



Federal Communications Commission
Washington, D.C. 20554

MAR 24 2005

In Reply Refer to:
1800B3-KV
NAL/Acct No. MB-AD 20031810076;
MB-AD 20031810077

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Leonard Wheeler, President/Owner
c/o Mel Wheeler, Inc.,
P.O. Box 92
Roanoke, Virginia 24022

In re: WFIR(AM) and WSLC-FM, Roanoke, VA
Mel Wheeler, Inc.,
Facility ID Nos.: 31138; 30156
File Nos. BR-20030528AKJ; BRH-20030528AKI

Dear Mr. Wheeler:

By this action, we cancel two monetary forfeitures, each in the amount of three thousand dollars (\$3,000), issued to Mel Wheeler, Inc. ("MWI"), licensee of Stations WFIR(AM) and WSLC-FM, Roanoke, Virginia for violations of Section 73.3526¹ of the Commission's Rules ("Rules"). The noted violations involved the failure to maintain the public inspection files for WFIR(AM) and WSLC-FM.

On March 31, 2000, the Commission granted an application to transfer of control of Stations WFIR(AM) and WSLC-FM² from the shareholders of Jim Gibbons Radio, Inc. ("JRI") to MWI.³ The parties consummated the transfer on May 15, 2000.⁴ On May 28, 2003, MWI filed applications for renewal of license for WFIR(AM) and WSLC-FM.⁵ Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times. MWI indicated "No" to the certification,

¹ 47 C.F.R. § 73.3526.

² Station WSLC-FM was then identified by the call sign WPVR(FM).

³ Application File No. BTC-19990928AAC. This transfer of control was filed on FCC Form 315, a "long-form."

⁴ *Id.*

⁵ Application File Nos. BR-20030528AKJ and BRH-20030528AKI.

attaching Exhibits explaining that in preparation for the filing of the renewal applications, MWI reviewed the public files for WFIR(AM) and WSLC-FM. MWI discovered, at that time, that the following quarterly Programs and Issues reports were missing: for 1996, the fourth quarter; and for 1997, the first and third quarters.⁶ MWI stated that it was unable to reconstruct the reports.

On October 8, 2003, for violation of Section 73.3526 of the Rules, the Bureau issued two Notices of Apparent Liability for Forfeiture ("NAL") each in the amount of three thousand dollars (\$3,000) to MWI.⁷ On November 10, 2003,⁸ the licensee filed a joint response to the NALs seeking cancellation of the proposed forfeitures. MWI asserts that the NALs should be cancelled as the violations were due to the neglect of the previous licensee.

In preparation for the filing of renewal applications, on April 30, 2003, the Bureau issued a public notice which listed revisions to the instructions to FCC Form 303-S.⁹ Under the caption, General Instruction I, the Bureau stated: "The following new instruction clarifies the time period for each Form 303-S certification. . . . [*I*]f the station license was assigned or transferred during the subject license term pursuant to a 'long-form' application on FCC Form 314 or 315, the renewal applicant's certifications should cover only the period during which the renewal applicant held the station's license."¹⁰ (emphasis original).

As noted above, MWI did not assume control of the stations until May 15, 2000. The missing reports covered the years 1996 and 1997, prior to the current licensee's tenure. Accordingly, in view of MWI's lack of culpability for the violations, the Notices of Apparent Liability for monetary forfeiture for violation of Section 73.3526 issued to Mel Wheeler, Inc. ARE HEREBY CANCELLED.

⁶ The licensee also noted that the missing reports were required to be placed in the public file by the previous licensee JRI.

⁷ For WFIR(AM), the Bureau issued a Notice of Apparent Liability for Forfeiture, NAL/Acct. No. MB-AD20031810076 (rel. Oct. 8, 2003). For WSLC-FM, the Bureau issued a Notice of Apparent Liability for Forfeiture, NAL/Acct. No. MB-AD 20031810077 (rel. Oct. 8, 2003).

⁸ Response to Notice of Apparent Liability for Forfeiture, filed by Mel Wheeler, Inc., on November 10, 2003 ("Response").⁸ Although, MWI's request was filed after the NAL's thirty day deadline; for good cause we are *sua sponte* waiving this requirement to permit acceptance. See 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁹ *Media Bureau Announces Certain Revisions to Instructions to Form 303-S – Application for Renewal of License for Broadcast Stations*, Public Notice, DA 03-1437 (rel. Apr. 30, 2003).

¹⁰ *Id.*

IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail to the licensee, Leonard Wheeler, c/o Mel Wheeler, Inc., P.O. Box 92, Roanoke, Virginia 24022

Sincerely,



Peter H. Doyle, Chief
Audio Division
Media Bureau