

DA 04-1816
Released: June 28, 2004

**FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, DC 20554**

June 21, 2004

In Reply Refer to:
1800B3-SS
NAL/Acct No.: MB20041810066
FRN: 0003754934

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

James P. Riley, Esq.
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209

In re: KUOA(AM), Siloam Springs, AR
KUOA Incorporated
Facility ID: 35729
File No. BR-20040128ADF

Dear Mr. Riley:

This letter refers to the captioned application of KUOA Incorporated (“KUOA”) for renewal of license for station KUOA(AM), Siloam Springs, Arkansas. For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to KUOA for violation of the Commission’s rule regarding a broadcast station’s public inspection file, 47 C.F.R Section 73.3526, and we grant the KUOA(AM) license renewal application.

Public file rule violation. 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. KUOA indicated “No” to that certification, filing an amendment to its Exhibit explaining that the complete issues/program lists from October 10, 1996, through January 10, 2003, were not placed in the public file.¹ KUOA states that the issues/programs lists for 2003 have been re-created and that steps have been taken to assure that in the future all quarterly lists are timely prepared and placed in the public file.

Section 73.3526 of the Commission’s Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. The

¹ KUOA indicates that “information relating to the licensees’ efforts to provide programming covering local issues” was placed in the station’s public file, but this information “did not, in most cases, include sufficient information to comply with the Commission’s rules.” June 4, 2004, amendment at Exhibit 1.

purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.² In this regard, where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.³

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.⁴ A continuing violation is "repeated" if it lasts more than one day.⁵

The Commission's Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the violations were admitted to the Commission in the context of the license renewal application, and the licensee has attempted to correct the violations that occurred during its ownership tenure and has instituted measures to prevent its recurrence. On the other hand, the violation continued for nearly seven years, encompassing almost the whole license period. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violation in this case.⁷ We will, however, reduce the forfeiture to \$9,000 due to the licensee's voluntary disclosure of the violation.⁸

License renewal application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁹ If, however, the licensee fails to meet that standard, the Commission may deny the

² Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division* (April 3, 1997), 13 FCC Rcd 4102 (1997) citing *License Renewal Applications of Certain Commercial Radio Stations*, 8 FCC Rcd 6400 (1993).

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9702 (1999), citing *Gaffney Broadcasting, Inc.*, 23 F.C.C.2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 F.C.C. 706 (1962).

⁴ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-4388 (1991).

⁵ *Id.* at 4388.

⁶ *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 FCC 99-407 (released December 28, 1999).

⁷ See *Dick Broadcasting Company, Inc. of Tennessee*, 19 FCC Rcd 6319 (Mb 2004); *Pacific Spanish Network, Inc.*, 14 FCC Rcd 10021 (MMB1991); *Padre Serra Communications, Inc.* at 9706; and *Dick Broadcasting*, DA 04-967 (rel. Apr. 8, 2004).

⁸ See *Surrey Front Range Limited Partnership*, 7 FCC Rcd 6361 (FOB 1992) (voluntary disclosure constitutes a downward adjustment criterion).

⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the

application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁰

The public inspection file rule serves the critical function of making available to the public important information regarding programs that provided a station’s most significant treatment of community issues during the license term. On balance, however, we find that KUOA’s violation of Section 73.3526 does not constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹¹ Further, we find that station KUOA(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹²

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503 (b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission’s Rules, 47 U.S.C. Sections 0.283 and 1.80, KUOA Incorporated is hereby advised of its apparent liability for a forfeiture of \$9,000 for willfully and repeatedly violating Section 73.3526.

Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission’s rules, that within thirty days of the release of this Notice, KUOA 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.

Payment of the forfeiture may be made by credit card through the Commission's Revenue and Receivables Operations Group 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 FCC Registration Number (“FRN”) (0003754934) and the NAL/Acct. No. (MB20041810066) referenced above.

Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

¹⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹¹ For example, we do not find here that the licensee's station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate WJJS-FM in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 F.C.C.2d at 200. See also *Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹² See 47 U.S.C. § 309(k).

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the NAL/Account number referenced in the caption of this document (MB20041810066) and the FCC Registration Number (FRN) (0003754934) referenced above.

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.

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. 20554.¹³

Finally, IT IS ORDERED, that the application (File No. BR-20040128ADF) of KUOA Incorporated for renewal of license for station KUOA(AM), Siloam Springs, Arkansas, IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: KUOA Incorporated

¹³ See 47 C.F.R. § 1.1914.