

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

In the Matter of)	
)	
HK Media, Inc.)	File No. EB-10-LA-0238
)	
Licensee of Station KFOX)	NAL/Acct. No. 201132900005
Torrance, California)	
Facility ID # 87242)	FRN 0020919791

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 27, 2011

Released: July 29, 2011

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 HK Media, Inc. (“HK Media”), licensee of Station KFOX, in Torrance, California, apparently willfully and repeatedly violated section 73.3526 of the Commission’s rules (“Rules”)¹ by failing to maintain and make available for inspection a local public inspection file at the Station KFOX main studio. We conclude that HK Media is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. On September 22, 2010, an agent from the Enforcement Bureau’s Los Angeles Office (“Los Angeles Office”) conducted an inspection at the main studio of Station KFOX in Los Angeles, California. The agent requested to review the station’s public inspection file, however, the station’s staff, including the Operations Manager and contract engineer, could not locate the public inspection file.

3. In response to a Letter of Inquiry issued by the Los Angeles Office, the President of HK Media stated that the Station KFOX public file materials were destroyed due to water damage at the station’s studio location in May 2010.² HK Media acknowledged that a complete public inspection file was not recreated until the week after the Los Angeles agent’s inspection in September 2010.³

III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (“Act”),⁴ provides that any

¹ 47 C.F.R. § 73.3526.

² See *Letter of Inquiry* from Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, to HK Media, Inc., dated March 8, 2011 (“LOI”); Response from Grant Chang, President, HK Media, Inc., to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated April 8, 2011 (“LOI Response”).

³ *LOI Response* at 3.

⁴ 47 U.S.C. § 503(b).

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. Section 312(f)(1) of the Act defines willful as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁵ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act⁶ and the Commission has so interpreted the term in the section 503(b) context.⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁹

5. 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.¹⁰ Section 73.3526(b)(1) of the Rules requires that the public inspection file shall be maintained at the station’s main studio.¹¹ Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours.¹²

6. On September 22, 2010, a Los Angeles agent attempted to review the Station KFOX public inspection file but there was no file available for review at the main studio location. In its *LOI Response*, HK Media acknowledged that the Station KFOX public inspection had been destroyed in May 2010 and was not recreated until after the inspection by the Los Angeles agent. Consequently, the Station KFOX public inspection file was unavailable to the public for a period of four months. Accordingly, based on the evidence before us, we conclude that HK Media apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to maintain and make available the Station KFOX public inspection file at the station’s main studio.

7. Pursuant to the Commission’s Forfeiture Policy Statement and section 1.80 of the Rules, the base forfeiture amount for violation of the public file rule is \$10,000.¹³ In assessing the monetary

⁵ 47 U.S.C. § 312(f)(1).

⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

⁷ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

⁸ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

⁹ 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.”

¹⁰ 47 C.F.R. § 73.3526(a)(2).

¹¹ 47 C.F.R. § 73.3526(b)(1).

¹² 47 C.F.R. § 73.3526(c)(1).

¹³ 12 *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) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that HK Media is apparently liable for a \$10,000 forfeiture.

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, 0.204, 0.311, 0.314 and 1.80 of the Commission's Rules, HK Media, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 73.3526 of the Rules.¹⁵

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, HK Media, Inc. **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 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, 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. 20554.⁸ If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, HK Media, Inc. will 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. Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite # 660, Los Angeles, CA 90703 and include the NAL/Acct. No. referenced in the caption. HK Media, Inc. shall also email the written response 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.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.3526.

⁸ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to HK Media, Inc., 4525 Wilshire Blvd., Los Angeles, California, 90010.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghight
District Director
Los Angeles Office
Western Region
Enforcement Bureau