the ability to make copies of the public file. A public file must be available for public inspection at any time during regular business hours, and a licensee may not require that a member of the public make an appointment in advance or return at another time to inspect the public file.¹⁴ Here, Licensee concedes that Boris was denied immediate access to the public file. Boris also raises a substantial and material question of fact as to whether Licensee made available for printing the contents of the public file. Because Licensee does not contest that Station staff would not allow Boris to make copies,¹⁵ we credit Boris’ account that he was also denied the opportunity to copy the file. Accordingly, we conclude that Licensee violated Section 73.3526(c)(1) of the Rules by failing to make the public file available immediately and to provide copies of materials in the file.

6. Next, Boris alleges that the public file was deficient. Specifically, he states that it lacked: (1) information related to its authorization;¹⁶ (2) applications filed with the Commission;¹⁷ (3) the most

⁷ Application at Exh. 6. It noted that the Application would be “supplemented with a statement by the Licensee as to the steps that were taken to address the violations.” We have no record of such a statement.

⁸ Petition at 6-7.

⁹ Opposition at 2. Licensee does not comment on whether Boris was given the opportunity to make copies but it implies that he left soon after viewing the file. Opposition at 3.

¹⁰ Opposition at 3.

¹¹ 47 U.S.C. § 309(d)(1).

¹² 47 U.S.C. § 309(d).

¹³ 47 U.S.C. § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993).

¹⁴ 47 CFR §73.3526(c). See also *Availability of Locally Maintained Records for Inspection by Members of the Public*, Public Notice, 13 FCC Rcd 17959 (1998).

¹⁵ There is also no evidence that Licensee later provided copies of the public file to Boris.

¹⁶ 47 CFR § 73.3526(e)(1). However, Boris does not specifically state that the file did not contain the authorization or the contour maps required by 47 CFR §73.3526(e)(4). He indicates that he believes there should be related

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recent ownership report; (4) a political file; (5) letters and email from the public;¹⁸ (6) material related to any Commission investigation or complaint; (7) all issues/programs lists; (8) all local public notice announcement notices; (9) all time brokerage agreements; and (10) all joint sales agreements.¹⁹ In response, Licensee states that the public file is “in order,”²⁰ “in good shape,”²¹ and the Station is “operating pursuant to the Rules.”²²

7. Section 73.3526(a) of the Rules requires broadcast licensees to maintain a public file containing specific types of information related to station operations.²³ Except as indicated in notes 15-18 with respect to evidentiary gaps or mistaken citations in Boris’s Petition, the information alleged absent is, indeed, required to be in the public file.²⁴ Here, Licensee’s response is insufficient because it responds only briefly and generally to the specific, numerous allegations cited in the Petition. Most importantly, it never states that the public file was maintained as required for the entire license term, as claimed in the Application.²⁵ Accordingly, we find that Licensee apparently violated Section 73.3526(e), as the Petition made a *prima facie* showing of rule violations that Licensee has failed to rebut. We thus grant the Petition in part, and deny it in all other respects. We also admonish Licensee for its false certification in the Application that its public file was updated throughout the license term, when in fact it was not.²⁶

8. *Proposed Forfeiture.* As noted above, Licensee denied access to the Station’s public file, and the file did not contain many of the items required to be retained by Section 73.3526 of the Rules. Where such lapses occur in maintaining the public file, neither the negligent acts or omissions of station

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materials relevant to the authorization, but does not specify what they are. Petition at 8. For instance, the Station received a grant of a minor modification application earlier in 2011 to correct the Station’s transmitter site coordinates. See FCC File No. BP-20101203AAM. However, that modification was not then licensed, so it was not required to be in the file pursuant to 47 CFR § 73.3526(a)(1), nor was a copy of the application required to be in the file pursuant to 47 CFR § 73.3526(a)(2).

¹⁷ Again, Boris does not specify which application he believes should have been in the file. Petition at 8.

¹⁸ Boris states no basis for knowing whether there were such letters or emails. Petition at 8.

¹⁹ Petition at 8. 47 CFR § 73.3526 at (e)(1), (2), (5), (6), (9), (10), (11), (12), (13), (14), and (16). For the last two categories, Boris states no basis for knowing whether there were such agreements required to be in the public file. Petition at 8. We reject the claims that Licensee violated Sections 73.3526(d)(1) and (2) of the Rules because those sections do not list materials that must be retained in the public file; rather, they identify the party that is responsible for maintaining the file in the case of a license assignment or transfer of control.

²⁰ Opposition at 3.

²¹ *Id.* at Exh. 2, Declaration of Frank Strnad, WQBQ Station Engineer at 2.

²² *Id.* at Exh. 1, Declaration of Shanti Persaud Hernandez, President at 1.

²³ 47 CFR § 73.3526(a)(2).

²⁴ 47 CFR § 73.3526(e)(5), (6), (10), (12), and (13).

²⁵ Application, Section III, Question 3 (affirmative certification that “the documentation, as required by 47 CFR Section 73.3526 or 73.3527, as appropriate, has been placed in the station’s public inspection file at the appropriate times”).

²⁶ See 47 CFR § 1.17. Despite our finding of false certification, we find there is no evidence of any intent to deceive by Licensee when it certified that its public file had been maintained as required by Section 73.3526 of the Rules, as it disclosed the 2010 NAL in the Application and thereby acknowledged the public file violations addressed in that order. See Application at Exh. 6.

employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.²⁷

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. 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. 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,²⁸ and the Commission has so interpreted the term in the Section 503(b) context.²⁹ 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."³⁰

10. 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 73.3526.³¹ 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."³²

11. In this case, Licensee denied access to the public file and refused to make the file material available for copying, as required by Section 73.3526(c) of the Rules. Furthermore, Licensee provides no evidence that the Station ever had any issues/program lists or the other required items described above in the public file during the license term. Licensee thus has apparently violated Section 73.3526 of the Rules repeatedly through the license term, as indicated in the 2010 *NAL* and here. In addition, Licensee's other stations have been the subject of several Enforcement Bureau forfeiture orders involving public file violations.³³ Accordingly, we believe an upward adjustment of the forfeiture is warranted. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors

²⁷ See *Padre Serra Comm'ns, Inc.*, Letter, 14 FCC Rcd 9709 (MB 1999) (citing *Gaffney Broad., Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913, para. 4 (1970), and *Eleven Ten Broad. Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)); *Surrey Front Range L.P.*, Notice of Apparent Liability, 7 FCC Rcd 6361 (FOB 1992).

²⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁹ See *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

³⁰ 47 U.S.C. § 312(f)(2).

³¹ 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, App. A (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.

³² 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 C.F.R. § 1.80(b)(4).

³³ See *Rama Comm'ns, Inc.*, Forfeiture Order, 23 FCC Rcd 17820 (EB 2008), *petition granted, in part, denied, in part*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (EB 2009) (reducing forfeiture based on inability to pay); *Rama Comm'ns, Inc.*, Forfeiture Order, 23 FCC Rcd 14931 (EB 2008), *petition denied*, Memorandum Opinion and Order, 23 FCC Rcd 18209 (EB 2008); *Rama Comm'ns, Inc.*, Forfeiture Order, 22 FCC Rcd 13796 (EB 2007); *Rama Comm'ns, Inc.*, Forfeiture Order, 19 FCC Rcd 24802 (EB 2004), *petition denied*, Memorandum Opinion and Order, 22 FCC Rcd 1104 (EB 2007); *Rama Comm'ns, Inc.*, NOV No. V20063270002 (Tampa Office, May 16, 2006); *Rama Comm'ns, Inc.*, NOV No. V20053270002 (Tampa Office, November 1, 2004) (all cases found that Licensee violated, among other Rules, Section 73.3526).

to the instant case, we conclude that Licensee is apparently liable for forfeiture in the amount of fifteen thousand dollars (\$15,000).

12. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.³⁴ 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.³⁵ 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.”³⁶

13. It is clear to us that Licensee's conduct has fallen far short of the standard of compliance with the Act and the Rules that would warrant routine license renewal. Licensee apparently failed to timely prepare a single issues/programs list over the entire license term, an eight-year period. The issues/programs lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community.³⁷ The Commission's public information file rule also safeguards the public's ability to assess the station's service, meaningfully participate in 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.³⁸ Accordingly, the public information requirements are integral components of a licensee's obligation to serve the public interest, and meet its community service obligations.³⁹ Absent any issues/programs lists in the Station's public inspection files, we cannot determine that Licensee has met those obligations.

14. We believe that Licensee's violations of Section 73.3526 were “serious” violations, as they denied both the public and the Commission any opportunity to review and comment on the Station's issue-responsive programming during the entire license term for the Station.⁴⁰ The record here further establishes that Licensee's willful and repeated violations of Section 73.3526, when considered together, constitute a pattern of abuse over a period of years.⁴¹ However, we find that Licensee's violations do not rise to such a level that designation for evidentiary hearing on the issue of whether to deny renewal is warranted.

15. Nevertheless, we believe that additional measures are necessary in order to ensure that the Station complies with the Act and the Rules in the future. Accordingly, pursuant to Section 309(k)(2) of the Act, we will grant the Application by separate action upon the conclusion of this forfeiture proceeding, if there are no issues other than these apparent violations that would preclude grant of the Application. The new license term will be limited to a period of two years.⁴² This limited renewal period

³⁴ 47 U.S.C. § 309(k).

³⁵ 47 U.S.C. § 309(k)(1).

³⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³⁷ See *Formulation of Policies and Rules to Broad. Renewal Applicants*, Third Further Notice of Inquiry and Notice of Proposed Rule Making, 4 FCC Rcd 6363, 6365, para. 20 (1989).

³⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, para. 39.

³⁹ See 47 U.S.C. § 307(a).

⁴⁰ See 47 U.S.C. § 309(k)(1)(B).

⁴¹ See 47 U.S.C. § 309(k)(1)(C).

⁴² See e.g., *Univ. of Maryland, Eastern Shore*, Memorandum Opinion and Order and Notice of Apparent Liability, 27 FCC Rcd 5177 (MB 2012) (\$10,000 NAL issued and four-year renewal proposed where licensee had no

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will afford the Commission an opportunity to review the Station's compliance with the Act and the Rules and to take corrective actions, if any, that may be warranted at that time.

IV. ORDERING CLAUSES

16. Accordingly, in light of the discussion above, IT IS ORDERED, that the December 27, 2011, Petition to Deny filed by Robert E. Boris, IS GRANTED TO THE EXTENT INDICATED, AND DENIED IN ALL OTHER RESPECTS.

17. Accordingly, IT IS FURTHER ORDERED that, pursuant to Section 503(b) of the Act⁴³ and Sections 0.283 and 1.80 of the Commission's Rules⁴⁴ Rama Communications, Inc. IS HEREBY NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for the violation of Section 73.3526 of the Rules.⁴⁵

18. IT IS FURTHER ORDERED that Rama Communications, Inc., IS HEREBY ADMONISHED for violation of Section 1.17 of the Rules.⁴⁶

19. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release of this NAL, Rama Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the proposed forfeiture must be made by a check or similar instrument, wire transfer or credit card and include the Account Number and FRN referenced in the caption above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the 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 at Penelope.Dade@fcc.gov and Alexander Sanjenis at Alexander.Sanjenis@fcc.gov. Below are additional instructions the Licensee should follow based upon the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2- GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159

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issues/programs lists for the entire license term); *Yeary Broad., Inc.*, Letter, 27 FCC Rcd 5172 (MB 2012) (\$20,000 NAL and four-year renewal proposed based on licensee's willful and repeated public file violations at two stations); *Enid Pub. Radio Ass'n*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 9138, 9144, para. 14 (MB 2010) (six-year renewal granted, NAL issued, after finding a pattern of abuse where "the number, nature and extent" of the violations on the record, coupled with licensee's apparent disregard for a prior admonition regarding those violations and refusal to address the allegations, 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."").

⁴³ 47 U.S.C. § 503(b).

⁴⁴ 47 CFR § 0.283, 1.80.

⁴⁵ 47 U.S.C. § 503(b); 47 CFR §§ 0.111, 0.311, 0.314, 1.80, 73.1125(a), 73.3526.

⁴⁶ 47 U.S.C. § 1.17.

must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

20. 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.

21. 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.

22. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.⁴⁷

23. IT IS FURTHER ORDERED, that a copy of this *NAL* shall be sent by First Class and Certified Mail - Return Receipt Requested, to Ms. Shanti Persaud Hernandez, President, Rama Communications, Inc., 3765 North John Young Parkway, and to its counsel, John C. Trent, Esq., Putbrese Hunsaker & Trent, P.C., 200 S. Church Street, Woodstock, VA 22661, with a copy to Robert E. Boris, 1011 Lake Gracie Drive, Eustis, FL 32726.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴⁷ See 47 C.F.R. § 1.1914.