

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

In the Matter of)	
)	
First Media Radio, LLC)	File Number EB-03-NF-055
Licensee of WWDR & WDLZ)	
Murfreesboro, North Carolina)	NAL/Acct. No. 200432640002
)	
)	FRN: 3726957
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 15, 2004

By the Enforcement Bureau, Norfolk Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find First Media Radio, LLC (“First Media”), licensee of AM radio station WWDR, and FM radio station WDLZ, Murfreesboro, North Carolina, apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000) for willful and repeated violation of Sections 73.1560(a)(1) and 73.3526(c)(1) of the Commission's Rules (“Rules”).¹ Specifically, we find First Media apparently liable for operating AM radio station WWDR in excess of authorized power and for failing to make available for inspection the complete public inspection file.

II. BACKGROUND

2. First Media Radio, LLC is the licensee of WWDR and WDLZ. WWDR and WDLZ are authorized to broadcast in Murfreesboro, North Carolina. WWDR is authorized to broadcast on a frequency of 1080 kHz with a power of 930 watts. WDLZ is authorized to broadcast on a frequency of 98.3 MHz with a power of 2200 watts.

3. On July 30, 2003, the FCC Enforcement Bureau’s Norfolk Office (“Norfolk Office”) received information alleging numerous FCC rule violations at WWDR, WDLZ and other broadcast stations licensed to First Media.

4. On August 8, 11, 25, and September 11, 2003, an agent of the Norfolk Office made field strength measurements of WWDR’s signal. Each field strength measurement was made at the same location and each measurement indicated the same level of signal strength.

5. Immediately after making the field strength measurement on September 11, 2003, the agent conducted an inspection of the co-located main studio and transmitter site of WWDR and WDLZ. During the inspection, the FCC agent and the licensee’s technical representative read the antenna base current meter and confirmed that WWDR was operating with an antenna base current of 6.8 amps. This current reading indicated

¹ 47 C.F.R. §§ 73.1560(a)(1) and 73.3526(c)(1).

that WWDR was transmitting with an operating power of 1063 watts (114% of authorized). An inspection of the public inspection file revealed that required material was missing including the quarterly issues and programs lists, contour map for WWDR and the Public and Broadcasting manual. First Media personnel present during the inspection stated that the missing documents may be in their Rocky Mount, North Carolina office.

III. DISCUSSION

6. Section 73.1560(a)(1) of the Rules requires an AM broadcast station antenna input power to be maintained as near as practicable to the authorized antenna input power and may not be more than 105% of authorized power. On September 11, 2003, WWDR operated with an antenna input power of 1063 watts (114% of authorized) instead of 930 watts as authorized. A field strength measurement made on September 11, 2003, of the station operating with 1063 watts was consistent with field strength measurements made on August 8, 11 and 25, 2003. Therefore, WWDR also operated with excessive power of 1063 watts on August 8, 11 and 25, 2003.

7. Section 73.3526(a)(2) of the Rules² requires that every permittee or licensee of an AM, FM, or TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. Additionally, every permittee or licensee of an AM, or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. Section 73.3526(b) of the Rules³ requires the public inspection file be maintained at the station's main studio. Section 73.3526(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours. On September 11, 2003, First Media failed to make available the complete public inspection file for co-located stations WWDR/WDLZ.

8. Based on the evidence before us, we find First Media Radio, LLC willfully⁴ and repeatedly⁵ violated Sections 73.1560(a)(1) and 73.3526(c)(1) of the Rules for operating in excess of authorized power at WWDR, and for failing to make available the complete public inspection file at WWDR and WDLZ.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for operating in excess of authorized power is \$4000 and the amount for violation of the public inspection file rules is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with

² 47 C.F.R. § 73.3526(a)(2).

³ 47 C.F.R. § 73.3526(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The 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.” 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Because the station maintained a portion of the required items in the public inspection file, a downward adjustment of the base forfeiture for that violation from \$10,000 to \$2,000 is warranted. Considering the entire record and applying the factors listed above, this case warrants a \$6,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ First Media is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand dollars (\$6,000) for willful and repeated violation of Sections 73.1560(a)(1) and 73.3526(c)(1) of the Rules by operating in excess of authorized power at WWDR and by failing to make available for inspection a complete public inspection file at WWDR and WDLZ.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, First Media 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 may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division 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. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

¹⁰ See 47 C.F.R. § 1.1914

certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to First Media Radio, LLC, 306 Port Street Easton, MA 21601. An additional copy shall be sent by regular mail and Certified Mail Return Receipt Requested to First Media Radio, LLC, (WWDR/WDLZ) P.O. Box 38, 1714 Main Street, Murfreesboro, North Carolina 27855.

FEDERAL COMMUNICATIONS COMMISSION

Luther Bolden
Resident Agent, Norfolk Office, Enforcement Bureau

Attachment

First Media Radio, LLC
306 Port Street
Easton, MA 21601

First Media Radio, LLC
WWDR/WDLZ
P.O. Box 38
1714 Main Street
Murfreesboro, NC