

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In re Application of)	
)	
DISCUSSION RADIO, INCORPORATED)	Facility ID No. 16977
WDIS(AM), Norfolk, Massachusetts)	
)	
Application for Renewal of Broadcast License)	File No. BR-19990603AAA
)	NAL/Acct. No. MB20041810004

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

Adopted: April 13, 2004

Released: April 16, 2004

By the Commission:

1. The Commission has under consideration a November 17, 1999, application for review filed by John J. Fuller d/b/a Astro Broadcasting System ("ABS"),¹ in which ABS seeks review of a November 3, 1999, action by the Mass Media Bureau ("Bureau") granting Discussion Radio, Incorporated's ("DRI") petition for reconsideration, reinstating the WDIS(AM) call sign, and accepting an untimely WDIS(AM) renewal application (File No. BR-19990603AAA) for filing.² For the reasons set forth below, we deny ABS' application for review and issue a Notice of Apparent Liability to DRI for its failure to timely file a license renewal application and for unauthorized operation, as well as for violation of the Commission's rule regarding the contents of a licensee's public inspection file.

2. **Background.** The broadcast license for WDIS(AM) expired on April 1, 1998. The staff notified DRI, licensee of WDIS(AM), by letter issued November 19, 1998, that the station's renewal application should have been filed by December 1, 1997, and that failure to file the license renewal application by December 9, 1998, would result in the cancellation of the station's license. Because DRI did not file a renewal application, the staff issued a letter canceling WDIS(AM)'s license on April 30, 1999.³ On June 3, 1999, DRI filed a timely petition for reconsideration together with an application for the renewal of WDIS(AM)'s license. ABS opposed DRI's petition.

3. In support of its petition, DRI stated that it failed to timely file its renewal application because it did not receive Commission correspondence concerning WDIS(AM)'s license renewal, and that "upon further check" it discovered that Commission correspondence was being addressed to WDIS(AM)'s

¹ ABS is the licensee of station WJFF(AM), Hope Valley, Rhode Island.

² *Letter to Arthur V. Belendiuk, Esq. and Albert E. Grady*, reference 1800B3-JWR (Chief, Aud. Serv. Div., Nov. 3, 1999).

³ *Letter to Discussion Radio, Incorporated (WDIS(AM))* (Chief, Aud. Serv. Div., Apr. 30, 1999).

previous owner. In a July 27, 1999, "Informal Objection" to DRI's petition,⁴ ABS asserted that "the record is clear" that DRI received Commission correspondence concerning WDIS(AM)'s license renewal, and that DRI's statement to the contrary was a material misrepresentation. In this regard, ABS maintained that the Commission's correspondence to DRI was not sent to the previous owner as DRI contended, but rather to a law office address, in a different municipality, of a DRI principal.

4. In denying ABS' "Objection" and granting DRI's petition for reconsideration, the staff held that (1) DRI's request for reconsideration relied on facts not previously presented to the Commission; and (2) it was in the public interest to reconsider the staff letter rather than force WDIS(AM) off the air because DRI had continuously operated WDIS(AM) in service to the community for nearly seven years.⁵ The staff also found that ABS had not presented evidence sufficient to raise a substantial and material question of fact regarding whether or not DRI had misrepresented facts to the Commission concerning its failure to receive and file a renewal application. Specifically, the staff pointed out, *inter alia*, that DRI had submitted (in its October 5, 1999, "Supplemental Opposition") a copy of a 1998 Commission letter concerning payment of DRI's 1997 regulatory fee that was, in fact, addressed to the previous licensee. In addition, the staff noted that DRI, during the course of the subject proceeding, notified the Commission for the first time of a change in its official address.⁶ DRI maintained that this undisclosed address change contributed to the miscommunication between it and the Commission. The staff noted that DRI was responsible for apprising the Commission promptly of any address change. It also concluded that ABS had not raised a substantial or material question warranting further inquiry regarding the misrepresentation allegation and that grant of the DRI petition for reconsideration and renewal application was warranted.

5. **Discussion. Procedural matters.** Numerous improperly titled and unauthorized pleadings have been submitted in this proceeding. For example, as noted in Paragraph 3 and Note 4 above, in response to DRI's proper petition for reconsideration, ABS filed an "Informal Objection." DRI then filed an "Opposition" to the Informal Objection, to which ABS filed a "Reply." An "Informal Objection" does not lie against a petition for reconsideration.⁷ Accordingly, we will treat ABS' "Informal Objection" as an Opposition to the petition for reconsideration, and we will treat DRI's "Opposition to Informal Objection" as a Reply to ABS' Opposition.⁸ These are the only pleadings authorized by Section 1.45 of

⁴ DRI filed an "Opposition" to that pleading on August 6, 1999, to which ABS filed a "Reply" on August 13, 1999. Subsequently, DRI filed a "Supplement to Opposition to Informal Objection" on October 5, 1999, and ABS filed a "Reply to Supplemental Opposition to Informal Objection" on October 22, 1999.

⁵ See 47 C.F.R. § 1.106(c)(2).

⁶ DRI had listed its address as "16 King's Way, Hyannis, Massachusetts 02601," an address where DRI principal Albert E. Grady maintained a law office. Mr. Grady averred that, "over the past 2-3 years there have been no employees [of his law practice] who have regularly appeared at the Hyannis office." *Affidavit of Attorney Albert E. Grady* appended to DRI's Opposition to ABS' objection. In fact, Mr. Grady's personnel only appeared at the Hyannis office "on average of once every other month," staffing and doing business from his office at 226 Montello Street, Brockton, Massachusetts. Thus, he claimed, matters addressed to DRI at the Hyannis address would not likely have been dealt with in a timely manner. Along with the instant license renewal application, DRI filed a Change of Address form noting that its official address should be changed to the Brockton address.

⁷ See 47 C.F.R. § 73.3587 (informal objection may be filed "before FCC action on any application for an instrument of authorization") (emphasis supplied).

⁸ See, e.g., *Atlantic Morris Broadcasting, Inc.*, 11 FCC Rcd 4723 n. 3 ("Motion to Add Misrepresentation Issue" treated as a "Reply" pursuant to Section 1.45). See also *In the Matter of Policies and Rules Concerning Operator*

the Commission's rules. Any additional pleadings after DRI's constructive Reply could be filed only with the Commission's permission and should have been accompanied by a petition for leave to file the unauthorized pleading. No such motions were filed with respect to any of the subsequent pleadings in this case. Ordinarily, then, those pleadings, as well as ABS' October 22, 1999 "Reply to Supplemental Objection," would be disregarded.⁹

6. Nevertheless, in its application for review, ABS first argues that the Bureau considered information contained in DRI's unauthorized "Supplemental Opposition" to ABS' July 27, 1999, pleading urging denial of the DRI petition for reconsideration, but it failed to consider ABS' own October 22, 1999, reply to that pleading. ABS' October 22, 1999, "Reply to Supplemental Opposition" was filed prior to the staff's November 3, 1999, action, but it was not received by the staff until after the decision had been rendered. We have examined ABS' supplemental reply pleading and find that, with one exception, discussed in Paragraph 16, *infra*, it reiterates arguments made in the July 27, 1999, objection, and that the staff properly considered and resolved those issues below.

7. *Misrepresentation.* A misrepresentation is a false statement of fact made with an intent to deceive the Commission.¹⁰ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.¹¹ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.¹² Fraudulent intent can be found from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity."¹³ Intent can also be found from motive.¹⁴ Upon consideration of all pleadings in this case, including ABS' October 22, 1999, supplemental opposition, we agree with the Bureau that ABS has failed to raise a substantial and material question of fact as to whether DRI misrepresented facts to the Commission. Specifically, we find that its dereliction in filing a license renewal application for WDIS(AM) was the result of confusion resulting from its failure to receive license renewal materials and its misunderstanding of Commission correspondence concerning the renewal application and regulatory fees. We find no evidence of any intent to deceive the Commission in DRI's responses regarding that matter.

8. We base the above conclusions upon the following factual chronology, drawn largely from the affidavit of Patricia Grady in DRI's October 5, 1999 Supplement to Opposition to Informal Objection.¹⁵

Service Access and Pay Telephone Compensation, 7 FCC Rcd 4355, 4360 n.65 ("Comments" filed by party treated as a "Reply").

⁹ See, e.g. *Secret Communications, Inc.*, 18 FCC Rcd 9139 n. 1 (2003) (in assignment application context, "Motion for Disclosure of Documents" is unauthorized and was dismissed pursuant to Section 1.45); *KOLA, Inc.*, 11 FCC Rcd 14297, 14310 (1996); and *Kin Shaw Wong*, 11 FCC Rcd 11928, 11930 (1996) (rejecting argument that staff should have considered arguments raised in unauthorized pleadings).

¹⁰ *Fox River Broadcasting, Inc.*, 93 F.C.C.2d 127, 129 (1983).

¹¹ *Id.*

¹² *Trinity Broadcasting of Florida, Inc.*, 10 FCC Rcd 12020, 12063 (1995).

¹³ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D. C. Cir. 1980)).

¹⁴ *Joseph Bahr*, 10 FCC Rcd 32, 33 (Rev. Bd. 1994).

¹⁵ Although, as noted above, the pleading was not authorized by 47 C.F.R. § 1.45, the Bureau considered DRI's supplemental opposition. In its initial opposition to ABS' informal objection, DRI principal Albert Grady indicated

Although the parties clearly differ in the significance accorded certain facts and the inferences which may be drawn from those facts, the salient facts are not in dispute.

9. On July 27, 1998, a letter from the Billings and Collections Branch of the Commission's Office of Managing Director, addressed to "John F. Crohan Company, Inc., 16 Kings Way, Hyannis, MA 02601"¹⁶ informed WDIS of its failure to respond to two previous letters requesting payment of the station's 1997 annual regulatory fee and stated that it must remit the \$2,000 fee immediately. On August 26, 1998, WDIS paid the regulatory fee, noting in a letter to the Billings and Collections Branch that it had never received the two referenced regulatory fee letters, which were addressed to the previous licensee.

10. On November 19, 1998, the Bureau's Radio Renewal Processing Staff sent to "Discussion Radio, Incorporated, 16 Kings Way, Hyannis MA 02601" a letter reminding WDIS that the Bureau had sent it a packet of license renewal materials more than six months previously¹⁷ but that the station still had not filed its license renewal application.¹⁸ The letter stated that if DRI wished to renew the station's license, it must file a renewal application by December 9, 1998. Contrary to ABS' allegation, at no time did DRI claim that it did not receive this letter. It appears that DRI's Patricia Grady, who performed clerical and administrative duties for the licensee, misunderstood that the regulatory fee and license renewal/application fee were different obligations; accordingly, believing that its obligations were satisfied, DRI took no further action. The Bureau then issued the Notice of Cancellation on April 10, 1999.

11. Upon receipt of the Notice of Cancellation, Ms. Grady contacted the Bureau staff member responsible for overseeing license renewal applications/cancellations in order to bring the station into compliance with its filing requirements. Upon that staff member's advice, on June 1, 1999, DRI filed a renewal application (together with the appropriate filing fee) for WDIS and a letter from Ms. Grady saying that, while she had "had communication with the Commission regarding the regulatory fee," DRI "had not been receiving correspondence [presumably because] correspondence was being addressed to Mr. John Crohan, previous owner of the station." Ms. Grady noted that "this has been corrected," and DRI sent in a Change of Address form to specify the Brockton address simultaneously with the renewal application.

that Patricia Grady, who handled all Commission correspondence for DRI, was out of the country. Affidavit of Albert E. Grady, at. P. 2, Items 6, 7. The supplemental opposition contained Patricia Grady's own affidavit.

¹⁶ According to Commission records, the address for the John F. Crohan Company was 6 Mohawk Road, Canton, Massachusetts, 02021. See Application No. BAL-19910819EC. The letter thus was sent to the previous licensee at DRI's listed address.

¹⁷ The November 19, 1998, letter was sent by First Class mail and not *via* Certified Mail-Return Receipt Requested. Additionally, while the staff has no record of the exact addressee on the renewal package ostensibly sent to DRI for WDIS, its standard operating procedure was to send the renewal materials by First Class mail.

¹⁸ In its Informal Objection, ABS supplies an unsigned copy of this letter addressed to DRI at the Brockton address. In its supplemental opposition, DRI submits a signed copy of the November 19, 1998 letter addressed to DRI at the Hyannis office. This incongruity raises no issue warranting further inquiry, however, as the unsigned copy submitted by DRI is clearly a copy sent by the Commission's staff by facsimile in July of 1999, well after the original signed letter was sent to DRI at the Hyannis address and apparently after the data base system through which the unsigned copy would have been automatically generated had been corrected to list DRI's Brockton address.

12. In light of these facts, we reject ABS' claim that DRI made misrepresentations regarding the untimely filing of the WDIS renewal application. Because DRI has demonstrated error in Commission mailings *vis-à-vis* WDIS – for example, the July 27, 1998, regulatory fee letter to the previous licensee at DRI's listed address -- we find it plausible that DRI did not receive pertinent renewal materials. We also find plausible Mr. Grady's explanation regarding DRI's handling of Commission correspondence,¹⁹ and in any event, ABS has provided no evidence that DRI in fact received correspondence it claims not to have received. We conclude that ABS has failed to raise a substantial and material question of fact calling for further inquiry regarding ABS' misrepresentation allegations. Although we believe that Ms. Grady was confused about various licensee obligations, we reiterate the Bureau's reminder to DRI that it is responsible for maintaining the accuracy of its official address and for filing on a timely basis all required Commission filings. Moreover, as a Commission licensee, DRI is charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority. This obligation attaches irrespective of its failure to receive Commission notification and materials regarding WDIS' license renewal.²⁰ Therefore, while we find insufficient evidence of misrepresentation to raise a substantial and material question of fact, we do find a level of carelessness and inattention on the part of DRI that warrants a forfeiture, as discussed below.

13. ABS' "*de facto waiver*" argument. Citing *WAIT Radio v. FCC*,²¹ ABS maintains that the staff, in granting DRI's request for reconsideration of the cancellation of WDIS' license, in effect waived Sections 73.1020 ("Station License Period") and 73.3539 ("Application for Renewal of License") of the Commission's rules without articulating a justification for doing so. As noted, DRI timely appealed the initial staff action.²² Moreover, a staff examination of DRI's petition established that reconsideration was warranted.²³ Hence, DRI's petition was granted in accordance with the Commission's provisions for seeking reconsideration of staff actions, and we do not believe the staff erred in using that approach.

14. Nonetheless, we agree with ABS that the Bureau's actions – accepting and granting DRI's late-filed renewal application – do not conform to Sections 73.1020 and 73.3539. The WDIS(AM) license renewal application was due on December 1, 1997, four months prior to the April 1, 1998 expiration date; the application was not filed until June 3, 1999, some 14 months after the WDIS(AM) license had expired. The Bureau's acceptance of the renewal application was "without prejudice to whatever further action the Commission may deem appropriate in connection with the late-filed renewal application." We conclude that waivers of these rules are warranted in the instant circumstances for the limited purpose of accepting and acting on the station's license renewal application. However, we also conclude that the

¹⁹ See note 5, *supra*.

²⁰ A licensee's obligation to file a timely renewal application is not dependent upon the Commission sending a renewal reminder to the licensee. See *ACC Network Corp.*, 16 FCC Rcd 22446, 22447 (2001). The Commission subsequently added to the web site of the Media Bureau's Audio Division a separate page affirming this obligation and providing pertinent renewal materials and information – including a timetable of license expiration and renewal application filing dates for all radio stations. This page can be found at: <http://www.fcc.gov/mb/audio/renewal/index.html>.

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²² See 47 C.F.R. § 1.106.

²³ 47 C.F.R. § 1.106(c)(2). Pursuant to this provision, as noted in Paragraph 4, *supra*, a petition for reconsideration which relies on facts not previously presented to the Commission or delegated authority can be granted if the Commission or delegated authority determines it to be in the public interest to do so.

licensee should be sanctioned for untimely filing and unauthorized operation violative of 47 U.S.C. Section 301²⁴ during the time between the expiration of the license and the untimely renewal filing.

15. The guidelines contained in the Commission's *Forfeiture Policy Statement*²⁵ specify a base forfeiture amount of \$3,000 for a failure to file a required form. The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service. Section 503(b)(2)(D) of the Act requires the Commission to consider "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." In this case, DRI failed to timely file the WDIS renewal application and continued station operations for more than 14 months before filing the appropriate application. On the other hand, DRI had previously been licensed to operate WDIS, so this is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000.²⁶ Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the Forfeiture Policy Statement, we will reduce the forfeiture to \$1,500 for the late filing and \$5,000 for the unauthorized operation. We do so in part on the premise that the station did not receive the license renewal packet that would have facilitated timely renewal filing.²⁷ We will not excuse the violation, however, because DRI was itself in part responsible for the problems it had in receiving Commission correspondence. Its official address in Commission records was 16 Kings Way, Hyannis, Massachusetts, the address provided in the assignee's portion of the November 1992 assignment application pursuant to which DRI became the WDIS licensee. Although DRI abandoned the Hyannis office by 1977,²⁸ DRI did not notify the Commission's until June of 1999, eleven months after it clearly became aware that critical Commission correspondence was still being sent to the Hyannis office.

16. *Public file rule violation.* In its October 22, 1999, "Reply to Supplemental Opposition," ABS argued that DRI has violated the Commission's public inspection file rule.²⁹ In support of this allegation, ABS submits a declaration from private investigator Robert Long. His statement, made under penalty of

²⁴ 47 U.S.C. § 301 prohibits the "use or [operation] of any apparatus for the transmission of energy or communications or signals by radio" without first obtaining a Commission license. Here, WDIS had such a license, but that license expired by its own terms on April 1, 1998, some 14 months before DRI filed the subject renewal application.

²⁵ *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 ("Forfeiture Policy Statement").

²⁶ *Joe L. Ford d/b/a Ford Communications*, 15 FCC Rcd 23721, 23722 (E.B. 2000), citing *Jean R. Jonassaint*, 15 FCC Rcd 10422 (E.B. 2000).

²⁷ The Commission will be disinclined to propose reductions in future cases based on alleged errors in mailing license renewal materials. The staff is no longer sending renewal application booklets to licensees; the staff is merely sending a renewal reminder postcard. This postcard directs licensees to the Audio Division web page and the Consolidated Data Base System (CDBS) electronic filing system.

²⁸ See note 5, *supra*.

²⁹ 47 C.F.R. § 73.3526. Generally, we require that replies be limited to matters raised in the preceding opposition. See 47 C.F.R. § 1.45(c) and *Palm Bay Public Radio*, 6 FCC Rcd 1772, 1773 n. 5 (1991) ("To allow the reply to serve the purposes of the original petition would be either to effectively render meaningless provisions of the rules for a fair opportunity by another party to respond to allegations, or to compel the addition of supplementary pleadings not ordinarily contemplated by the rules.") However, in this case, because the staff considered an otherwise unauthorized DRI pleading, we will not strictly apply this proscription to ABS' Reply to Supplemental Opposition. See Paragraph 6, *supra*.

perjury, asserts that, when he viewed the WDIS public inspection files on or about October 8, 1999, they were in “disarray” and contained “no current files containing FCC-required materials.”³⁰ DRI provided no response to ABS’ public file allegations.

17. With respect to the public file violation, we note that the Commission’s Enforcement Bureau, for unrelated reasons, independently examined WDIS’ operations on September 14, 1999, and identified, *inter alia*, the existence of a violation of Section 73.3526.³¹ Pursuant to well-established precedent, we conclude that the public file violation does not warrant denial or designation of the renewal application for hearing.³² However, we believe that the violation does warrant an additional forfeiture.

18. Section 73.3526 of the Commission’s Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.³³ In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee’s rule violation.³⁴

19. Section 503(b) of the Communications Act, 47 U.S.C. Section 503(b) and Section 1.80(a) of the Commission’s rules, 47 C.F.R. Section 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”

³⁰ Mr. Long indicates that the file failed to contain, among other things, a current copy of WDIS’ broadcast license, annual ownership reports, annual employment reports, or issue/program lists. The file also failed to contain a copy of *The Public and Broadcasting*, although it apparently did contain material dating back to the early 1970’s.

³¹ See *Official Notice of Violation, Discussion Radio, Inc.*, (New England Regional Director, E.B., rel. Sep. 30, 1999), at ¶ 17 (“The local Public Inspection File was incomplete and unavailable for review. . . .”) This *Notice of Violation* was premised on findings made during an inspection of WDIS(AM) conducted on September 14, 1999, several weeks before Mr. Long averred that he visited the station and found its public file incomplete and in disarray. The licensee responded to the notice of violation by letter dated October 6, 1999, promising corrective action with respect to the specified violations. These facts serve to confirm the presence of the alleged violation claimed by Mr. Long. The Enforcement Bureau’s field staff re-inspected the station on November 13, 2000 and identified several additional and continuing violations. Among the violations was that the public inspection file failed to contain current ownership information, the most recent ownership report in the file dating back to 1994. See *Official Notice of Violation, Discussion Radio, Inc.*, File No. EB-00-BS-586 (District Director, New England District Office, E.B., rel. Nov. 16, 2000).

³² See *Lincoln Dellar*, 8 FCC Rcd 2582 (M.M. Bur. 1993), citing *Catoctin Broadcasting Corp. of New York*, 2 FCC Rcd 2126, 2137 (Rev. Bd. 1987), *aff’d*, 4 FCC Rcd 2553, *recon. denied*, 4 FCC Rcd 6312 (1989) (severe sanction of non-renewal generally inappropriate for public file violations); *Millard V. Oakley*, 45 R.R.2d 661, 663 (1979) (Commission generally will not designate public file issue for hearing when there is no evidence of intentional misconduct).

³³ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (Apr. 3, 1997), 13 FCC Rcd 4102 (1997) citing *License Renewal Applications of Certain Commercial Radio Stations*, 8 FCC Rcd 6400 (1993).

³⁴ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999)(citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 F.C.C. 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.³⁵ A continuing violation is "repeated" if it lasts more than one day.³⁶

20. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations.³⁷ In this case, the violation was not admitted by DRI in response to ABS' charge but was confirmed by the Commission's field staff and, although the licensee claimed in response to the *Notice of Violation* that it instituted measures to prevent the recurrence, subsequent corrective measures will not obviate the violations. Further, a subsequent investigation in this case found continuing violations notwithstanding DRI's representation that it had instituted measures to prevent any recurrence. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.³⁸

21. **Conclusion/Orders.** In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act. 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 Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.³⁹ 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."⁴⁰

22. This case presents a very close question under this statutory license renewal standard. DRI clearly has violated a number of Commission technical and legal rules. However, on balance, we find that neither DRI's overall conduct nor the issues raised by ABS establish a "serious violation" of the Communications Act or the Commission's rules.⁴¹ Moreover, we find that the established violations do not, when considered together, evidence a pattern of abuse.⁴² Further, we find that that station

³⁵ See *Capstar California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991).

³⁶ *Id.*, 6 FCC Rcd at 4388.

³⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* FCC 99-407 (released December 28, 1999).

³⁸ See *Pacific Spanish Network, Inc.*, 14 FCC Rcd 10021 (MMB 1991) and *Padre Serra Communications Inc.*, 14 FCC Rcd 9702 (MMB 1999).

³⁹ 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 *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁴⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁴¹ We do not wish to minimize the gravity of DRI's violations. In other circumstances, tower registration and painting violations could pose sufficient risks to public safety to support a "serious" violation finding.

⁴² For example, we do not find here that the licensee's station operation "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*, 32 F.C.C.2d 196, 198 (1971). Nor will 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."

WDIS(AM) served the public interest, convenience, and necessity during the subject license term. Accordingly, we find no basis for a hearing in this proceeding and will deny ABS' requested relief. We will therefore grant the WDIS license renewal application below.⁴³ Notwithstanding this conclusion, we find that the issuance of a Notice of Apparent Liability for Forfeiture in the amount of \$16,500 is appropriate.

23. In view of the above, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules,⁴⁴ Discussion Radio, Inc. IS HEREBY ADVISED of its apparent liability for a forfeiture of Sixteen Thousand Five Hundred Dollars (\$16,500.00) for its apparent willful or repeated violation of 47 C.F.R. Sections 73.3526 and 73.3539 and 47 U.S.C. Section 301. Additionally, in regard to this forfeiture, DRI is afforded a period of thirty (30) days from the date of this Notice to show, in writing, why a forfeiture penalty should not be imposed or pay the forfeiture. Any showing as to why the forfeiture should not be imposed or reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent.⁴⁵

24. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed on November 17, 1999 by John J. Fuller d/b/a Astro Broadcasting System IS DENIED.

25. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Multicultural Broadcasting, Inc., 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.

26. Payment of the forfeiture may be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number of this proceeding.

27. The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, 445 Twelfth Street, S.W., Room 2-A360, Washington, D.C. 20554, and MUST INCLUDE the NAL/Account number referenced in the caption of this document (MB-AD 20031810004).

28. 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.

Heart of the Black Hills Stations, 32 F.C.C.2d at 200. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

⁴³ See 47 U.S.C. § 309(k).

⁴⁴ See 47 C.F.R. §§ 0.111, 0.311 and 1.80.

⁴⁵ 47 C.F.R. § 1.80(f)(3).

29. 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 Twelfth Street, S.W., Washington, D.C.⁴⁶

30. IT IS FURTHER ORDERED, That the Application for Renewal of License of WDIS(AM), Norfolk, Massachusetts (File No. BR-990603AAA), is GRANTED.

31. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail -- Return Receipt Requested, to Discussion Radio, Inc., 226 Montello Street, Brockton, Massachusetts, 02301.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁶ See 47 C.F.R. § 1.1914.