

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

In the Matter of	)	
	)	
Kelley Enterprises of Muskegon, Inc.	)	Facility I.D. No. 33869
Licensee of Station WMKG-CA	)	NAL/Acct. No.: 201341420054
Muskegon, Michigan	)	FRN: 0004948410

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: October 25, 2013**

**Released: October 28, 2013**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the “Act”), and section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> we find that Kelley Enterprises of Muskegon, Inc. (“the Licensee”), licensee of Station WMKG-CA, Muskegon, Michigan (the “Station”), apparently willfully and repeatedly violated section 73.3526 of the Rules by failing to prepare and/or place issues and programs list into the Station’s public file in a timely manner for 6 quarters. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. In accordance with Section 73.3526(e)(11)(i) of the Rules, every commercial television licensee is required to place in its public inspection file, on a quarterly basis, an issues and programs list with a brief description describing the “programs that have provided the stations most significant treatment of community issues during the preceding three month period.”<sup>2</sup> Copies of the issues and programs list must be “retained in the public inspection file until final action has been taken on the station’s next license renewal application.”<sup>3</sup>

3. In 2012, the Commission adopted a proposal requiring Class A stations to post most of the documents required to be in the public file, including the quarterly issues-programs lists, to an online public file hosted by the Commission.<sup>4</sup> Stations were required to upload all required documents to the

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>3</sup> *Id.*

<sup>4</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4536, n.2 (2012).

online public file by February 4, 2013.<sup>5</sup>

4. On May 16, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for the Station (“renewal application”).<sup>6</sup> In response to Section IV, Question 3 of the Application, the Licensee admitted that it had not placed in the public file, or filed with the Commission, the station’s issues/programs lists for six quarters during the license period. The Licensee stated that it could not explain why the lists were not present and could not reconstruct the lists at this time.

### III. DISCUSSION

5. The Licensee admits in its renewal application that issues and programs lists for six quarters were not filed with the Commission. This constitutes apparent willful and/or repeated violations of Section 73.3526 of the Rules.<sup>7</sup> A commercial broadcast television station’s quarterly issues and programs list is a vital part of the Commission’s evaluation as to whether a station has served the public interest, convenience and necessity during the preceding license term.<sup>8</sup> Upon evaluation of the Station’s entire renewal application, we find forfeiture is the appropriate course of action at this time.

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>9</sup> 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.<sup>10</sup> Furthermore, the Commission has held that an inadvertent error, oversight or failure to become familiar with Commission requirements are willful violations.<sup>11</sup> 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 Act,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> 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.”<sup>14</sup>

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<sup>5</sup> *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, MM Docket No. 00-168; MM Docket No. 00-44, 2013 WL 364406 (January, 30, 2013).

<sup>6</sup> File No. BRTTA-20130516AAE.

<sup>7</sup> See, e.g., *Raycom Am. License Subsidiary, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd. 19234 (2005).

<sup>8</sup> 47 U.S.C. § 309(k)(1)(A).

<sup>9</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>10</sup> 47 U.S.C. § 312(f)(1); See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “Commission interpretations of “willful” do not require licensee intent to engage in a violation”).

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that “[t]he fact that a licensee’s violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional”); see also *Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See *Southern California*, 6 FCC Rcd at 4388 (1991).

<sup>14</sup> 47 U.S.C. § 312(f)(2).

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$10,000 for public file violations.<sup>15</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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."<sup>16</sup> Based on our review of the facts and circumstances here, we find that the Licensee is liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violations of section 73.3526 of the Rules.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Kelley Enterprises of Muskegon, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated violations of Section 73.3526 of the Commission's Rules.

9. In the event that the Licensee wishes to revert WMKG-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the station.<sup>17</sup> Should the Licensee revert the station to low power status, the Licensee would no longer be liable for the forfeiture amount described herein.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within thirty (30) days of the release date of this *NAL*, Kelley Enterprises of Muskegon, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Peter Saharko, Attorney Adviser, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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

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<sup>15</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd. 303 (1999); 47 C.F.R. § 1.80(b), Section I.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8); 47 C.F.R. § 1.80(b), Section II.

<sup>17</sup> 47 C.F.R. § 73.6001(d).

respondent'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.<sup>18</sup>

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>19</sup>

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Kelley Enterprises of Muskegon, Inc., 4237 Airline Road, Muskegon, Michigan, 49441, and to its counsel, James A. Koerner, Esq., Koerner & Olender, P.C., 11913 Grey Hollow Court, North Bethesda, Maryland, 20852.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>18</sup> See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that “[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....”).

<sup>19</sup> See 47 C.F.R. § 1.1914.