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

In the Matter of	)	
	)	
K.I.D.S. – TV6	)	File No. 99100489
	)	NAL/Acct. No. 20013208005
Licensee of Low Power Television Station	)	Facility #63149
K06MU, Big Bear Lake, California	)	JWS
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 18, 2000 **Released: October 20, 2000**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that K.I.D.S. – TV6, licensee of low power television station K06MU, Big Bear Lake, California, has apparently violated Section 310(d) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 310(d), and Section 73.3540(a) of the Commission's rules, 47 C.F.R. § 73.3540(a), by transferring *de facto* control of the K06MU license without obtaining prior Commission approval. We conclude that K.I.D.S. – TV6 is apparently liable for an eight thousand dollar ($8,000) forfeiture.

II. BACKGROUND

2. The Enforcement Bureau received a complaint alleging that K.I.D.S. – TV6 had sold the license for K06MU without obtaining Commission approval. As a result of that complaint, on January 31, 2000, the Chief, Investigations and Hearings Division, sent a letter of inquiry to K.I.D.S. – TV6. Although K.I.D.S. – TV6 did not respond to the letter of inquiry, Bear Valley Broadcasting, Inc. ("Bear Valley"), the proposed assignee of the K06MU license, filed a response on March 23, 2000. The staff then sent two additional letters of inquiry to Bear Valley.

3. The staff's investigation revealed that on September 17, 1999, K.I.D.S. – TV6[1] and Bear Valley entered into an agreement to sell the K06MU license and station facilities to Bear Valley. On September 19, 1999, those parties also entered into an "Interim Management Agreement." The term of the agreement was through November 30, 1999, but Bear Valley has the right to "extend the term for such time as is necessary to obtain the approval" for the assignment of the license to Bear Valley. Under the agreement, Bear Valley acquired "full and complete power and exclusive authority to conduct, on behalf of [the licensee], all business operations and transactions on or pertaining to" K06MU. The agreement also provided that Bear Valley (1) receives all monies derived from station operations, except for certain

[1] The seller was originally named "American Sports Kids Association." The agreement was later amended to substitute K.I.D.S. – TV6 as the seller.

insurance benefits, (2) has the right to establish all policies for the television station, (3) can employ personnel for the operation of the station, and (4) can make whatever changes to the station's property or equipment that it deems appropriate. Bear Valley also assumed any loss that might result from the station's operation during the management agreement. K.I.D.S. – TV6 may terminate the management agreement only if Bear Valley files for bankruptcy or is placed in receivership, or if Bear Valley defaults on any material provision of the agreement, and the default is not cured within 60 days or such longer period as is reasonable.

4. Bear Valley states that under the management agreement, its principal Robert Cartwright controls the station's financial records and books, pays the station's operating expenses, and establishes the station's management. Mr. Cartwright and Bear Valley principal Jacque P. Montero interview, hire, and fire station personnel, establish station management, and maintain the programming format (which is the same format used by K.I.D.S. – TV6). Bear Valley pays a contract engineer to maintain the station's facilities.

5. On December 22, 1999, Chuck Foster, the principal of K.I.D.S. – TV6, pled guilty in the Superior Court, State of California, County of San Bernardino, to a criminal charge of felony insurance fraud. *See People v. Chuck Foster*, Case No. FVI009947. Mr. Foster was incarcerated in state prison. On February 9, 2000, Mr. Foster was sentenced to two years in prison (with credit for time previously served). Bear Valley represents that prior to Mr. Foster's incarceration, Mr. Cartwright and Mr. Foster discussed the station's operations on almost a daily basis. As of June 22, 2000, Mr. Cartwright had not received permission to visit Mr. Foster in prison, although they had spoken on the telephone "on a number of occasions." *See* Bear Valley June 23, 2000 Response to Letter of Inquiry, Response 3.

6. K.I.D.S. – TV6 and Bear Valley filed an application for the Commission's consent to assign the K06MU license to Bear Valley on January 12, 2000 (File No. BALTVL-20000112ABO). That application remains pending.

III. DISCUSSION

7. Section 310(d) of the Act provides in pertinent part:

> No . . . station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

Similarly, Section 73.3540(a) of the Commission's rules, 47 C.F.R. § 73.3540(a), provides, "Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control."

8. We traditionally look beyond the legal title to whether a new entity or individual has obtained the right to determine the basic operating policies of the station in ascertaining whether a transfer of control has occurred. *See WHDH, Inc.*, 17 FCC 2d 856 (1969) *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970) *cert. denied*, 403 U.S. 923 (1971). Specifically, we look to three essential areas of station operation: programming, personnel and finances. *See, e.g., Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981), *recon. denied*, 50 RR 2d 1346 (1982). A licensee may delegate certain functions on a day-to-day basis to an agent or employee, but such delegation cannot be wholesale. *See, e.g., Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713, 715 (1981). That is, those persons assigned a task must be guided by policies set by the permittee or licensee. *See David A. Davila*, 6 FCC

Rcd 2897, 2899 (1991). Moreover, the standards by which we measure control are equally applicable to situations involving "time brokerage" or "management agreements." *Choctaw Broadcasting Corporation*, 12 FCC Rcd 8534, 8538 (1997).

9. In this case, K.I.D.S. – TV6 appears to have transferred *de facto* control of the station through the management agreement with Bear Valley. The terms of the management agreement and the actual conduct of the parties show that Bear Valley has actually set station policies, as opposed to simply managing the station under Mr. Foster's direction. Under the agreement, Bear Valley has "full and complete power and exclusive authority" to operate the station. Moreover, Bear Valley assumed all of the financial risks and the financial benefits from the operation of the station. All of the station's employees are Bear Valley's employees, and Bear Valley has the exclusive right to set personnel policies for the station. Mr. Foster appears to have no current role in the station's operation because he is incarcerated. Under these circumstances, Bear Valley appears to have acquired ultimate control over station operations without prior Commission approval.

10. Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and Section 1.80(a) of the Commission's rules, 47 C.F.R. § 1.80(a), each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Communications Act, the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Furthermore, a continuing violation is "repeated" if it lasts more than one day. *Id.*, 6 FCC Rcd at 4388.

11. The Commission's Forfeiture Policy Statement sets a base forfeiture amount of $8,000 for an unauthorized substantial transfer of control. *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* 15 FCC Rcd 303 (1999). Currently, there is nothing before us to suggest that the base amount should be increased or decreased. Accordingly, we believe that a forfeiture of $8,000 forfeiture is appropriate.

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.111, 0.311 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, that K.I.D.S. – TV6 is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars ($8,000) for willfully and repeatedly violating Section 310(d) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 310(d), and Section 73.3540(a) of the Commission's rules, 47 C.F.R. § 73.3540(a).

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, K.I.D.S. – TV6 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.

14. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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. referenced above.

15. 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.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

17. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

18. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail/Return Receipt Requested, to K.I.D.S. – TV6, 41506 Big Bear Boulevard, Big Bear Lake, California 92315.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau