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

In the Matter of:	)	
	)	Facility ID No. 35091
KM LPTV of Milwaukee, LLC	)	NAL/Acct. No.: 201341420066
Licensee of Station WMKE-CA	)	FRN: 0005014725
Milwaukee, Wisconsin	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: May 28, 2014 **Released: May 28, 2014**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division ("Bureau") has before it a petition for reconsideration ("Petition"), filed by KM LPTV of Milwaukee, LLC ("Petitioner" or "KM LPTV of Milwaukee"), licensee of Station WMKE-CA ("Station"). Licensee seeks reconsideration of a forfeiture in the amount of Twenty Thousand Dollars ($20,000) issued by the Video Division for the Licensee's failure to: (i) file with the Commission electronically the Station's Children's Television Programming Reports in a timely manner and (ii) file its issues/programs lists in a timely manner; and (iii) report the violations in its renewal application.[1] For the reasons set forth below, we deny reconsideration.

II. BACKGROUND

2. On December 23, 2013, the Video Division issued a Notice of Apparent Liability for Forfeiture proposing a monetary forfeiture of $20,000 for the above-listed violations.[2] Licensee filed a timely response on January 31, 2014 arguing that the forfeiture should be cancelled or reduced.[3] In a February 20, 2014 Forfeiture Order, the Video Division rejected these arguments and declined to reduce the forfeiture.[4] Licensee filed a Petition for Reconsideration on March 24, 2014.

III. DISCUSSION

3. Petitioner first argues that the Video Division should not have combined the revenues of two separate and independent limited liability companies in determining each company's ability to pay a separate forfeiture.[5] The Video Division considered the combined revenues of KM LPTV of Chicago, and KM LPTV of Milwaukee, LLC ("KM LPTV of Milwaukee") in determining each entity's ability to pay, given that the companies share the same ownership. Petitioner contends that the Video Division should not have done this because the two companies are not a parent and subsidiary and the Division did not conduct any analysis as to whether KM of Chicago-13 had any legal obligation to assume the debts of

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[1] *KM LPTV of Milwaukee, LLC*, Forfeiture Order, DA 14-216 (Feb. 20, 2014) ("Forfeiture Order").

[2] *KM LPTV of Chicago-13, L.L.C.*, Notice of Apparent Liability for Forfeiture, DA 13-2461 (Dec. 23, 2013) ("NAL").

[3] *KM LPTV of Chicago-13, L.L.C.*, Response to Notice of Apparent Liability (Apr. 6, 2012) ("Licensee Response").

[4] Forfeiture Order at 1-4.

[5] Petition for Reconsideration at 2-4, 8.

KM of Milwaukee.[6]

4. Our determination of the ability to pay a forfeiture depends on whether the Licensee is financially capable of paying based on its consolidated revenues, not just an inchoate snapshot of those revenues.[7] All of a violator's sources of revenue must be identified and provided to consider a request to reduce a forfeiture based on a purported inability to pay.[8] For example, in *KASA Radio Hogaar, Inc.*, the Enforcement Bureau considered all of a Licensee's financial resources--rather than just the information related to the station where the violation occurred--in determining the Licensee's ability to pay a forfeiture.[9]

5. Contrary to the Petitioner's contention,[10] the cases cited in the *Forfeiture Order* do not limit our ability to delve into the full scope of a licensee's ability to pay to the specific factual relationships between entities at issue in those cases. Instead, the cases stand for the more general proposition that it is appropriate to take into account income derived from all other affiliated operations.[11] The 2013 biennial ownership reports for KM LPTV of Chicago and KM LPTV of Milwaukee show that Myoung Hwa Bae is the 100 percent owner of both companies.[12] Therefore, the resources of both KM LPTV of Chicago and KM LPTV of Milwaukee were appropriate to review in determining the Licensee's overall ability to pay.

6. Petitioner further contends that the Video Division has not provided a reasoned basis for its use of gross revenues as the primary measuring stick for measuring the ability to pay.[13] In its *Forfeiture Policy Statement*, the Commission stated that gross revenues are the best indicator of ability to pay but that, in certain cases, financial indicators such as net losses might be relevant.[14] Congress' goal in imposing forfeitures for violations was to make them "sufficiently high to deter violations and constitute a meaningful sanction."[15] If an entity "could escape meaningful sanctions for violations of the Rules by seeking an inability to pay reduction that is unsupported by gross revenues, it would undermine the

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[6] *Id.* at 3-4.

[7] *KASA Radio Hogaar, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 6256, 6258 (2002) (quoting *Hinton Telephone Company of Hinton, Oklahoma,* Memorandum Opinion and Order*,* 7 FCC Rcd 6643, 6644 (CCB 1992), *review denied*, 8 FCC Rcd 5176 (1993)).

[8] *Frank Neely*, 22 FCC Rcd at 1436.

[9] *KASA Radio Hogaar, Inc.*, 17 FCC Rcd at 6258.

[10] Petition for Reconsideration at 3.

[11] *KASA Radio Hogaar, Inc.*, 17 FCC Rcd at 6257-58 (quoting *Emery Telephone*, 13 FCC Rcd 23854, 23859-60 (1998) (emphasis added), *recon. denied*, 15 FCC Rcd 7181 (1999)).

[12] KM LPTV of Chicago-13, LLC, *Biennial Ownership Report*; KM LPTV of Milwaukee, LLC, *Biennial Ownership Report*. Bae also controls 100 percent of the equity and assets in KM LPTV of Atlanta, L.L.C. Based on these reports, the Video Division could have also requested from the Licensee and included in its analysis the gross revenues of KM LPTV of Atlanta as well as KM Communications, Inc., the parent company of all three entities. Without requesting that additional information, however, the Video Division staff had sufficient information to determine that the revenues of the consolidated operations controlled by Myoung Hwa Bae were sufficiently great such that no reduction in the forfeiture amount would be appropriate.

[13] Petition for Reconsideration at 4.

[14] *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, 17106 (1997) ("Forfeiture Policy Statement").

[15] *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1436 (EB 2007) (quoting *Radio X Broadcasting Corporation*, 21 FCC at 12217, ¶ 19,) (citing S. Rep. No. 580, 95th Cong. 1st Sess. 3 (1978), reprinted in 1978 U.S.C.C.A.N. 109, 111))).

remedial purposes of Section 503 of the Act."[16] Indeed, if gross revenues are sufficiently great, the mere fact that the business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture.[17] Therefore, the Commission's approach--relying on gross revenues as a principal determining stick while being cognizant of the need to review other financial factors on a case by case basis--fulfills Congress' intent.

7. Petitioner also argues that we have not provided a reasoned explanation for why a reduction relative to the ability to pay would be inappropriate as applied here.[18] The Video Division conducted a detailed analysis with respect to the Licensee's ability to pay. The Video Division did not offer its full analysis regarding this financial information in the *Forfeiture Order* because the Licensee submitted the information with a request for confidential treatment. Nonetheless, we will provide further details regarding our analysis without implicating the Licensee's request for confidentiality.

8. The Licensee provided tax returns for KM LPTV of Milwaukee for the years 2009-2011 and explained that the returns for 2012 had not yet been completed. In a parallel proceeding, the Licensee provided tax returns showing gross revenues for KM LPTV of Chicago, an entity with the same owner as KM LPTV of Milwaukee. The proposed forfeiture is $20,000, which represents approximately 3.9 percent of the combined average gross revenues of KM LPTV of Milwaukee and KM LPTV of Chicago for the three year period.[19] The staff appropriately concluded that the forfeiture amount is not excessive relative to the Licensee's ability to pay.[20]

9. Petitioner notes that certain forfeitures represent as little as 2 percent of an entity's gross revenues while other forfeitures represent almost 8 percent of an entity's gross revenues.[21] Forfeiture amounts are initially assessed based on the violation at issue and its severity, as outlined in the *Forfeiture Guidelines*. Only after the forfeiture is determined, and upon request from the Licensee, is the Licensee's ability to pay take into consideration.[22] Here, the Petitioner was assessed a $20,000 forfeiture because of the egregiousness of its violations: (i) the failure to file electronically 13 issues/programs lists; (ii) the late filing of 12 Children's Television Programming Reports; and (iii) the failure to report these violations in the license renewal application.[23]

10. All the cases cited by Petitioner[24] are in line with our precedent finding that a forfeiture representing 7 to 8 percent of an entity's gross revenues is usually not excessive relative to its ability to pay.[25] Although we consider the totality of the circumstances, this is an upper cap guideline for measuring

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[16] *Unipoint Technologies, Inc.*, Forfeiture Order, FCC 14-11 at ¶ 29 (2014) (citing *Frank Neely*, 22 FCC Rcd at 1436, ¶ 8.

[17] *Id.* (citing *Forfeiture Policy Statement* at 17106).

[18] Petition for Reconsideration at 5-6. All cases cited by Petitioner taking a different approach to determining whether a forfeiture amount is appropriate, Petition for Reconsideration at 6 & nn. 15-17, preceded the release of the Forfeiture Policy Statement.

[19] The Licensee provided both sets of tax returns with a request for confidential treatment.

[20] *Forfeiture Policy Statement* at 17106.

[21] Petition for Reconsideration at 7.

[22] Forfeiture Policy Statement at 17107

[23] Forfeiture Order at ¶¶ 1-2.

[24] Petition for Reconsideration at 7.

[25] *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002); *Bruno Goodworth Network, Inc.*, Forfeiture Order, DA 13-1585, 2013 WL 3777827 (Vid. Div. Jul. 28, 2013).

ability to pay in most cases. Here, the forfeiture represents approximately 4 percent of the Licensee's combined gross revenues. The forfeiture in *PJB Communications, Inc.* was not reduced to 2 percent of the Licensee's gross revenues; that was the initial forfeiture amount determined independent of the ability to pay.

11. Finally, even if the Petitioner demonstrated an inability to pay, we would not have reduced the forfeiture here given that the egregious violations outweigh any evidence regarding an inability to pay.[26]

IV. ORDERING CLAUSES

12. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by KM LPTV of Milwaukee, LLC IS DENIED.

13. IT IS ALSO ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that KM LPTV of Milwaukee, LLC IS LIABLE FOR A MONETARY FORFEITURE in the amount of Twenty Thousand ($20,000) for its apparent willful and repeated violations of Section 73.3526 of the Commission's Rules.

14. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within 30 days of the release date of this Memorandum Opinion and Order, that KM LPTV of Milwaukee, LLC, SHALL PAY the full amount of the proposed forfeiture. In the event that the Licensee wishes to revert WMKE-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the Stations.[27] Should the Licensee elect to revert the Station to low power status, the Licensee would no longer be liable for the forfeiture amount described. 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). 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.[28]

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[26] *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (EB 2011); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087 (EB 2013).

[27] *See* 47 C.F.R. § 73.6001(d).

[28] *See* 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that copies of this Memorandum Opinion and Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KM LPTV of Chicago-13, L.L.C., 3654 West Jarvis Avenue, Skokie, Illinois, 60076, and to its counsel Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street NW, Suite 240, Washington, D.C., 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau