

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

In the Matter of Liability of)	
)	
Kansas Public Telecommunications Services, Inc.,)	
licensee of Station KPTS(TV),)	File. No. BRET-980129KG
Hutchinson, Kansas,)	
)	
For a Forfeiture)	
)	
)	

MEMORANDUM OPINION AND ORDER & FORFEITURE ORDER

Adopted: March 22, 2001

Released: March 23, 2001

Before the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, pursuant to delegated authority, has before it for consideration: (i) the *Memorandum Opinion and Order and Notice of Apparent Liability in Kansas Public Telecommunications Service, Inc.*, 14 FCC Rcd 12112 (MMB 1999) (“*MO&O*”), which granted the license renewal application of Kansas Public Telecommunications Service, Inc. (“KPTS” or “licensee”) for Station KPTS(TV), Hutchinson, Kansas, subject to a Notice of Apparent Liability (“NAL”) for a \$5,000 forfeiture; and (ii) the licensee’s response to the NAL, which seeks rescission or reduction of the forfeiture.

2. In the *MO&O*, we found that the licensee had violated Section 73.1015 of the Commission’s Rules by willfully omitting material facts in the FCC Form 396 (Broadcast EEO Program Report) filed with its license renewal application on January 29, 1998. In Section VII of the Form 396, which states “[y]ou must provide here a brief description of any complaint which has been filed before any body having competent jurisdiction under Federal, State, territorial or local law, alleging unlawful discrimination in the employment practices of the station including the persons involved, the date of filing, the court or agency, the file number (if any), and the disposition or current status of the matter,” the licensee stated “No Complaints.” However, in an informal objection filed against the licensee’s renewal application on April 30, 1998, two former employees of KPTS(TV) informed Commission staff that they had filed discrimination complaints against the licensee with the Kansas Human Rights Commission on December 29, 1997.

3. In its July 10, 1998, opposition to the informal objection, the licensee explained that it had prepared its license renewal materials in early January 1998 and filed the renewal application on January 29, 1998. The licensee contended that it became aware of the complaints in the interim (between preparation of the renewal materials and filing of the renewal application) so that it inadvertently failed to report the complaints because the materials involved had “simply crossed in the mail.” On August 18, 1998, the licensee finally filed an amendment to its renewal application. In this amendment, the licensee reported the discrimination complaints in Section VII of Form 396. In a further pleading filed on December 30, 1998, the licensee stated that it had knowledge of the complaints by January 6, 1998. The licensee also stated that it did not report the complaints on the station’s renewal application because preparation of the renewal materials pre-dated the station’s receipt of the complaints and the station

inadvertently failed to amend its renewal materials because of “the confusion and press of business surrounding the complaints.”

4. We found no evidence in the MO&O that the licensee’s failure to report the discrimination complaints resulted from an intent to deceive. However, we concluded that the licensee had omitted material facts from its Form 396. We further concluded that this action was willful inasmuch as the licensee’s president and general manager, Donald Checots, certified that the information contained in the form, including the statement that no complaints had been filed, was true and correct to the best of his knowledge when he was clearly aware of the complaints. Accordingly, the Commission issued the licensee an NAL for a \$5,000 forfeiture for willfully omitting material facts from its Form 396 in violation of Section 73.1015 of the Commission’s Rules.

5. In the licensee’s response to the NAL, the licensee submits that it would be inappropriate for the Commission to impose a monetary forfeiture since KPTS has a history of overall compliance with Commission rules and policies. The licensee also submits that the proposed forfeiture would impose an economic hardship on KTBS, a noncommercial station, and “divert from KPTS much-needed funds for its current operations and digital future.”

6. Finally, the licensee argues that the “nature and circumstances” of this case also warrant rescission or reduction of the forfeiture. The licensee cites Commission cases which imposed forfeitures for failure to report discrimination complaints where the licensees had been aware of the existence of the complaint at least four months before certifying the lack of such complaints in FCC Form 396. Unlike those cases, the licensee argues, the present circumstances are “different” since “the preparation of the license renewal and its receipt of service of the discrimination complaint occurred within the same time period.” The licensee also asserts that the January 12, 1998 date on which it executed the application; i.e., signed the application’s certification, is the relevant date to use when applying Section 73.1015, and not the January 29, 1998 date on which its legal counsel filed the station’s renewal application, as “incorrectly suggested” by the *MO&O*. Further, the licensee disputes the *MO&O*’s finding that a failure to report a pending discrimination complaint is “material” since the FCC’s policy is to defer action on such complaints until resolved by the appropriate agency or court, so that the licensee’s failure to report the complaints is a violation without any consequence other than the NAL at issue.

7. We conclude that the licensee has provided no basis for rescission or reduction of the forfeiture. Contrary to the licensee’s assertion, we do not believe that a licensee’s overall history of compliance with the Commission’s Rules necessitates or justifies a reduction of the specified forfeiture amount. While Section 503(b)(2) of the Communications Act, as amended, 47 U.S.C. § 503(b)(2), requires us to consider a licensee’s recidivist history of prior offenses in determining a forfeiture amount, it does not mandate that we mitigate a forfeiture amount should a licensee have no history of prior offenses. *CRC Broadcasting, Inc.*, 15 FCC Rcd 6697, 6698 (MMB 1999).

8. After reviewing the licensee’s financial statements for the years ended June 30, 1998 and 1999, we deny the request of the licensee that we reduce or rescind the forfeiture due to its financial condition. Although the licensee reported an earnings loss for fiscal year 1999, it also reported significant revenue for the same year. Nonetheless, we will consider a request for an installment plan. If the licensee wishes to arrange a payment plan, it can address its request to: Regina Dorsey, Chief, Credit & Debt Management Center, Financial Operations Division, Office of Managing Director, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554.

9. The licensee argues that the circumstances in this case are significantly different from

those where the Commission imposed forfeitures for similar violations because the other licensees were aware of the complaints for longer periods of time. We disagree. The licensee does not deny that it was aware of the existence of the complaints at the time the renewal application was executed and filed. Thus, the *length* of the time period that the licensee had prior knowledge of the complaint is irrelevant in this case. The licensee had a responsibility to report accurately all information requested in the application before it signed the certification. Its failure to do so and its subsequent claim that the failure is immaterial reflect a continuing lack of concern for the accuracy of information provided to the Commission. The licensee's failure to acknowledge the existence of the discrimination complaints until five months after the station's renewal application was filed, and only after an informal objection had been filed alerting the Commission to the existence of the complaints, further supports this conclusion. Accordingly, the Commission's policy of deferring action on discrimination complaints until resolved by the appropriate agency or court does not mitigate the licensee's willful failure to report information to the Commission on its Form 396.

10. ACCORDINGLY, IT IS ORDERED that the response to the Notice of Apparent Liability filed by Kansas Public Telecommunications Services, Inc. IS DENIED.

11. IT IS FURTHER ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), that Kansas Public Telecommunications Services, Inc. FORFEIT to the United States the sum of five thousand dollars (\$5,000) for willfully omitting material facts in violation of Section 73.1015 of the Commission's Rules, 47 C.F.R. § 73.1015. Full payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission within 30 days of the release of this Order. In regard to this forfeiture proceeding, the licensee may take appropriate action as set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, and Section 504(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 504(a), as summarized in the attachment to this Memorandum Opinion and Order and Forfeiture Order.

12. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order and Forfeiture Order be sent by Certified Mail – Return Receipt Requested – to Kansas Public Telecommunications Services, Inc.

13. This action is taken pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau