

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

In the Matter of)	
)	
M&R Enterprises, Inc.)	File No. EB-01-IH-0441
)	NAL/Acct. No. 200232080010
Licensee of Station WESL(AM))	FRN: 0005-0159-87
East St. Louis, Illinois)	Facility ID No.72815
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 28, 2002

Released: March 29, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that M&R Enterprises, Inc. ("M&R"), licensee of Station WESL(AM), East St. Louis, Illinois, apparently willfully and repeatedly violated Section 73.3526 of the Commission's rules, 47 C.F.R. § 73.3526, by denying access to the public inspection file to members of the public on two occasions. We conclude that M&R is apparently liable for a ten thousand dollar (\$10,000) forfeiture.

II. BACKGROUND

2. On July 3, 2001, the Enforcement Bureau received a complaint alleging that M&R failed to comply with the Commission's public inspection file requirements. The complainant alleged that on July 2 and July 3, 2001, station staffers Betty Robinson and Steve Riggins denied access to members of the public, including Mr. Anthony Noland, Ms. Clytee Shaw, and Mr. Michael Bryant, who requested to view the public inspection file. As a result of that complaint, the Commission sent M&R a letter of inquiry on August 8, 2001.

3. M&R responded to the Commission's letter of inquiry on August 15, 2001. In the response, M&R stated that the public inspection file is maintained in the manager's office in East St. Louis, Illinois, and has been since the station was acquired. M&R stated that the public inspection file contains the station's FCC license, political contracts, EAS logs, annual employment reports, Articles of Incorporation, the FCC application, Letter of Consummation, letters from the public, Measurement Work Order (NRSC), the Ownership Report, Pre-filing Announcement, August 1997, and Revenue Application, 1997. The response also stated that the station's regular business hours are Monday through Friday, 9:00 am until 5:00 pm, and that the public inspection file is available to the public during said business hours and a request for copies will be fulfilled by the General Manager in not more than seven days.

4. M&R stated in its response that Mr. Noland, Ms. Shaw, and Mr. Bryant did not ask for any specific materials and that the public inspection file was in the office at the time of the alleged violation.

5. The complainant maintains that the named individuals specifically asked for access to the public inspection file and that station personnel denied them access. In its response, M&R does not deny this. Rather, M&R states that these individuals did not ask for any specific materials.

III. DISCUSSION

6. Section 73.3526(a) of the Commission's rules, 47 C.F.R. § 73.3526(a), requires all licensees of commercial broadcast stations to maintain a public inspection file containing certain designated information. Section 73.3526(c) of the Commission's rules, 47 C.F.R. § 73.3526(c), requires that the public inspection file be available for public inspection at any time during regular business hours.

7. M&R violated Section 73.3526(c) of the Commission's rules, 47 C.F.R. § 73.3526(c), when Station WESL(AM) failed to provide access to the public inspection file to members of the public upon request. M&R claims that the named individuals did not request specific materials from the public inspection file. We find that this does not excuse the station's failure to provide access to the public inspection file. The Commission has held that "a simple request to see the file should be sufficient to elicit the complete file" without the further necessity of asking for documents piecemeal.¹ Thus, we find that it is irrelevant whether the individuals requested to view specific documents from the public inspection file or whether they simply asked to see the public inspection file. M&R's failure to provide access to its public inspection file upon request is a violation of the Commission's rules.

8. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b) and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991).

9. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999). In this case, it appears that Station WESL(AM) willfully and repeatedly denied access to the public inspection file to members of the public upon request. The station denied such a request to more than one individual and on more than one occasion. Considering the record as a whole, 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, we believe that a \$10,000 forfeiture is appropriate for the violations in this case. *See Riverside Broadcasting, Inc.*, 15 FCC Rcd 18322 (EB 2000) (NAL paid; licensee found apparently liable for \$10,000 forfeiture for denying access to station's public inspection file on June 13 and 14, 2000).

¹ *In the Matter of Liability of KLDT-TV 55, Inc.*, 10 FCC Rcd 3198 (1995). *See also In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15700-06 (1998) (¶¶ 18 and 32) (The Commission explained that because the public may not be aware of the required contents of public inspection files, the rule requires that the file contain the most recent version of the manual, "The Public and Broadcasting," which details the required contents of the public inspection file and describes the public's role in monitoring a "station's operations and public interest performance...").

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.111, 0.311 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, that M&R Enterprises, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3526 of the Commission's rules, 47 C.F.R. § 73.3526.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, M&R SHALL PAY to the United States 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 may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) referenced above and also must note the NAL/Acct. No. referenced above.

13. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to M&R Enterprises, Inc., Robert Riggins, General Manager, 149 South Eighth Street, East St. Louis, IL.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau