

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

In the Matter of	)	
	)	
Mapleton License of San Luis Obispo, LLC.	)	File Number: EB-10-LA-0032
	)	
Licensee of FM Broadcast Station KXDZ	)	NAL/Acct. No.: 201132900001
Templeton, California	)	FRN: 0017174020
Facility ID # 70781	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: November 3, 2010

Released: November 5, 2010

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Mapleton License of San Luis Obispo, LLC ("Mapleton"), licensee of FM station KXDZ, in Templeton, California, apparently willfully and repeatedly violated Section 73.3526<sup>1</sup> of the Rules by failing to maintain a complete public inspection file. We conclude that Mapleton License of San Luis Obispo, LLC, is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On February 24, 2010, an agent from the Enforcement Bureau's Los Angeles Office inspected the main studio of Station KXDZ, located in San Luis Obispo, California. The agent reviewed the content of Station KXDZ's public inspection file and discovered that required issues/programs lists were missing for the fourth quarter of 2007, first, second, and third quarters of 2008, and the first and fourth quarters of 2009. The agent discussed the file's deficiency with the Market Manager for the Mapleton stations. The Market Manager agreed that the documents were missing from the file and indicated that the period for which the issues/programs lists were missing appeared to coincide with the departure of the station employee who had previously maintained the lists.

**III. DISCUSSION**

3. Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly 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. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or

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<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> 47 U.S.C. § 503(b).

omissions are committed knowingly.<sup>3</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>4</sup>

4. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM or FM station shall maintain a public inspection file containing the material, relating to that station, described in Section 73.3526(e) of the Rules.<sup>5</sup> Specifically, Section 73.3526(e)(12) of the Rules requires licensees to place in their public inspection file, for each 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>6</sup> This list is known as the radio issues/programs list and copies of the lists must be maintained in the file until final action has been taken on the station’s next renewal application. Further, as required by Section 73.3526(b), the public inspection file shall be maintained at the station’s main studio.<sup>7</sup>

5. The public inspection file for Station KXDZ was missing quarterly radio issues/program lists for the fourth quarter of 2007, the first, second, and third quarters of 2008, and the first and fourth quarters of 2009. All of the noted quarters are within the current license term, which began on November 29, 2005. When interviewed by the Los Angeles Office agent, Mapleton’s Market Manager acknowledged the above-specified lists were missing and indicated that the problems with the lists coincided with the departure of the station employee responsible for maintaining the lists. Where lapses occur in maintaining the public inspection file, however, the negligent acts or omissions of station employees or agents do not excuse or nullify a licensee’s rule violation.<sup>8</sup> Based on the evidence before us, including the fact that the public inspection file was missing multiple quarters of material, we find that Mapleton apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to ensure a complete public inspection file was properly maintained at the Station KXDZ main studio.

6. Pursuant to the Commission’s *Forfeiture Policy* and Section 1.80 of the Rules, the base forfeiture for violations of the public inspection file rules is \$10,000.<sup>9</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E)

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<sup>3</sup> 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 this Act....” See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>4</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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.”

<sup>5</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>6</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>7</sup> 47 C.F.R. § 73.3526(b).

<sup>8</sup> See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (Mass Media Bur. 1999) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970). See also *Rama Communications*, Memorandum Opinion and Order, 23 FCC Rcd 18209 (Enf. Bur. 2008).

<sup>9</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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>10</sup>

7. With respect to the forfeiture calculation in this case, we note that Mapleton has a history of noncompliance with the public inspection file requirement. In its July 29, 2005 renewal application for Station KXDZ, Mapleton acknowledged certain omissions in the Station KXDZ public inspection file in the prior license term, related to EEO reports, and stated that “Mapleton has now prepared and placed in its public inspection file all required reports. Mapleton understands that the public inspection file requirements are intended to provide the public with important information regarding the station’s operations in a timely manner and sincerely regrets its oversight. Mapleton anticipates that it will comply with the public file requirements in all respects going forward.”<sup>11</sup> Notwithstanding those assurances, however, Mapleton again violated the Commission’s public file rule five years later. Thus, although the Station KXDZ public inspection file was partially complete, in light of Mapleton’s previous public file rule violations, we conclude that no reduction in the base forfeiture amount for the public file violation is appropriate, given Mapleton’s history of noncompliance.<sup>12</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mapleton is apparently liable for a forfeiture in the amount of \$10,000. We caution Mapleton that further violations of the public file rule may meet with even more severe penalties.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission’s Rules, Mapleton License of San Luis Obispo, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 73.3526 of the Rules.<sup>13</sup>

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 of Apparent Liability for Forfeiture, Mapleton License of San Luis Obispo, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL,

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<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> See File No. BRH-20050729DPU, granted November 29, 2005, Exhibit 11.

<sup>12</sup> See *Citicasters Licenses, L.P.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1633 (Enf. Bur. Investigations & Hearings Div. 2007) (upwardly adjusting a proposed forfeiture amount when a licensee has a history of similar violations over a seven-year period); see also *WXDJ Licensing*, Forfeiture Order, 25 FCC Rcd 3911 (Enf. Bur. Investigations & Hearings Div. 2010).

<sup>13</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526.

1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>14</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Mapleton License of San Luis Obispo, LLC, shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., #660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

12. 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.

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, and regular mail, to Mapleton License of San Luis Obispo, LLC.

#### FEDERAL COMMUNICATIONS COMMISSION

Nader Haghghat  
District Director  
Los Angeles District Office  
Western Region  
Enforcement Bureau

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<sup>14</sup> See 47 C.F.R. § 1.1914.