

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

In the Matter of	)	
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<b>DONALD W. KAMINSKI, JR.</b>	)	
	)	EB-00-IH-0348
Licensee of Station KHWK(FM), Tonopah, NV	)	NAL Acct. No. 200132080012
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**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** May 9, 2001

**Released:** May 14, 2001

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Donald W. Kaminski, Jr. (Mr. Kaminski), licensee of KHWK(FM), Tonopah, Nevada, apparently willfully violated section 73.1015 of the Commission’s rules<sup>1</sup> by failing to respond to a written Commission inquiry. Based upon the facts and circumstances surrounding this apparent violation, we find that Mr. Kaminski is apparently liable for a forfeiture in the amount of \$4,000.

**II. BACKGROUND**

2. On November 9, 2000, we sent a letter of inquiry (LOI) to Mr. Kaminski concerning the ownership and operation of FM translator K240BS, Pahrump, NV and KHWK(FM), Tonopah, NV. Our LOI was sent certified mail, return receipt requested. However, the U.S. Postal Service certified mail receipt was not returned to the Commission.

3. On January 3, 2001, we sent Mr. Kaminski another letter, and enclosed a copy of the earlier LOI. Our January 3, 2001 letter reminded Mr. Kaminski that section 73.1015 of the Commission’s rules requires him to respond to our inquiry. We also provided Mr. Kaminski with the name, telephone number and e-mail address of the staff attorney assigned to this matter. Our letter of January 3, 2001 also was sent certified mail, return receipt requested. The U.S. Postal Service certified mail receipt reflects that Mr. Kaminski received this letter, but does not indicate the date of delivery. Nevertheless, Mr. Kaminski did not respond to our inquiry following receipt of the January 3, 2001 letter.

**III. DISCUSSION**

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<sup>1</sup> 47 C.F.R. § 73.1015.

4. Section 73.1015 of the Commission's rules provides:

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked, or to any other matter within the jurisdiction of the Commission, or, in the case of a proceeding to amend the FM or Television Table of Allotments, require from any person filing an expression of interest, written statements of fact relevant to that allotment proceeding. No applicant, permittee, licensee, or person who files an expression of interest shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any other written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. (note omitted).

Mr. Kaminski apparently has refused to respond in writing to our inquiry. Therefore, it appears that Mr. Kaminski's refusal constitutes a willful violation of section 73.1015 of the Commission's rules. Section 503(b)(1)(B) of the Act provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty.<sup>2</sup> The Commission has ruled that an act or omission is "willful" if the violator knew it was taking the action in question whether or not there is any intent to violate the rule.<sup>3</sup> Under these circumstances, we conclude that Mr. Kaminski's apparent violation of section 73.1015 warrants the imposition of a monetary forfeiture.

5. In assessing a forfeiture, section 503(b)(2)(D) of the Act<sup>4</sup> and section 1.80(b)(4)<sup>5</sup> of the Commission's rules require us 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 other such matters as justice may require. The Commission's *Forfeiture Guidelines* establish a base amount of \$4,000 for failure to respond to Commission communications.<sup>6</sup> Based upon the information before us, and taking into consideration the factors expressed in section 503(b)(2)(D) of the Act, we find that a forfeiture in the amount of \$4,000 is appropriate.

6. Our action issuing this NAL does not resolve serious questions concerning ownership and operation of FM translator K240BS. Mr. Kaminski's failure to comply with section 73.1015 in the future would constitute a separate violation of the Commission's rules. We warn Mr. Kaminski that failure to respond to further Commission inquiries in this matter could form the basis for additional notices of apparent liability and may result in an order to show cause why FM translator K240BS should not be required to cease and desist operation.

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<sup>2</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(2).

<sup>3</sup> *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Guidelines").

**IV. ORDERING CLAUSES**

7. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 1.80, Donald W. Kaminski, Jr. is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for violating section 73.1015 of the Commission's rules.

8. IT IS FURTHER ORDERED THAT, pursuant to 47 C.F.R. § 1.80, within thirty days of this NOTICE OF APPARENT LIABILITY, Donald W. Kaminski, Jr. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

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

11. 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.

12. 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 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by Certified Mail- Return Receipt Requested, to Mr. Donald W. Kaminski, licensee of KHWK(FM), at the licensee's address of record, P.O. Box 1669, Tonopah, Nevada 89049.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau