

Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| Cumulus Radio LLC; |) | File No.: EB-IHD-18-00027598 |
| Radio License Holding CBC, LLC; |) | NAL/Acct. No.: 201932080010 |
| Cumulus Licensing LLC; and |) | FRN Nos.: 0024927642; 0019721638; |
| Radio License Holdings LLC |) | 0002834810; 0023190655 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 24, 2019

Released: August 6, 2019

By the Commission: Commissioner Rosenworcel concurring; Commissioner Starks dissenting and issuing a statement.

I. INTRODUCTION

1. We propose a penalty of \$233,000 against Radio License Holding CBC, LLC (Radio License), Cumulus Licensing LLC, Radio License Holdings LLC, and Cumulus Radio LLC, successor-in-interest to Cumulus Radio Corporation (Cumulus)¹ for apparently failing repeatedly to air sponsorship identifications in violation of the Communications Act of 1934, as amended (Act), and Federal Communications Commission (FCC or Commission) rules (Rules) on paid-for broadcast programming and for failing to timely notify the FCC about certain of these violations, as required by a 2016 consent decree (Consent Decree or CD) between Radio License, Cumulus, and the FCC's Enforcement Bureau (Bureau).²

¹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

² The Attachment identifies the stations that broadcast the programming discussed herein. Cumulus, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC are indirect subsidiaries of Cumulus Media Inc. *See* Cumulus Media, Inc., Debtor-in-Possession, Applications to Transfer Control of and Assign FCC Authorizations and Licenses, BTC-20180322ABI, *et al.*, Comprehensive Exh. (Mar. 22, 2018) (Reorganization Applications), *granted with conditions, Cumulus Media, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 5243 (MB-AD 2018) (*Cumulus Media*). Cumulus Radio Corporation and its direct subsidiary, Radio License, are parties to the CD. *Radio License Holding CBC, LLC*, Order and Consent Decree, 31 FCC Rcd 3, 3, para. 1, 5, para. 1 (EB 2016) (Consent Decree or CD). Radio License is licensee of WFBE(FM), Flint, Michigan, and WTRX(AM), Flint, Michigan, two of the stations that broadcast the paid-for programming discussed herein. Cumulus Licensing LLC is an indirect subsidiary of Cumulus, and licensee of WTKA(AM), Ann Arbor, Michigan, WWWW-FM, Ann Arbor, Michigan, and WMAC(AM), Macon, Georgia, which broadcast the paid-for programming discussed herein. Radio License Holdings LLC, licensee of WDVD(FM), Detroit, Michigan and WDRQ(FM), Detroit, Michigan, which broadcast the paid-for programming discussed herein, is the indirect subsidiary of Cumulus Intermediate Holdings, LLC, the parent of Cumulus.

Cumulus Media Inc., the ultimate parent of Cumulus Radio Corporation, Cumulus, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC, reorganized pursuant to Chapter 11 of the Bankruptcy Code while the Consent Decree was in effect. *Cumulus Media* (granting applications to implement the Joint Plan of Reorganization approved by the bankruptcy court and to transfer control of Cumulus Media Inc., Debtor-in-Possession, and *inter alia*, Radio License, Cumulus Licensing LLC, Radio License Holdings LLC, subject to conditions and certain divestitures). As part of this reorganization, Cumulus Radio Corporation was converted to an

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2. The sponsorship identification laws require broadcasters to air sponsorship identification announcements when any valuable consideration is paid or promised to them in exchange for the broadcast of program material. Following an investigation, the Bureau determined that Cumulus and Radio License failed to air required sponsorship announcements in connection with certain paid programming, and Radio License, Cumulus, and the Bureau entered into the CD,³ which required that Cumulus and Radio License adopt a compliance plan, file regular compliance reports, and notify the Bureau of any noncompliance with the sponsorship identification laws or the CD within 15 days after discovery of such noncompliance. After entering into the CD, during the term of the CD, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC received payment to broadcast sponsored programming, and apparently broadcast such programming at seven stations, collectively twenty-six times, without airing appropriate sponsorship identification announcements. In addition, Cumulus and Radio License failed to timely notify the Bureau about certain of these violations in accordance with the 15-day time-table set forth in the CD.

3. Our action today advances the Commission's longstanding goals of protecting consumers by ensuring that they know who is attempting to persuade them, and by protecting broadcasters and sponsors from unfair competitors that fail to abide by our disclosure rules. When a broadcast licensee fails to disclose the sponsor of paid programming, it might mislead the public into believing that the paid broadcast material is a station's independently-generated news or editorial content. In addition, enforcement of the sponsorship identification requirements protects competition by preventing sponsors from gaining an unfair advantage by paying stations to present commercial material as news or editorial content, while their competitors' paid programming is properly disclosed as sponsored material. Our action today also advances the Commission's commitment to ensure that parties fully comply with consent decrees.

II. BACKGROUND

4. On January 7, 2016, Cumulus and Radio License, the former licensee of radio station WOKQ(FM), Dover, New Hampshire (Station), entered into the Consent Decree with the Bureau to resolve the Bureau's investigation into the Station's broadcast announcements, which were aired without adequate sponsorship identification disclosures.⁴ Cumulus and Radio License agreed to pay a \$540,000 civil penalty⁵ and to implement a compliance plan,⁶ among other terms. Under the Consent Decree, during the period from January 2016 until January 2019, Cumulus and Radio License were required to

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LLC. Reorganization Applications, Comprehensive Exh., Attach. A (Cumulus Ownership Structure (Post Reorganization)) & Attach. C (Entities to be Converted to LLCs). The plan of reorganization approved by the bankruptcy court does not proscribe or constrain the Commission's exercise of its regulatory or enforcement authority to the extent provided by law. *Cumulus Media Inc. et al.*, Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' First Amended Joint Chapter 11 Plan of Reorganization, at 50, para. 105, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. May 10, 2018). Moreover, Cumulus Media Inc., the reorganized debtor, has agreed that the Commission has the authority to enforce the Consent Decree as if the bankruptcy reorganization had never been filed. *CM Wind Down Topco Inc.*, Stipulation and Order Resolving Reorganized Debtor's Objection to Claims of the Federal Communications Commission, at 3, paras. 1, 3, Case No. 17-13381 (SCC) (Bankr. S.D.N.Y. May 20, 2019).

³ The CD is binding on Cumulus Radio LLC as successor-in-interest to Cumulus Radio Corporation. See Consent Decree, 31 FCC Rcd at 6, para. 2(k), 13, para. 23 (stating "Cumulus [which is defined to include Cumulus Radio Corporation] agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees").

⁴ *Id.* at 3-4, paras. 1-6, 5, para. 1, 7-8, para. 5.

⁵ *Id.* at 11-12, para. 16.

⁶ *Id.* at 9-10, para. 12.

report any noncompliance with the Commission's sponsorship identification laws and with the terms and conditions of the Consent Decree within 15 calendar days after discovery of such noncompliance.⁷

5. In a January 8, 2018 filing with the Bureau (January 2018 Filing), Cumulus and Radio License disclosed that one non-compliant spot sponsored by Relevant Sports LLC aired collectively thirteen times on six radio stations in Michigan (of these six stations, two are licensed to Radio License, two are licensed to Cumulus Licensing LLC, and two are licensed to Radio License Holdings LLC) on May 16, 2017 (May 2017 Sponsorship ID Violations).⁸ The six stations apparently broadcast the spot without the appropriate sponsorship identifications.⁹ Cumulus and Radio License reported these violations nearly eight months after they occurred. Cumulus and Radio License claimed the matter was promptly reported to the designated compliance officer under the CD, Richard S. Denning, then Senior Vice President, General Counsel, and Secretary of Cumulus Media Inc., the ultimate indirect parent of Cumulus and Radio License, and Senior Vice President, General Counsel, and Secretary of Cumulus and Radio License (Compliance Officer).¹⁰ Cumulus and Radio License also claimed that immediate steps were taken to prevent any further airing of the sponsored material on stations without appropriate sponsorship identification.¹¹ Cumulus and Radio License stated that in addition to the compliance plan under the Consent Decree, they continued to conduct legal research and training regarding the sponsorship identification laws to better comply with the Consent Decree, and prepared a presentation each of the past two years which it used in one-hour compliance training programs.¹²

6. In a May 29, 2018, filing with the Bureau (May 2018 Filing), Cumulus and Radio License reported that a non-compliant advertisement concerning a gubernatorial candidate ran nine times on another radio station (licensed to Cumulus Licensing LLC) in Georgia on May 14, 2018, and four times on May 15, 2018, for a total of thirteen times in May 2018 (May 2018 Sponsorship ID Violations).¹³ These spots also apparently did not have appropriate sponsorship identifications. Cumulus and Radio License claimed the matter was promptly reported to the Compliance Officer, and that immediate steps were taken to prevent any further airing of the sponsored material on stations without appropriate sponsorship identification.¹⁴ Cumulus and Radio License also claimed that to remedy such noncompliance, a one-hour training session with employees in the Macon, Georgia market was scheduled during the week of June 11, 2018.¹⁵

⁷ *Id.* at 10-11, para. 13, 11, para. 15.

⁸ Letter from Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 3, para. 4, Appx. A (Jan. 8, 2018) (on file in EB-IHD-18-00027598) (January 2018 Filing).

⁹ *Id.* at Appx. A.

¹⁰ *Id.* at 1, paras. 1-2, 3, para. 4.

¹¹ *Id.* at 3, para. 4.

¹² *Id.* at 3, para. 5.

¹³ Letter from Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau at 2, para. 2 (May 29, 2018) (on file in EB-IHD-18-00027598) (May 2018 Filing). The May 2018 Filing does not include page numbers; the page numbers included herein refer to counted page numbers. See Letter from Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus Media, to Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau at 3, para. 4 (Jan. 29, 2019) (on file in EB-IHD-18-00027598) (January 2019 Filing) (referring to the violations and subsequent actions disclosed in the May 2018 Filing).

¹⁴ May 2018 Filing at 2, paras. 2-3; January 2019 Filing at 3, para. 4.

¹⁵ May 2018 Filing at 2, para. 3; January 2019 Filing at 3, para. 4. See January 2019 Filing at 4, para. 6 (stating that Cumulus and Radio License have continued to conduct legal research and training regarding the sponsorship

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III. DISCUSSION

7. We find that Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC apparently willfully and repeatedly violated section 317(a)(1) of the Act and section 73.1212(a) of the Rules by broadcasting program material without appropriate sponsorship identification announcements collectively twenty-six times on seven stations. We also find that Cumulus and Radio License apparently violated the Consent Decree by failing to timely notify the Bureau about the 13 violations reported in its January 2018 Filing. We propose a forfeiture of \$233,000 against Cumulus, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC based on their apparent violations of the Act and the Rules.

A. Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC Apparently Violated Section 317 of the Act and Section 73.1212 of the Rules

8. When programming is sponsored, section 317 of the Act and section 73.1212(a) of the Rules require the broadcaster to announce to viewers at the time the program is aired that the broadcaster has been paid to air the programming, and to provide the identification of the sponsor.¹⁶

9. As described above, in the January 2018 Filing, Cumulus and Radio License admitted 13 violations in May 2017,¹⁷ and in the May 2018 Filing, Cumulus and Radio License admitted 13 violations in May 2018.¹⁸ Based on those admissions, the broadcast stations identified herein apparently transmitted programming for which money, service, or other valuable consideration was either directly or indirectly paid or promised to them, or charged or accepted by such stations, without also announcing at the time of the broadcasts that such programming was sponsored, paid for, or furnished, either in whole or in part, and/or by whom, or on whose behalf, such consideration was supplied as is required by section 73.1212(a) of the Rules.¹⁹ Accordingly, we find that Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC apparently repeatedly violated section 317 of the Act and section 73.1212(a) of the

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identification laws and has prepared a Power Point presentation each of the past three years which it has utilized in its one-hour Compliance Training Programs).

¹⁶ Section 317(a)(1) of the Act provides in part:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person.... 47 U.S.C. § 317(a)(1).

Section 73.1212(a) of the Rules provides in part:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied.... 47 CFR § 73.1212(a).

¹⁷ January 2018 Filing at 3, para. 4, Appx. A.

¹⁸ May 2018 Filing at 2, para. 2.

¹⁹ See 47 CFR § 73.1212(a). Under that Rule, “service or other valuable consideration” does “not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.” 47 CFR § 73.1212(a)(2).

Rules by broadcasting sponsored programming on seven stations collectively twenty-six times without airing appropriate sponsorship identification announcements.²⁰

B. Cumulus and Radio License Apparently Violated the Consent Decree

10. For the period from January 2016 until January 2019, the Consent Decree required Cumulus and Radio License to report any noncompliance with the Commission's sponsorship identification laws and with the terms and conditions of the Consent Decree within 15 calendar days after discovery of such noncompliance.²¹ The May 2017 Sponsorship ID Violations occurred on May 16, 2017, and apparently were "promptly reported" to the Compliance Officer.²² Nevertheless, Cumulus and Radio License did not report these sponsorship identification violations to the Bureau until January 2018,²³ nearly eight months later. Accordingly, we find that Cumulus and Radio License apparently failed to comply with the Consent Decree.

C. Proposed Forfeiture

11. Section 503(b)(1)(B) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission...."²⁴ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.²⁵ This definition of willful applies to section 503(b) of the Act, and the Commission has so interpreted the term in the section 503(b) context.²⁶

12. Here, section 503(b)(2)(A) of the Act authorizes us to assess a forfeiture against Cumulus and the other licensee entities of up to \$50,334 per violation, or for each day of a continuing violation, up to a statutory maximum of \$503,349 for a single act or failure to act.²⁷ In exercising our forfeiture authority, we must 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, substantial

²⁰ 47 U.S.C. § 317(a)(1); 47 CFR § 73.1212(a).

²¹ Consent Decree, 31 FCC Rcd at 10-11, para. 13, 11, para. 15.

²² January 2018 Filing at 1, paras. 1-2, 3, para. 4.

²³ *Id.* at 3, para. 4, Appx. A.

²⁴ 47 U.S.C. § 503(b)(1)(B).

²⁵ 47 U.S.C. § 312(f)(1).

²⁶ *See, e.g., Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) ("...[C]onsistent with congressional intent, recent Commission interpretations of 'willful' do not require licensee intent to engage in a violation."), *recons. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

²⁷ 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(A). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (Inflation Adjustment Act). The Bureau released the order making the 2019 annual adjustment on December 19, 2018. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-1272, 2018 WL 6722625 (EB Dec. 19, 2018); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 83 Fed. Reg. 4600 (Feb. 1, 2019) (setting February 1, 2019, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." *See* 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended, § 6.

economic gain, and such other matters as justice may require.²⁸ We have discretion to adjust the base forfeiture upward or downward, taking into account the particular facts of each individual case.²⁹

13. Section 1.80(b) of the Rules sets a base forfeiture of \$4,000 for violations of the Commission's sponsorship identification rules for each violation or each day of a continuing violation.³⁰ We apply the \$4,000 base forfeiture to each station's apparent violations of the sponsorship identification requirements, including the apparent violations of section 317 of the Act and section 73.1212 of the Rules (13 instances of apparently airing programming without the requisite adequate disclosures in May 2017, and another 13 such instances in May 2018).³¹ Thus, the aggregate base forfeiture amount for the sponsorship identification violations at issue here is \$104,000.³²

14. As to Cumulus' and Radio License's failure to comply with the Consent Decree, the Commission's 1997 *Forfeiture Policy Statement* and section 1.80 of the Rules do not specify a base forfeiture amount for failing to comply with a Commission order such as the Consent Decree.³³ The Commission has stated, however, that the "omission of a specific rule violation from the list [establishing base forfeiture amounts] should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules."³⁴ In cases in which the Commission has not established a base forfeiture amount for an apparent violation, it has looked to the base forfeitures established or issued in analogous cases for guidance,³⁵ and the Commission retains the discretion to issue forfeitures on a case-by-case basis,³⁶ irrespective of whether it has established a corresponding base forfeiture amount.

²⁸ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note § II (articulating criteria for upward adjustments (egregious misconduct, ability to pay/relative disincentive, intentional violation, substantial harm, prior violations of any FCC requirements, substantial economic gain, and repeated or continuous violation) and downward adjustments (minor violation, good faith or voluntary disclosure, history of overall compliance, and inability to pay)).

²⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (*1997 Forfeiture Policy Statement*) (noting that "[a]lthough [the Commission has] adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, [the Commission] retain[s] the] discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under [the] general forfeiture authority contained in Section 503 of the Act"), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³⁰ 47 CFR § 1.80(b), § I.

³¹ Section 1.80 lists a base forfeiture of \$4,000 per violation for "sponsorship identification requirements." *Id.* The Commission has previously assessed forfeitures consistent with this listing in instances involving violations of sponsorship identification requirements under section 317 of the Act and section 73.1212 of the Commission's rules. See *Radio License Holding XI, LLC*, Forfeiture Order, 29 FCC Rcd 1623, 1628, para. 12, 1630-31, para. 17 (2014) (*Radio License Holding XI*).

³² In *Radio License Holding XI*, the Commission observed that "[i]n more recent cases . . . the Commission has imposed significantly higher forfeiture amounts and has calculated the forfeiture by multiplying the base forfeiture by the number of violations . . . [The Commission is] following here the approach [the Commission] used in *Sonshine*, and [the Commission] intend[s] that the Commission and the Bureau will generally take this approach to calculating forfeiture amounts for sponsorship identification violations in the future." 29 FCC Rcd at 1628, para. 12. Although the Commission has deviated from a per-instance standard occasionally in other areas, see, e.g., *STi Telecom Inc.*, Forfeiture Order, 30 FCC Rcd 11742, 11756, para. 30 (2015), in this case, no excessive penalties will result if we follow the guidance in *Radio License Holding XI*; thus, we see no reason to deviate from that approach here.

³³ *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15, Appx. A; 47 CFR § 1.80.

³⁴ *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

³⁵ See, e.g., *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3304, para. 19 (2000).

³⁶ *1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

The Commission has, in the past, determined that the failure to comply with the terms of a consent decree is a serious violation warranting a substantial forfeiture.³⁷ In one case in which a licensee violated a consent decree by failing to pay its civil penalty and file a compliance report, the Bureau assessed a \$25,000 forfeiture.³⁸ In the instant case, Cumulus and Radio License were late by nearly eight months in reporting noncompliance with provisions of the consent decree. The Commission expects parties to honor agreements made in consent decrees, and Cumulus' and Radio License's failure to do so undermines the value of consent decrees as an efficient means to resolve investigations without further expenditure of public resources.³⁹ "The Commission has stated that 'a consent decree violation, like misrepresentation, is particularly serious.'"⁴⁰ We therefore conclude that Cumulus and Radio License are apparently liable for a forfeiture in the amount of \$25,000.

15. Based on the above, the base forfeiture is \$4,000 for the May 2017 Sponsorship ID Violations (13 violations, totaling \$52,000), \$4,000 for the May 2018 Sponsorship ID Violations (13 violations, totaling \$52,000), and \$25,000 for the violation of the Consent Decree, amounting to a \$129,000 total base forfeiture liability.

16. In this case, given the totality of the circumstances, and consistent with the *1997 Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted based on prior violations of FCC rules.⁴¹ The target entities and/or their affiliates have a prior history of violating the sponsorship identification rules and other FCC rules.⁴² Here, the Consent Decree resolved Cumulus' and Radio License's violations of the sponsorship identification rules, yet Radio License repeatedly continued to violate the same sponsorship identification rules while operating under the Consent Decree. Under these circumstances, a substantial upward adjustment for the sponsorship identification violations is warranted.⁴³ Thus, we conclude an upward adjustment of the base forfeiture from \$4,000 to \$8,000 is

³⁷ *A Radio Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6561, 6563, para. 6 (EB 2011) (*A Radio NAL*) (proposing a \$25,000 forfeiture for failure to pay voluntary contribution and submit compliance report), *aff'd*, Forfeiture Order, 27 FCC Rcd 6336, 6337, para. 4 (EB-Field Office 2012) (*A Radio Forfeiture Order*) (rejecting licensee's ability to pay argument).

³⁸ *A Radio NAL*, 26 FCC Rcd at 6562-63, paras. 5-6. *See GPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2533, paras. 27-28 (2015) (proposing a forfeiture penalty of \$25,000 for apparent failure to fully respond to a letter of inquiry based on the extent and willfulness of the violation, and the insufficiency of the LOI Response), *aff'd*, Forfeiture Order, 30 FCC Rcd 7814 (2015); *BigZoo.com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437, 24440-41, paras. 12-13 (EB 2004), *aff'd*, Order of Forfeiture, 20 FCC Rcd 3954 (EB 2005) (ordering \$20,000 for a common carrier's failure to respond to an LOI).

³⁹ *See A Radio Forfeiture Order*, 27 FCC Rcd at 6337, para. 4.

⁴⁰ *Id.*

⁴¹ *See 1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17116, Appx. A (including "[p]rior violations of any FCC requirements" as an upward adjustment factor).

⁴² *See, e.g.*, Consent Decree, 31 FCC Rcd at 9, para. 10 (Cumulus and Radio License admitting that their actions with respect to the broadcast of the 178 announcements referenced in CD violated the Commission's sponsorship identification laws); *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1667 (EB-IHD 2009) (forfeiture paid) (imposing \$6,000 forfeiture for Cumulus Licensing LLC's apparent violation of section 73.1206 of the Rules); *Cumulus Licensing Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 5286, 5292, para. 17 (2008) (affirming Memorandum Opinion and Order's conclusion that Cumulus Licensing Corporation willfully and repeatedly violated section 17.50 of the Rules and that it is not entitled to a reduction in the assessed forfeiture amount); *Cumulus Licensing Corp.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 2753 (EB 2004) (forfeiture paid) (imposing \$4,000 forfeiture for Cumulus Licensing Corp.'s apparent violation of section 73.1206 of the Rules).

⁴³ *See, e.g.*, *Clear Channel Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 343, 347-48, para. 9 (EB-IHD 2012) (forfeiture paid) (proposing a 450% upward adjustment of the \$4,000 base forfeiture to \$22,000 for violation of the contest rule, 47 CFR § 73.1216, based in part on prior violations); *Citicasters*

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appropriate for each sponsorship identification violation and propose a forfeiture of \$208,000 for the sponsorship identification violations. Adding the proposed \$25,000 forfeiture for the violation of the Consent Decree results in a total proposed forfeiture of \$233,000.

17. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none.

18. Cumulus and Radio License stated that after discovering that the sponsorship identification violations occurred, they took steps to ensure that further broadcasts of sponsored material on associated Cumulus stations were not made without appropriate sponsorship identification.⁴⁴ However, these preventive actions do not lessen Cumulus and Radio License's failure to timely report the new sponsorship identification violations to the Commission. The Consent Decree required that Cumulus and Radio License report sponsorship identification violations within fifteen days of discovery,⁴⁵ yet it was nearly eight months before Cumulus and Radio License reported these new violations to the Commission. Cumulus and Radio License have not explained or justified their failure to timely report the May 2017 Sponsorship ID Violations. Even if the failure to timely report the May 2017 Sponsorship ID Violations was due to inadvertent oversight, such inadvertence does not mitigate the late reporting, or the fact that new sponsorship identification violations occurred shortly after Cumulus and Radio License entered into and were still subject to the terms of a Consent Decree that specifically dealt with prior sponsorship identification violations.⁴⁶ Commission licensees are required to take corrective action in order to come into compliance with Commission rules, and taking such required corrective action does not mitigate the violations themselves or reduce the associated penalties.⁴⁷ Under the circumstances of the instant case, there are no factors that would justify a downward adjustment of the forfeiture amount.

19. Therefore, after applying the *1997 Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$233,000, for which Cumulus, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC are apparently liable. The proposed forfeiture is calculated as follows:

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Licenses, L.P., Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1633, 1635-36, paras. 9-10 (EB-IHD 2007) (forfeiture paid) (applying a 150% upward adjustment of the base forfeiture from \$4,000 to \$10,000 based in part on prior rule violations); *Union Broad., Inc.*, Notice of Apparent Liability for Forfeiture, File No. EB-02-KC-783, slip op. at 3, para. 11 (EB-Field Feb. 18, 2003), <https://www.fcc.gov/document/union-broadcasting-inc-whb-am-and-kcte-am-overland-park-ks> (proposing a forfeiture of \$18,000, including a 100% upward adjustment of the \$4,000 base forfeiture for licensee's operation outside the terms of its authorization in violation of 47 CFR § 73.1745(a)), *aff'd*, Forfeiture Order, 19 FCC Rcd 18588, 18590, para. 10, 18591, para. 13 (EB 2004) (forfeiture paid) (*Union Forfeiture Order*) (affirming upward adjustment and finding no basis to cancel or reduce the forfeiture).

⁴⁴ See January 2018 Filing at 3, paras. 4-5, Appx. A, May 2018 Filing at 2, paras. 2-3, January 2019 Filing at 3, para. 4, 4, para. 6.

⁴⁵ Consent Decree, 31 FCC Rcd at 10-11, para. 13.

⁴⁶ See, e.g., *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (“[I]nadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”) (internal quotation omitted), *recon. dismissed in part, denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013) (rejecting argument that unintentional nature of the violation justifies mitigation of the forfeiture amount).

⁴⁷ See *Union Forfeiture Order*, 19 FCC Rcd at 18590, para. 10 (specifying that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations”), quoting *Seavest Yacht Brokers d/b/a San Juan Marina Friday Harbor, Washington*, Forfeiture Order, 9 FCC Rcd 6099, 6099, para. 7 (1994).

| Apparent Violation | Number of Apparent Violations | Proposed Forfeiture Per Apparent Violation | Total |
|------------------------------------|-------------------------------|--|------------------|
| May 2017 Sponsorship ID Violations | 13 | \$8,000 | \$104,000 |
| May 2018 Sponsorship ID Violations | 13 | \$8,000 | \$104,000 |
| Violation of Consent Decree | 1 | \$25,000 | \$25,000 |
| Total | 27 | NA | \$233,000 |

IV. CONCLUSION

20. We have determined that Cumulus, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC apparently willfully and repeatedly violated section 317 of the Act and section 73.1212 of the Rules and/or the Consent Decree. We have further determined that Cumulus, Radio License, Cumulus Licensing LLC, and Radio License Holdings LLC are apparently jointly and severally liable for a forfeiture in the amount of \$233,000.

V. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act⁴⁸ and section 1.80 of the Rules,⁴⁹ Cumulus Radio LLC, Radio License Holding CBC, LLC, Cumulus Licensing LLC, and Radio License Holdings LLC are hereby **NOTIFIED** of their **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two hundred thirty-three thousand dollars (\$233,000) for willful and repeated violations of section 317 of the Act⁵⁰ and section 73.1212 of the Rules,⁵¹ and/or violation of the Consent Decree.

22. **IT IS FURTHER ORDERED** that pursuant to section 1.80 of the Rules,⁵² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Cumulus Radio LLC, Radio License Holding CBC, LLC, Cumulus Licensing LLC, and Radio License Holdings LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 23-26 below.

23. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),⁵³ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁵⁴

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank

⁴⁸ 47 U.S.C. § 503(b).

⁴⁹ 47 CFR § 1.80.

⁵⁰ 47 U.S.C. § 317.

⁵¹ 47 CFR § 73.1212.

⁵² 47 CFR § 1.80.

⁵³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

⁵⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁵⁵ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

24. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁵⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk, by telephone, at (877) 480-3201, or, by e-mail, ARINQUIRIES@fcc.gov.

25. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 and 1.80(f)(3) of the Rules.⁵⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Acct Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Melanie A. Godschall at Melanie.Godschall@fcc.gov, and Melissa A. Marshall at Melissa.Marshall@fcc.gov.

26. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless Cumulus Radio LLC, Radio License Holding CBC, LLC, Cumulus Licensing LLC, and Radio License Holdings LLC submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current

⁵⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁵⁶ 47 CFR § 1.1914.

⁵⁷ 47 CFR §§ 1.16, 1.80(f)(3).

financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

27. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to Richard S. Denning, Esq., Executive Vice President, General Counsel, and Secretary, Cumulus Media Inc., Cumulus Radio LLC, and Radio License Holding CBC, LLC, 3280 Peachtree Road NW, Suite 2200, Atlanta, Georgia 30305, and to Andrew S. Kersting, Esq., Regulatory Counsel, Cumulus Media, 3280 Peachtree Road NW, Suite 2200, Atlanta, Georgia 30305.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

ATTACHMENT

| STATION LICENSEE/ STATION ¹ | FACILITY IDENTIFICATION NUMBER | ON-AIR SPOT OR ADVERTISEMENT WITHOUT APPROPRIATE SPONSORSHIP IDENTIFICATION | |
|---|--------------------------------------|---|--|
| | | Apparent Violations | Broadcast Dates ² |
| Radio License Holdings LLC/ WDVD(FM), Detroit, Michigan | 8631 | 3 | 5/16/17 (3 times) |
| Radio License Holdings LLC/ WDRQ(FM), Detroit, Michigan | 70040 | 3 | 5/16/17 (3 times) |
| Cumulus Licensing LLC/ WTKA(AM), Ann Arbor, Michigan | 47116 | 2 | 5/16/17 (2 times) |
| Cumulus Licensing LLC/ WWWW-FM, Ann Arbor, Michigan | 41080 | 2 | 5/16/17 (2 times) |
| Radio License Holding CBC, LLC/ WFBE(FM), Flint, Michigan | 21730 | 1 | 5/16/17 (1 time) |
| Radio License Holding CBC, LLC/ WTRX(AM), Flint, Michigan | 15768 | 2 | 5/16/17 (2 times) |
| Cumulus Licensing LLC/ WMAC(AM), Macon, Georgia | 46998 | 13 | 5/14/18 (9 times) 5/15/18 (4 times) |
| TOTALS | N/A | 26 | 26 broadcasts |

¹ January 2018 Filing at Appx. A (includes information regarding WDVD(FM), WDRQ(FM), WTKA(AM), WWWW-FM, WFBE(FM), WTRX(AM)); May 2018 Filing at 2, para. 2 (includes information regarding WMAC(AM)).

² *Id.*

**DISSENTING STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Cumulus Radio LLC et al.*, File No.: EB-IHD-18-00027598.

This Commission has seldom had to act against a party for violating a consent decree. This isn't surprising. Consent decrees are agreed to by the target of an investigation, often to avoid a more severe enforcement action. The terms are negotiated, and through these terms the Commission is often able to secure commitments that significantly advance the public interest, such as consumer refunds or other compliance activity. In return, and to reflect the value of these commitments, the target often pays a penalty that is slightly lower than they otherwise would have had the investigation resulted in a notice of apparent liability. Ideally, a consent decree results in a win-win-win situation, with the Commission, the target, and consumers all satisfied in some way by the result. And, importantly, in the rare cases involving consent decree violations that the Commission has previously considered, they were dealt with severely.

In fact, this system only works if noncompliance with our consent decrees is strongly punished. Prior Commission precedent that is quoted in this item states that "a consent decree violation, like misrepresentation, is particularly serious."¹ Indeed, misrepresentation, or lying to the Commission, is among the most serious violations that we enforce.² It is easy to understand why the Commission has historically understood consent decree violations to be similarly serious. As the Commission has previously noted: "The whole premise of a consent decree is that enforcement action is unnecessary due, in substantial part, to a promise by the subject of the consent decree to take the enumerated steps to ensure future compliance."³ As an Enforcement Bureau field office further explained in a later case and the Commission, again, notes in this item: "The Commission expects parties to honor agreements made in consent decrees, and . . . failure to do so undermines the value of consent decrees as an efficient means to resolve investigations without further expenditure of public resources."⁴

Today, the Commission changes course on how it deals with consent decree violations. Specifically, we are dealing with Cumulus, a radio broadcaster who previously entered a consent decree in 2016 with the Enforcement Bureau to settle an investigation into 178 sponsorship identification violations for failing to tell its listeners that certain programming spots were in fact paid promotional material. Sponsorship identification rules are important because they ensure that listeners know when the content they are consuming is an advertisement and who exactly is paying for it. These rules are particularly crucial for paid political speech because, as we well know, Americans should not be confused or misled by content that goes to the heart of how people make up their minds, exercise their right to vote, and participate in our democracy. The 2016 Cumulus consent decree included a compliance plan to specifically make sure that the broadcaster had better practices around attributing paid advertisements.

We are here today considering another enforcement action against Cumulus because, despite the promises made in the consent decree, the broadcaster has a fresh round of sponsorship identification violations, including some for political advertisements. When you promise the Commission better policies and practices, and then repeat the same violation that you were obligated to correct, we must vindicate the public interest and demand full accountability. Moreover, despite agreeing in the consent decree to notify us almost immediately after discovering noncompliance, Cumulus uncovered violations

¹ *SBC Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 19091, 19125 (2001) (*SBC NAL*).

² See 47 CFR § 1.80.

³ *SBC NAL*, 16 FCC Rcd at 19125.

⁴ *A Radio Company, Inc.*, Forfeiture Order, 27 FCC Rcd 6336, 6337, para. 4 (EB 2012).

in a timely manner but, inexplicably, waited nearly eight months to disclose certain violations to the Commission.

The \$25,000 proposed forfeiture for the consent decree violation does not follow well-established Commission precedent and is not, in my mind, commensurate with the misconduct and violations at issue.

From my time in the Enforcement Bureau, I know that these actions are significant and will not go unnoticed by savvy lawyers, who will undoubtedly refer to this case in future investigations. I fear that the Commission's action here will make it more difficult for us to impose significant penalties for consent decree violations in the future and will signal to industry that we do not take noncompliance seriously. This will undermine the deterrent effect of our enforcement actions and make it more difficult for the Enforcement Bureau to prosecute its important mission. For these reasons, I dissent.