

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

In the Matter of)	
)	
Carolina Radio Group, Inc.)	NAL/Acct. No. MB-201941410009
)	FRN: 0001940766
Application for License to Cover)	Facility ID No. 143608
W225DF, Raleigh, North Carolina)	File No. BLFT-20190425AAW

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

Adopted: December 4, 2019

Released: December 5, 2019

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (Petition) filed by Triangle Access Broadcasting, Inc. (Triangle). Triangle challenges our grant of an application (License Application)—filed by Carolina Radio Group, Inc. (CRG)—for a license to cover facilities authorized in a construction permit (Permit) for W225DF, Raleigh, North Carolina (Translator). In this Memorandum Opinion and Order and Notice of Apparent Liability (NAL),¹ we find CRG apparently willfully and repeatedly violated section 74.1251(c) of the Commission’s rules (Rules) by failing to notify the Commission that the Translator had changed its primary station, and apparently willfully and repeatedly violated section 74.1232(b) of the Rules by failing to provide a “technical need” showing in support of that change.² Based upon our review of the record before us, we find CRG apparently liable for a monetary forfeiture in the amount of two thousand dollars (\$2,000), and grant in part, dismiss in part, and otherwise deny the Petition.

II. BACKGROUND

2. CRG applied for the Permit on July 23, 2018.³ It later amended the Permit Application to specify WQDR-FM (HD3), Raleigh, North Carolina, as the Translator’s primary station.⁴ On August 20, 2018, we granted the Permit Application.⁵ Triangle then filed a Petition for Reconsideration (Permit Petition). While the Permit Petition was pending, CRG filed the License Application. We granted the unopposed License Application on May 1, 2019.⁶ Shortly thereafter, we dismissed the Permit Petition as

¹ 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 CFR § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. *See* 47 CFR § 0.283.

² *See* 47 U.S.C. § 301.

³ *See* File No. BNPFT-20180723AAW (Permit Application).

⁴ As originally filed, the Permit Application listed WBBB(FM) Raleigh, North Carolina, as the Translator’s primary station.

⁵ *Broadcast Actions*, Public Notice, Report No. 49306, at 5 (MB Aug. 23, 2018).

⁶ *Broadcast Actions*, Public Notice, Report No. 49480, at 4 (MB May 6, 2019).

procedurally defective.⁷ Grant of the Permit Application became final on July 1, 2019.⁸

3. On May 28, 2019, Triangle filed the Petition. Therein, Triangle asserts that there is no “technical need” for the Translator,⁹ and alleges that, since commencing operations, the Translator has not operated as authorized.¹⁰ CRG filed an Opposition to Petition for Reconsideration (Opposition) on June 10, 2019. CRG indicates that the Translator “is rebroadcasting the signal of WQDR-FM (HD3)” and asserts that no “technical need” showing is required.¹¹ Triangle filed a Reply to Opposition (Reply) on June 14, 2019. On reply, Triangle again asserts that the Translator is not operating as authorized.¹² We consider these pleadings below.

III. DISCUSSION

A. “Technical Need” Issues

4. We dismiss Triangle’s argument that there was no “technical need” for the facilities proposed in the Permit Application and authorized in the Permit.¹³ Triangle made this argument in the Permit Petition and incorporates it by reference in the Petition. However, our grant of the Permit Application is final. Further, because we consider whether there is a “technical need” for FM translator facilities at the permitting—not the licensing—stage,¹⁴ we decline to consider Triangle’s “technical need” argument as part of our review of the License Application. In any event, were we to consider the merits of that argument, we would reject it. The Commission’s “technical need” rule comes into play “only when the same party proposes to own more than one translator rebroadcasting the same signal and serving substantially the same area.”¹⁵ Triangle’s argument does not concern common ownership of “more than one translator.”¹⁶ Thus, it was (and is) inapposite.

5. We do find, though, that the Translator did not rebroadcast its authorized primary station for a period of about a month and, as a result, violated sections 74.1232(b),¹⁷ and 74.1251(c) of the Rules.¹⁸ According to Triangle, when the Translator commenced operations after grant of the License

⁷ *Carolina Radio Group, Inc.*, File No. BNPFT-20180723AAW, Letter Order (dated May 2, 2019) (*Permit Reconsideration Decision*).

⁸ Triangle initially filed an Application for Review (AFR) of the *Permit Reconsideration Decision*. However, it withdrew the AFR on June 18, 2019. See Letter from Steven L. White, Director, Triangle Access Broad., Inc., to Secretary, FCC (dated June 18, 2019).

⁹ Petition at 2.

¹⁰ *Id.* Triangle also argues that “action on the license application should have been withheld until the Permit [was] final” and urges us to rescind our grant of the License Application “until action on the underlying permit can no longer be reviewed.” *Id.* at 1-2. Our grant of the Permit Application has since become final. Accordingly, we will dismiss this argument as moot.

¹¹ Opposition at 2-3.

¹² Reply at 3-4.

¹³ See Petition at 2.

¹⁴ The Commission requires an FM translator applicant to certify that it does not “have any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station” in its construction permit application. See FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, Section III-A-Engineering, Item 14: Multiple Translators. If an applicant cannot so certify, the applicant must “demonstrate the **technical need** for the additional translator.” Instructions for FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, Section III-A-Engineering, Item 14: Multiple Translators (emphasis in original). No such certification or showing is required in an application for a license to cover an FM

Application, it rebroadcast WPLW(AM), Raleigh, North Carolina,¹⁹ not WQDR-FM (HD 3) (the primary station specified in the Permit).²⁰ Triangle indicates that this continued until June 4, 2019. On that date, Triangle indicates WQDR-FM (HD 3) began simulcasting WPLW(AM), which brought the Translator's operations into compliance with its Permit. CRG states that, as of June 10, 2019, the Translator was "rebroadcasting the signal of WQDR-FM (HD 3)" but does not respond to Triangle's allegation that the Translator previously rebroadcast the signal of a different station. Based on the information before us, we conclude that the Translator rebroadcast the signal of WPLW(AM) from on or about May 1, 2019, until June 4, 2019. CRG did not notify the Commission of this change in the Translator's primary station and did not submit any "technical need" showing to support the change despite the fact that another commonly-owned translator was rebroadcasting the same signal to substantially the same area. Accordingly, we find CRG apparently violated both sections 74.1232(b),²¹ and 74.1251(c). Below, we propose a forfeiture for these violations.

B. Proposed Forfeiture

6. Under Section 503(b)(1)(B) of the Act, a person who is found 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.²² Section 312(f)(1) of the Act defines willfully as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²³ 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,²⁴ and the Commission has so interpreted the term in the Section 503(b) context.²⁵ 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."²⁶

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(8) of the Rules

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translator construction permit. See FCC Form 350, Application for an FM Translator or FM Booster Station License.

¹⁵ *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Report and Order*, 5 FCC Rcd 7212, 7222, para. 75 (1990). See also 47 CFR § 74.1232(b).

¹⁶ Triangle argued there was no "technical need" for the Translator's proposed facilities because the programming the Translator proposed to rebroadcast also aired on WPTF(AM), Raleigh, North Carolina, and the Translator's service contour was encompassed by the WPTF(AM) contour. Permit Petition at 2-3.

¹⁷ Section 74.1232(b) permits an entity to hold the licenses for multiple FM translators serving "substantially the same area ... upon an appropriate showing of technical need." 47 CFR § 74.1232(b).

¹⁸ Section 74.1251(c) requires a translator permittee or licensee to notify the Commission in writing of any change in primary station designation. 47 CFR § 74.1251(c). This allows staff to verify that the change complies with the Commission's translator rules (such as the signal delivery and technical need rules). *Processing of Broadcast Applications*, First Report and Order, 56 RR 2d 941 (1984).

¹⁹ The station changed its call sign from WQDR(AM) to WPLW(AM) on June 4, 2019. To avoid confusion, we refer to it as WPLW(AM) herein.

²⁰ Reply at 3.

²¹ In May and June 2019, another commonly-owned translator—W262CZ, Raleigh, North Carolina—already was authorized to rebroadcast the signal of WPLW(AM) to substantially the same area. See File No. BLFT-20170411ABS. See also Petition at 2. Given this, CRG needed to demonstrate "technical need" for the Translator to also rebroadcast the signal of WPLW(AM). Its failure to do so resulted in a violation of section 74.1232(b) of the Rules.

²² 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(1).

establishes a base forfeiture amount of \$3,000 for failure to file required forms or information, and a base forfeiture of \$4,000 for unauthorized emissions.²⁷ 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.”²⁸ Considering the record as a whole and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we believe that a reduced forfeiture of two thousand dollars (\$2,000) is appropriate here. We reach this conclusion based on the fact that CRG’s violations were not prolonged,²⁹ and the fact that CRG has no history of prior offenses.³⁰

C. Grant of License Application

8. Under the standard set forth in section 319(c) of the Act,³¹ a permittee is entitled to a high degree of protection and a presumption that the public interest determination made during the construction permit proceeding continues in effect unless circumstances have arisen that would make operation of the station against the public interest.³² The Commission traditionally is reluctant to designate license applications for hearing and, in most instances, considers the grant of a license application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith.³³

9. Under this stringent standard, Triangle’s challenge to the licensing of the Translator fails. Although, as discussed above, the facts on record indicate that CRG violated sections 74.1232(b) and 74.1251(c) of the Rules, we conclude that the violations at issue are appropriately resolved through a proposed forfeiture. We further find that nothing else in the record raises a substantial or material question of fact regarding whether CRG possessed the basic qualifications to be a Commission licensee at

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²³ 47 U.S.C. § 312(f)(1).

²⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁵ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

²⁶ 47 U.S.C. § 312(f)(2).

²⁷ 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 CFR § 1.80(b)(8), note to paragraph (b)(8), Section I.

²⁸ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(8).

²⁹ See, e.g., *Church Planters of America*, Memorandum Opinion and Order and Notice of Apparent Liability, 31 FCC Rcd 3607, 3612, para. 15 (MB 2016) (reducing forfeiture due to, among other things, short duration of the violation).

³⁰ See, e.g., *Zuma Beach FM Emergency and Cmty. Broad., Inc.*, Order, 33 FCC Rcd 8222 (MB 2018); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793 (MB 2018) (both reducing forfeitures based on “history of compliance”).

³¹ 47 U.S.C. § 319(c).

³² *Id.* (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest . . .”); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977).

³³ See, e.g., *Meyer Broad. Co.*, Memorandum Opinion and Order, 65 FCC 2d 438, 441, para. 9 (1977).

the time we granted the License Application. Finally, nothing in the record creates a substantial or material question of fact regarding whether CRG continues to possess those qualifications. For these reasons, we grant the Petition to the extent indicated above, dismiss the Petition in part, and otherwise deny the Petition, and affirm our grant of the License Application.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that Carolina Radio Group, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$2,000 for its apparent willful and repeated violations of sections 74.1232(b) and 74.1251(c) 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, Carolina Radio Group, Inc., **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 forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁴ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

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: Albert Shuldiner, and must include the NAL/Acct. No. referenced above.

14. The Bureau 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. **IT IS FURTHER ORDERED** that, Carolina Radio Group, Inc., shall place a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the records maintained for W225DF, Raleigh, North Carolina, pursuant to Section 74.1281 of the Commission's rules.

16. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Carolina Radio Group, Inc., 3012 Highwoods Boulevard, Suite 201, Raleigh, NC 27604, and its counsel, Coe W. Ramsey, Esq., Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, 150 Fayetteville Street, Raleigh, NC 27601.

³⁴ See 47 CFR § 1.1914.

17. Finally, **IT IS ORDERED** that the Petition for Reconsideration filed by Triangle Access Broadcasting, Inc., on May 28, 2019, **IS GRANTED IN PART, DISMISSED IN PART, AND OTHERWISE DENIED.**

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Albert Shuldiner", with a long horizontal stroke extending to the right.

Albert Shuldiner
Chief, Audio Division, Media Bureau