

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

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

FORFEITURE ORDER

Adopted: November 20, 2013

Released: November 21, 2013

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Blue Skies Broadcasting Corporation (Blue Skies), licensee of Station KSKT-CA, in San Marcos, California, for willfully and repeatedly violating Section 73.3526(e)(11)(i) of the Commission's rules (Rules), which requires broadcast stations to maintain complete issues/programs lists in their public inspection files.¹ The noted violations involve Blue Skies' failure to maintain multiple issues/programs lists in the Station KSKT-CA public inspection file. In addition, no later than thirty (30) calendar days from the date of this Forfeiture Order, Blue Skies must submit a statement signed under penalty of perjury that the Station KSKT-CA public inspection file is in compliance with Section 73.3526 of the Rules.

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 – all quarterly TV issues/programs lists since the Commission granted Station KSKT-CA's license on August 9, 2001.² On March 3, 2011, the San Diego Office issued a letter of inquiry (*LOI*) to Blue Skies requesting information on the status of Station KSKT-CA's public inspection file and for a list of documents currently in the file.³ 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

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-20060809AAQ. That application is still pending.

³ See Letter of Inquiry from James T. Lyon, Acting District Director, San Diego Office, Western Region, FCC Enforcement Bureau, to Blue Skies Broadcasting Corporation (Mar. 3, 2011) (on file in EB-10-SD-0102) (*LOI*).

⁴ See Letter from Robert Ruiz, President, Blue Skies Broadcasting Corporation, to James T. Lyon, Acting District Director, San Diego Office, Western Region, FCC Enforcement Bureau (Mar. 21, 2011) (on file in EB-10-SD-0102) (*LOI Response*).

file.⁵ That list did not include any quarterly issues/programs lists.

3. On May 26, 2011, the San Diego Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$14,000 to Blue Skies for failing to maintain a complete public inspection file.⁶ Blue Skies responded to the *NAL* on June 10, 2011.⁷ In its *NAL Response*, Blue Skies argues that the proposed forfeiture amount is out of proportion to the seriousness of the violation⁸ and excessive compared to forfeitures proposed in similar cases.⁹ Blue Skies also claims that it lacks the ability to pay the proposed forfeiture and provides tax returns to support its claim.¹⁰

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹¹ Section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ In examining Blue Skies' *NAL 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.¹⁴ We consider Blue Skies' *NAL Response* in light of these statutory factors and find that reduction of the forfeiture is warranted for the reasons discussed below.

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.¹⁵ 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.¹⁶ 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.¹⁷ This list is known as the "TV issues/programs list."¹⁸ Copies of the issues/programs list must be retained in the public

⁵ *Id.*

⁶ *Blue Skies Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 7698 (Enf. Bur. 2011) (*NAL*).

⁷ See Response of Blue Skies Broadcasting Corporation (June 10, 2011) (on file in EB-10-SD-0102) (*NAL Response*).

⁸ *Id.* at 2–4.

⁹ *Id.* at 4–6.

¹⁰ *Id.* at 1–2.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ *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), recons. denied, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 C.F.R. § 73.3526(a)(2).

¹⁶ 47 C.F.R. § 73.3526(c)(1).

¹⁷ 47 C.F.R. § 73.3526(e)(11)(i).

¹⁸ *Id.*

inspection file until final action has been taken on the station's next license renewal application.¹⁹ On June 22, 2010, San Diego agents reviewed Station KSKT-CA's public inspection file and found that it was missing 34 quarterly TV issues/programs lists. As evidenced by its *LOI Response*, Blue Skies took no action subsequent to the inspection to ensure that the required quarterly TV issues/programs lists were available in the Station KSKT-CA public inspection file.

6. Blue Skies does not dispute that the quarterly issues/programs lists were missing from the Station KSKT-CA public inspection file as described above. Rather, Blue Skies argues that the proposed forfeiture amount is out of proportion to the seriousness of the violation and excessive compared to forfeitures proposed in similar cases.²⁰ We find no merit to Blue Skies' arguments. The Commission has determined that forfeitures are appropriate in cases where issues/programs lists are missing from the public inspection file and underscored the seriousness of such violations, stating "[t]hese lists enable citizens to determine whether local broadcast facilities are assessing and addressing the uniquely local concerns and issues affecting the station's community of license."²¹ Contrary to Blue Skies' assertion,²² a proposed forfeiture of \$14,000 for failing to make all or most of the issues/programs lists for a license term available for public inspection is consistent with current procedure and precedent.²³

7. Blue Skies also claims an inability to pay the proposed forfeiture and produces three years of tax forms to support its claim. With regard to an individual or entity's inability to pay claim, the Commission has determined that generally gross revenues are the best indicator of an ability to pay a

¹⁹ *Id.*

²⁰ *NAL Response* at 2–6. Blue Skies also states “[m]ore than five years ago [its attorney] filed a Petition for Rulemaking (RM-11322) proposing that the Public File Rules be abolished on the grounds they serve no useful purpose.” *Id.* at 4. A review of Commission records shows that RM-11322 is entitled “*Joint Petition for Rulemaking to Further Reform the International Settlements Policy*, RM-11322 (filed by AT&T Inc., Sprint Nextel Corporation, and Verizon on Mar. 13, 2006). See *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 2764 (rel. Mar. 20, 2006). In any event, as the Commission has declined to abolish the public file rules, the Enforcement Bureau will continue to vigorously enforce them.

²¹ *Lazer Licenses, LLC*, Order on Review, 27 FCC Rcd 626, 629 (2012) (affirming an Enforcement Bureau order assessing forfeitures on three broadcast stations for failing to make available multiple issues/programs lists).

²² Blue Skies cites to 15 Notices of Apparent Liability for Forfeiture (Notices) issued by the Media Bureau on October 8, 2003, each for \$3000, concerning issues/programs list violations. We note that in each of these Notices, the issues/programs list violation was self-reported by the licensee, and that, unlike Blue Skies, the licensee had remedied the violation prior to the report to the Commission. See, e.g., *Mel Wheeler, Inc., c/o Vincent A. Pepper, Esq.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20215 (Med. Bur. 2003) (proposed forfeiture of \$3,000 for self-reporting that three issues/programs lists were not timely placed in public inspection file); *Kenneth E. Satten, Esq.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20175 (Med. Bur. 2003) (proposed forfeiture of \$3,000 for self-reporting that one issues/programs list was not timely placed in public inspection file); *David Tillotson, Esq.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20151 (Med. Bur. 2003) (proposed forfeiture of \$3,000 for self-reporting that issues/programs lists were not timely placed in public inspection file).

²³ See, e.g., *Vision Latina Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6258 (Enf. Bur. 2012) (proposing a \$15,000 forfeiture for failing to make any issues/programs lists available for inspection); *L. Stanley Wall*, Notice of Apparent Liability for Forfeiture and Order, 26 FC Rcd 8506 (Enf. Bur. 2011) (proposing a \$15,000 forfeiture for failing to make all but one issues/programs list available for inspection). Blue Skies argues that the forfeiture amount proposed is inconsistent with the Enforcement Bureau's decision in *Daniel D. Smith*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 15874 (Enf. Bur. 2010) (*Smith*). *NAL Response* at 3. We disagree. In *Smith*, the station's public inspection file was missing five issues/programs lists and the Enforcement Bureau proposed a forfeiture of \$4,000. In the instant case, Station KSKT-CA was missing 34 issues/programs lists, resulting in a proposed forfeiture of \$14,000.

forfeiture.²⁴ Based on the financial documents provided by Blue Skies, we find sufficient basis to reduce the forfeiture to \$500.²⁵ However, we caution Blue Skies that a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.²⁶ We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.²⁷ Therefore, future violations of this kind may result in significantly higher forfeitures that may not be reduced due to Blue Skies' financial circumstances.

8. We have examined Blue Skies' *NAL Response* pursuant to the statutory factors above and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Blue Skies willfully and repeatedly violated Section 73.3526(e)(11)(i) of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$500 is warranted. We also note that Blue Skies did not indicate in its *NAL Response* whether the public inspection file for Station KSKT-CA has come into compliance with the requirements of Section 73.3526(e)(11)(i) of the Rules. We therefore order Blue Skies to submit a written statement pursuant to Section 1.16 of the Rules²⁸ signed under penalty of perjury by an officer or director of Blue Skies within thirty (30) calendar days of the release date of this Forfeiture Order that Station KSKT-CA is now in compliance with Section 73.3526(e)(11)(i) of the Rules. Continued failure to comply with this order may result in additional enforcement action, including monetary penalties.

IV. ORDERING CLAUSES

9. **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(f)(4) of the Commission's Rules, Blue Skies Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred dollars (\$500) for willfully and repeatedly violating Section 73.3526(e)(11)(i) of the Commission's Rules.²⁹

10. **IT IS FURTHER ORDERED** that Blue Skies Broadcasting Corporation **SHALL SUBMIT** a written statement, as described in paragraph 8, within thirty (30) calendar days of the release date of this Forfeiture Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street - Suite 370, San Diego, CA

²⁴ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

²⁵ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *supra* note 24.

²⁶ See 47 U.S.C. § 503(b)(2)(E) (requiring Commission to 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 such other matters as justice may require).

²⁷ *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay) (petition for reconsideration pending); *Hodson Broadcasting Corp.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued operation at variance with its construction permit constituted an intentional and continuous violation, which outweighed permittee's evidence concerning its ability to pay the proposed forfeitures).

²⁸ 47 C.F.R. § 1.16.

²⁹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.3526(e)(11)(i).

92111. Blue Skies Broadcasting Corporation shall also e-mail the written statement to WR-Response@fcc.gov.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.³⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³¹ Blue Skies Broadcasting Corporation shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made.

12. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

³⁰ 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 504(a).

³² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³³ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested to Blue Skies Broadcasting Corporation, 5220 Campo Road, Woodland Hills, California, 91364, and to Peter Tannenwald, Esquire, its counsel of record, at Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau