

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

In the Matter of)	
)	
Blue Skies Broadcasting Corporation)	File Number: EB-10-SD-0102
)	
Licensee of Station KSKT-CA)	NAL/Acct. No.: 201132940005
San Marcos, California)	
Facility ID # 58927)	FRN: 0003777406

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 25, 2011

Released: May 26, 2011

By the District Director, San Diego District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“*NAL*”), we find that Blue Skies Broadcasting Corporation (“Blue Skies”), licensee of Station KSKT-CA, San Marcos, California, apparently willfully and repeatedly violated section 73.3526(e)(11)(i) of the Commission’s rules (“*Rules*”)¹ by failing to maintain and make available the quarterly TV issues/programs lists in the local public inspection file. We conclude that Blue Skies is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000).

II. BACKGROUND

2. On June 22, 2010, agents from the Enforcement Bureau’s San Diego Office (“San Diego Office”) conducted an inspection with personnel of Station KSKT-CA at the station’s main studio in Escondido, California. The agents reviewed the materials in Station KSKT-CA’s public inspection file and found that the file was missing 34 quarterly TV issues/programs lists, *i.e.*, all quarterly TV issues/programs lists since the Commission granted Station KSKT-CA’s license on August 9, 2001.²

3. On March 3, 2011, the Commission’s San Diego office issued a *Letter of Inquiry* to Blue Skies³ requesting information on the status of Station KSKT-CA’s public inspection file, and for a list of documents currently in the file. On March 21, 2011, the San Diego Office received a reply to the *LOI* from Blue Skies’ President.⁴ In its *LOI Response*, Blue Skies listed the documents currently in the Station KSKT-CA public inspection file. That list did not include any quarterly issues/programs lists.

¹ 47 C.F.R. § 73.3526(e)(11)(i).

² See File No. BLTTA-20010712AAA, granted August 9, 2001. Blue Skies filed an application to renew the Station KSKT-CA license on August 9, 2006. See File No. BRTTA-20060809. That application is still pending.

³ See *Letter of Inquiry* from James T. Lyon, Acting District Director, San Diego Office, Western Region, Enforcement Bureau, to Blue Skies Broadcasting Corporation, dated March 3, 2011 (“*LOI*”).

⁴ See Letter from Robert Ruiz, President, Blue Skies Broadcasting Corporation, to James T. Lyon, Acting District Director, San Diego Office, Western Region, Enforcement Bureau, dated March 21, 2011 (“*LOI Response*”).

III. DISCUSSION

4. 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 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 sections 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 “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.⁹

5. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection a file containing materials listed in that section.¹⁰ 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.¹¹ Section 73.3526(e)(11)(i) of the Rules requires Class A and commercial TV 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.¹² This list is known as the “TV issues/programs list.”¹³ Copies of the issues/programs list must be retained in the public inspection file until final action has been taken on the station’s next license renewal application.¹⁴ On June 22, 2010, San Diego agents reviewed Station KSKT’s public inspection file and found that it was missing 34 quarterly TV issues/programs lists. As evidenced by its *LOI Response*, Blue Skies has taken no action subsequent to the inspection to ensure that the required quarterly TV issues/programs lists are available in the Station KSKT-CA public inspection file. Accordingly, based on the evidence before us, we find that Blue Skies apparently willfully and repeatedly violated section 73.3526(e)(11)(i) of the Rules by failing to maintain the TV issues/programs lists and make them available in Station KSKT's public inspection file.

⁵ 47 U.S.C. § 312(f)(1).

⁶ H.R. Conf. Rep. No. 97-765, at 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 *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁰ 47 C.F.R. § 73.3526(a)(2).

¹¹ 47 C.F.R. § 73.3526(c)(1).

¹² 47 C.F.R. § 73.3526(e)(11)(i).

¹³ *Id.*

¹⁴ *Id.*

6. 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 \$10,000.¹⁵ In assessing the monetary 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.¹⁶ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that an upward adjustment is warranted, given that Blue Skies failed to correct the violation subsequent to the inspection by the San Diego agents. We therefore conclude that Blue Skies is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for its failure to maintain any quarterly TV issues/programs lists in its public inspection file. We also direct Blue Skies to submit a written statement signed under penalty of perjury by an officer or director of the company stating that Station KSKT-CA is now in compliance with section 73.3526 of the Rules. This statement must be provided to the Enforcement Bureau at the address listed in paragraph 11 within thirty days of the release date of this *NAL*.

IV. ORDERING CLAUSES

7. 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, Blue Skies Broadcasting Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for violation of section 73.3526(e)(11)(i) of the Rules.¹⁷

8. **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, Blue Skies Broadcasting Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. **IT IS FURTHER ORDERED** that Blue Skies Broadcasting Corporation **SHALL SUBMIT** a sworn statement as described in paragraph 6 to the Enforcement Bureau Office listed in paragraph 11 within thirty (30) days of the release date of this Notice of Apparent Liability for 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,

¹⁵ *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.

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.3526(e)(11)(i).

Washington, D.C. 20554.¹⁸ 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, Blue Skies Broadcasting Corporation, shall 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, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner St., Room 370, San Diego, CA 92111 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed 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 both by Certified Mail, Return Receipt Requested, and by regular mail, to Blue Skies Broadcasting Corporation, 5220 Campo Road, Woodland Hills, California 91364.

FEDERAL COMMUNICATIONS COMMISSION

James T. Lyon
District Director
San Diego District Office
Western Region
Enforcement Bureau

¹⁸ See 47 C.F.R. § 1.1914.