

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

In the Matter of  KM Television of Flagstaff, L.L.C. Licensee of KCFG(TV) Flagstaff, Arizona Facility ID No. 35104	) ) ) ) ) ) )	File Number: EB-05-SD-179  NAL/Acct. No.: 200632940004  FRN: 0005014667
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**ORDER**

**Adopted: March 14, 2007**

**Released: March 16, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Order*, we cancel a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to KM Television of Flagstaff, L.L.C. (“KM TV”), licensee of Television station KCFG serving Flagstaff, Arizona, for willful and repeated violation of Section 73.3526 of the Commission’s Rules (“Rules”).<sup>1</sup> On March 20, 2006, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to KM TV for failing to maintain a complete public inspection for KCVG.<sup>2</sup> In this *Order*, we consider KM TV’s arguments that the proposed forfeiture amount exceeds other forfeitures proposed to broadcast stations under similar scenarios; that KM TV has a history of compliance with the Commission’s Rules; and that KM TV does not have sufficient revenue to pay the forfeiture. While we cancel the forfeiture for a demonstrated inability to pay, we admonish KM TV for its willful and repeated violation of Section 73.3526 of the Commission’s Rules.

**II. BACKGROUND**

2. On August 11, 2005, an agent of the Enforcement Bureau’s San Diego Office conducted an inspection of the KCFG’s public inspection file at the studio and address of record for KM TV at 2616 N. Steves Blvd., Flagstaff, Arizona. While examining the public inspection file, the agent observed that the file was not complete. Specifically, there were no TV issues/program lists for the present year or for the license term<sup>3</sup> (which expired on October 1, 2006) and there were no records concerning commercial limits during children’s programming.<sup>4</sup> KCFG’s most recent renewal application was granted on October 16, 2006.<sup>5</sup>

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<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632940004 (Enf. Bur., Western Region, San Diego Office, released March 20, 2006).

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>4</sup> 47 C.F.R. § 73.3526(e)(11)(ii).

<sup>5</sup> See File No. BRCT-20060531ALF, accepted June 2, 2006 and granted October 16, 2006 (“*KCFG Renewal*”).

3. On March 20, 2007, the San Diego Office issued a *NAL* in the amount of \$10,000 to KM TV, finding that KM TV apparently willfully and repeatedly failed to maintain a complete public inspection file for KCFG. KM TV filed a response to the *NAL* on April 17, 2006 (“*Response*”). In its *Response*, KM TV argues that the proposed forfeiture should be reduced or cancelled because the amount exceeds other forfeiture amounts proposed to broadcast stations under similar scenarios; that KM TV has a history of compliance with the Commission’s Rules; and that KM TV has demonstrated an inability to pay the forfeiture.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>8</sup> In examining KM TV’s response, Section 503(b) of the Act requires that the Commission take into account 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.<sup>9</sup>

5. Section 73.3526(e)(11)(i) of the Rules requires licensees to place in their public inspection file a list for each calendar quarter, to be filed by the tenth day of the succeeding calendar quarter, a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period.<sup>10</sup> This list is known as the TV issues/programs list. Section 73.3526(e)(11)(ii) of the Rules requires that a commercial TV station maintain records sufficient to permit substantiation of the station’s certification, in its license renewal application, of compliance with the commercial limits on children’s programming established in Section 73.670 of the Rules.<sup>11</sup> The records for each calendar quarter must be filed in the station’s public inspection file by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October – December, etc.).<sup>12</sup> These records shall be retained until final action has been taken on the station’s next license renewal application.

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*Application*”). In that application, KM TV acknowledged that, prior to the inspection by the San Diego agent August 2005, “KCFG did not timely place and maintain in its local public inspection file the required quarterly issues/programs lists nor records regarding commercial limits during childrens [sic] programming, since first going on the air as a new station on December 18, 2000.” *KCFG Renewal Application* at Exhibit 17.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>10</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>11</sup> 47 C.F.R. § 73.3526(e)(11)(ii). In the Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules limiting the amount of commercial matter that television stations may air during children’s programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children’s Television Programming*, 6 FCC Rcd 5529, 5530 (1991). *See Libco, Inc.*, 2005 WL 2778821 (FCC) (MB 2005).

<sup>12</sup> 47 C.F.R. § 73.3526(e)(11)(ii).

6. KM TV does not deny the violation as detailed by the San Diego Office, but argues that in similar situations, the Commission's Media Bureau proposed forfeitures of \$4,000 to stations for violations of the public file requirements concerning issues/programs lists and records on commercial limits in children's programming. To support its argument, KM TV cites to *Telefutura Orlando, Inc. (WOTF-TV)*<sup>13</sup> and *UPN Television Stations, Inc. (WUPL(TV))*.<sup>14</sup> We have reviewed both cases and while we agree with KM TV that both cases involve the two rules that KM TV was found to have violated, in neither case did the violation occur for the entire license term. In *Telefutura Orlando, Inc.*, the Media Bureau proposed a \$4,000 forfeiture for WOTF-TV because its public inspection was missing required documents for three quarters of its license term. In *UPN Televisions Stations, Inc.*, the Media Bureau proposed a \$4,000 forfeiture for WUPL(TV) because its public inspection file was missing required documents for four quarters of its license term. We note that in both cases, the violations were discovered by the licensees and reported to the Commission. In the present case, KM TV was unaware of the violation until it was notified by the San Diego agent.<sup>15</sup> Additionally KCFG public inspection file was missing required documents for the entire license term until it was inspected by the San Diego agent. Finally, we note that the Media Bureau has also proposed forfeitures of \$10,000 for stations who have self-reported their failure to maintain the appropriate documents concerning the issues/program lists or certifications concerning commercial limits on children's programming for multiple years in their public inspection files.<sup>16</sup> We are therefore not persuaded by this argument to reduce the forfeiture amount.

7. KM TV also argues that it has a history of overall compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce KM TV's forfeiture amount from \$10,000 to \$8,000.

8. KM TV also argues that it is not able to pay the forfeiture amount because of its minimal gross revenues and supplies financial data for the three calendar years prior to the *NAL*. In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>17</sup> Upon review of the evidence presented, we find cancellation of the proposed forfeiture is warranted in light of the financial documents provided by KM TV. While we cancel the proposed forfeiture, we admonish KM TV for its willful and repeated violation of the public inspection file rule as set forth in Section 73.3526 of the Commission's Rules.

#### IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, that the proposed forfeiture in the amount of ten thousand dollars (\$10,000) issued to KM Television of Flagstaff, L.L.C, licensee of KCFG(TV), Flagstaff, Arizona, in the March 20, 2006 Notice of Apparent Liability for willful and repeated violations of Sections 73.3526 of the Rules **IS CANCELLED**.

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<sup>13</sup> 20 FCC Rcd 20051 (MB 2005).

<sup>14</sup> 20 FCC Rcd 15807 (MB 2005)

<sup>15</sup> See *supra* n.5.

<sup>16</sup> See e.g., *WLBB Broadcasting, LLC*, DA 07-555, 2007 WL 470423 (rel. February 14, 2007); *Ramar Broadcasting II, LTD.*, DA 07-556, 2007 WL 470424 (rel. February 14, 2007); *Lesea Broadcasting of Tulsa, Inc.*, DA 07-603, 2007 WL 437852 (rel. February 9, 2007).

<sup>17</sup> See *PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

10. **IT IS FURTHER ORDERED** that KM Television of Flagstaff, L.L.C, licensee of KCFG(TV), Flagstaff, Arizona, **IS ADMONISHED** for its willful and repeated violations of Section 73.3526 of the Rules.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to KM Television of Flagstaff, L.L.C., at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau