

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

In the matter of)	
)	
KCWE-TV, Inc.)	Facility ID No. 64444
Licensee of KCWE(TV))	NAL/Acct. No. 0641420030
Kansas City, MO)	FRN: 0003725371

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: February 8, 2006

Released: February 10, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Kansas City, Missouri. We find that KCWE-TV, Inc., the licensee of station KCWE(TV), willfully and repeatedly violated Section 73.3526(e)(11)(i) of the Commission's Rules (Rules), by failing to place in the station's public inspection file TV issues/programs lists for each calendar quarter.¹ For the reasons set forth below, we find KCWE-TV, Inc. apparently liable in the amount of eight thousand dollars (\$8,000) for its violation of Section 73.3526(e)(11)(i) of the Rules.

II. BACKGROUND

2. Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.² Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. 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

3. On October 3, 2005, the licensee filed a license renewal application (FCC Form 303-S) for station KCWE(TV) (File No. BRCT-20051003BWM). In response to Section IV,

¹ 47 C.F.R. § 73.3526(e)(11)(i).

² See 47 C.F.R. § 73.3526.

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

Question 3 of that application, the licensee certified that, during the previous license term, station KCWE(TV) failed to place in the public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17 to the renewal application, the licensee indicates that in reviewing station KCWE(TV)'s public inspection file, it discovered that the TV issues/programs lists for the first through the fourth quarters of 2003, although prepared timely, were missing. The licensee also reports that TV issues/programs lists for the first quarter of 2004 through the second quarter of 2005 were missing from the public inspection file. The licensee maintains that it recreated all of the missing TV issues/programs lists and placed them in station KCWE(TV)'s public inspection file.

III. DISCUSSION

4. KCWE(TV)'s failure to place in its public inspection file TV issues/programs lists constitutes a willful and repeated violation of Section 73.3526(e)(11)(i). Section 503(b) of the Communications Act of 1934, as amended, (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "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 such other matters as justice may require."⁵

5. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the licensee concedes that the station's TV issues/programs lists for the first through the fourth quarters of 2003, and the first quarter of 2004 through the second quarter of 2005 were missing from the public inspection file. Based on the record before us, we believe that a forfeiture in the amount of \$8,000 is appropriate for the violations in this case.

6. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.⁷ Section 309(k) provides that if, upon consideration of

⁴ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

⁷ 47 U.S.C. § 309(k).

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.⁸ If, however, the licensee fails to meet that standard, the Commission may deny 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.”⁹

7. On balance, we find that KCWE-TV, Inc.'s violations of Section 73.3526 do 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. Further, we find that station KCWE(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹⁰ KCWE-TV, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR FORFEITURE in the amount of eight thousand dollars (\$8,000) for willful and repeated violations of Section 73.3526 (e)(11)(i) of the Commission's Rules as indicated above.¹¹

9. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, KCWE-TV, Inc. SHALL PAY 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 must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

10. IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability

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

⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁰ 47 C.F.R. §§ 0.283 and 1.80.

¹¹ 47 C.F.R. § 73.3526(e)(11)(i).

¹² See 47 C.F.R. § 1.1914.

shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at 1049 Central, Kansas City, Missouri 64105, and to its attorney of record, Meredith S. Senter, Jr., Esquire, Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006.

11. Finally, IT IS ORDERED that, the application (File No. BRCT-20051003BWM) of KCWE-TV, Inc. for renewal of license for station KCWE(TV), Kansas City, Missouri, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau