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

In the Matter of	)	
	)	
KSQA, LLC	)	NAL/Acct. No: 20164120007
Licensee of Station	)	FRN: 19020957
KSQA(DT), Topeka, Kansas	)	Facility No. 166546

MEMORANDUM OPINION AND ORDER

Adopted: January 25, 2018 **Released: January 25, 2018**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. We have before us a petition for reconsideration (Petition), filed by KSQA, LLC (KSQA),[1] licensee of station KSQA(DT), Topeka, Kansas (Station), seeking reconsideration of a Forfeiture Order in the amount of Fifteen Thousand Dollars ($15,000) for its willful and/or repeated violations of: (1) Section 73.3526(e)(11)(iii) of the Commission's rules (Rules) by failing to timely-file its Children's Television Programming Reports for thirteen quarters;[2] and (2) Section 73.3514(a) of the Rules by failing to report those late-filings in its renewal application.[3] For the reasons below, we deny KSQA's Petition.

II. BACKGROUND

2. On April 7, 2016, we issued a Notice of Apparent Liability for Forfeiture (*NALF*) proposing a forfeiture amount of $15,000 for the above-listed violations.[4] On April 21, 2016, KSQA filed a response stating that it did not intend to contest the violations listed in the *NALF*.[5] Instead, KSQA requested that we defer our collection action until after the conclusion of the incentive auction, which would allow

[1] Response to Forfeiture Order filed by KSQA LLC (dated Jul. 18, 2016) (Petition). Although the document is titled "Response to Forfeiture Order," we will treat the document as a Petition for Reconsideration. *See* Communications Act of 1934, as amended, Pub. L. No. 97-259, 96 Stat. 1087, 1097-98 (codified at 47 U.S.C. 405(a)) (the Act) and 47 CFR § 1.106.

[2] The Notice of Apparent Liability for Forfeiture and the Forfeiture Order state that KSQA violated Section 73.3526(e)(11)(iii) for fourteen quarters. However, footnote six of the NAL only lists thirteen quarters that were the subject of the violation. *See KSQA, LLC,* Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 3437, 3438, n.6 (Vid. Div. 2016) (*NALF*). After a careful review of the record, we have determined that KSQA violated Section 73.3526(e)(11)(iii) for thirteen quarters as stated in footnote 6 of the *NALF*. Those quarters include fourth quarter of 2011, all four quarters of 2012, the second through fourth quarters of 2013, the first through third quarters of 2014, and the first and second quarters of 2015. Based upon the formula used for determining fines for such violations, this discrepancy does not change the amount the Station would have been fined.

[3] *KSQA, LLC*, Forfeiture Order, 31 FCC Rcd 6904 (Vid. Div. 2016) (*Forfeiture Order*).

[4] *See NALF*, 31 FCC Rcd at 3439, paras. 6 and 7.

[5] Response to Notice of Apparent Liability for Forfeiture filed by KSQA LLC (dated Apr. 21, 2016) (Response to NALF).

KSQA, assuming that it was a reverse auction winner, to pay the proposed forfeiture with the auction proceeds.[6] If not a winner, KSQA stated that it would request an extension of time to submit an amended response to the *NALF* demonstrating its "inability to pay" the proposed forfeiture.[7] On June 16, 2016, we rejected KSQA's request and issued the *Forfeiture Order* finding KSQA liable in the amount of $15,000.[8]

3. On July 18, 2016, KSQA filed the above-referenced Petition requesting either cancellation or a substantial reduction of the forfeiture based on its "inability to pay."[9] Gregory Talley, the Station's General Manager and a member of KSQA, claimed that the Station has "operated at a loss since its launch in 2012,"[10] and that KSQA's three members currently underwrite those losses through "short-term monthly loans or equity infusions."[11] To support his claims, Mr. Talley provided KSQA's balance sheet, prepared as of June 30, 2016, and its "Statement of Revenues and Expenses" for Fiscal Year (FY) 2014 through FY 2016.[12] Per Division staff's request, KSQA supplemented its Petition by submitting its tax returns for FYs 2013, 2014, and 2015.[13]

4. On June 15, 2017, KSQA submitted a second supplement to its Petition (Second Supplement) responding to Division staff's inquiry regarding the "short-term loans" or "equity infusions" that KSQA's members provided the Station.[14] According to KSQA, Commission precedent prohibits the Division from imposing liability for payment of a forfeiture to a licensee's individual principals, shareholders, or officers.[15] KSQA claims that its three members provided the "short-term loans" or "equity infusion" as "debts owed by the station" and were not under any agreement or obligation to provide additional funds to the station.[16] KSQA also reasserted its inability to pay the forfeiture and provided declarations from its three members and an updated Balance Sheet (May Balance Sheet).[17]

III. DISCUSSION

5. Pursuant to the *Forfeiture Policy Statement* and Section 1.80(b)(8) of the Rules, we may adjust a forfeiture amount based on the factors listed in Section 503(b)(2)(E) of the Communications Act of 1934, as amended (Act),[18] which includes "the nature, circumstances, extent, and gravity of the violation

---

[6] *Id*; *See Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 29, 2016, Public Notice*, Public Notice, 30 FCC Rcd 11034 (2015) (*Application Procedures Public Notice* or *Public Notice*).

[7] Response to NALF at 2.

[8] *Forfeiture Order*, 31 FCC Rcd at 6907, para. 9.

[9] *See* Petition at 1.

[10] Petition, Declaration of Gregory Talley at 1 (Declaration of Gregory Talley).

[11] Declaration of Gregory Talley at 2.

[12] *Id.* at 2 and 4. KSQA has requested that its financial documents be treated as confidential pursuant to Section 0.457(d)(1)(i) of the Commission's Rules. 47 CFR § 0.457(d)(1)(i). KSQA has provided the same request for confidentially for all subsequent financial documents it has filed in this proceeding and referenced below.

[13] Supplement to Response to Forfeiture Order filed by KSQA, LLC (dated May 16, 2017) (Supplement to Petition). KSQA's tax returns for FY 2016 were not yet available at the time of the request.

[14] Second Supplement to Response to Forfeiture Order filed by KSQA, LLC (dated Jun. 15, 2017) (Second Supplement to Petition).

[15] *Id.* at 3 (citing *Connellsville Broadcasters, Inc.*, Decision, 46 FCC 2d 919 (1974) (*Connellsville Broadcasters*)).

[16] *Id*. at 5.

[17] *Id*.

[18] 47 U.S.C. § 503(b)(2)(E).

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."[19] We will not consider reducing or cancelling a forfeiture based on a licensee's inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to the generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the licensee's current financial status.[20] While we may consider other financial indicators, we generally use a licensee's gross revenues as the primary measuring stick to determine whether a licensee has an inability to pay.[21] After reviewing the record, we were unable to determine or verify KSQA's gross revenues from the information it provided. Specifically, we found that the gross revenues KSQA reported on its FY 2014 and FY 2015 tax returns did not match the gross revenues reported on its FY 2014 and FY 2015 "Statement of Revenues and Expenses." Therefore, we are unable to evaluate KSQA's claimed inability to pay based on its gross revenues.

6. Although we are not able to determine whether KSQA lacks the sufficient gross revenues to warrant reduction or cancellation of the forfeiture, we acknowledge that "the Commission's inability to pay analysis is not a strict mathematical exercise."[22] As stated in the *Forfeiture Policy Statement*, "we must look to the totality of the circumstances surrounding the individual case" and evaluate each claim of inability to pay on a case-by-case basis in accordance with Section 503(b)(2)(E) of the Act.[23] In this regard, we look to all potential sources of income available to the entity, including that of a parent company, owner operator, and lines of credit.[24] While we have previously concluded that "operational losses" alone do not mean that a licensee has an inability to pay an assessed forfeiture,[25] we have taken a licensee's "operational losses" into account in extreme cases of severe financial distress. For example, forfeitures have been reduced or cancelled because the licensee was facing foreclosure because of its operating losses, the licensee was unable to secure funding to cover its losses, the licensee's owners needed to personally guarantee loans on the licensee's behalf to avoid foreclosure, and the licensee's station was of an inherently low value.[26] Our review of KSQA's May Balance Sheet revealed that it

---

[19] 47 CFR § 1.80(b)(8) and note to paragraph (b)(8), Section II; *see also 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, 17100-101, para. 27 (1997) *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

[20] *See Forfeiture Policy Statement,* 12 FCC Rcd at 17106-07, paras. 43-44.

[21] *See e.g., PJB Communications of Virginia, Inc., Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, para. 8 (1992) (PJB Communications); San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

[22] *D.T.V., LLC*, Forfeiture Order, 31 FCC Rcd 2650, 2658, para. 20 (2016).

[23] *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07, para. 43.

[24] *See e.g.,* A-*O Broad. Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756 (2005) (violator's whole financial picture is needed to fully assess its inability to pay claim); *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429 (2008) (licensee must provide financial data concerning all potential sources of income available to it); *KASA Radio Hogar*, Memorandum Opinion and Order, 17 FCC Rcd 6256, 6258, para. 4 (2002) ("[I]t is the Commission's general policy to consider the financial condition of a licensee's consolidated operations, not just the financial condition of an individual station or a limited portion of its operations."); *Emery Tel*., Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859–60, para. 13 (1998) ("[I]ncome from other affiliated operations, as well as the financial status of the station(s) in question, can be taken into account" in evaluating an inability to pay claim), recon. denied, 15 FCC Rcd 7181 (1999).

[25] *See e.g., PJB Communications*, 7 FCC Rcd at 2089, para. 8; *Studio 51 Multi Media Productions*, Forfeiture Order, 30 FCC Rcd 2330, 2332, para. 6 (Vid. Div. 2015) *aff'd* Memorandum Opinion and Order, 30 FCC Rcd 6134 (Vid. Div. 2015).

[26] *Id.*; *See e.g., First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996) (considering that the station's losses exceeded its income and that the sole shareholder funded those losses and received no income from the station when reducing proposed forfeiture); *Pinnacle Communications, Inc.*,

(continued....)

generated a dollar amount of "Members Equity" that would not only cover KSQA's purported "operating losses" for the past three years, but also satisfy payment of the assessed forfeiture. Additionally, KSQA admits that it has been able to cover its "operating losses" through "short-term loans" or "equity infusions" that it received from its three members. After considering the evidence before us, we did not find sufficient evidence showing that KSQA was experiencing severe financial distress warranting a cancellation or substantial reduction of the forfeiture amount based on its operating losses.

7. Furthermore, we reject KSQA's assertion that *Connellsville Broadcasters* precludes us from considering as part of our evaluation information regarding the "short-term loans" or "equity infusions" from KSQA's three members. In *Connellsville Broadcasters*, the Commission determined that the Act makes clear that "the liability for [a] monetary forfeiture attaches to the licensee or permittee, not to an individual stockholder or officer of the licensee."[27] We do not believe *Connellsville Broadcasters* is applicable here because we are not attempting to impose forfeiture liability to KSQA's three members. As stated in the *Forfeiture Order*, we have imposed forfeiture liability on KSQA.[28] The purposes of staff's request for information regarding the "short-term loans" or "equity infusions" that were provided by KSQA's three members was to identify all potential sources of income available to KSQA, which, as stated above, is relevant to our evaluation of KSQA's inability to pay claim.

8. For the foregoing reasons, we reject KSQA's Petition to cancel or substantially reduce the forfeiture based on its purported inability to pay. Accordingly, we find that KSQA is liable for the full monetary forfeiture in the amount of $15,000 for its apparent and willful and/or repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.[29]

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.106 of the Commission's rules, 47 CFR § 1.106, that the Petition for Reconsideration filed by KSQA, LLC, **IS DENIED**.

10. **IT IS FURTHER ORDERED**, pursuant to Section 405(a) of the Commission's rules, that KSQA, LLC, **SHALL PAY** the full forfeiture in the amount of Fifteen Thousand Dollars ($15, 000) within thirty (30) days of the release of this Memorandum Opinion and Order.

- Payments of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN reference above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.[30] When completing FCC Form 159, enter the Account Number in block 23A (call sign/other ID) and enter the letters "FORF" in block number

(...continued from previous page)
Memorandum Opinion and Order, 11 FCC Rcd 15496 (1996) (considering that the licensee was in default of a loan personally guaranteed by licensee's owner, that the loan was entered into to avoid foreclosure, and that the licensee and its owner would receive no cash from sale of the license when cancelling forfeiture); *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995) (considering the fact that the station was a directional daytime-only radio station licensed to a community of 425 when reducing proposed forfeiture).

[27] *Connellsville Broadcasters*, 46 FCC 2d at 919, para. 3 (internal citations omitted).

[28] *See Forfeiture Order*, 31 FCC Rcd at 6907, paras. 9 and 10.

[29] 47 CFR §§ 73.3526(e)(11)(iii), 73.3514(a).

[30] Payment may be made on the Commission's online Fee Filer Website: https://www.fcc.gov/encyclopedia/fee-filer. Payment may also be made by FCC Form 159. Detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

24A (payment type code).[31]

- 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.

- Requests for full payment of the forfeiture 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. If such a request is made, KSQA shall also send an electronic notification to Darren Fernandez at darren.fernandez@fcc.gov

11. **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 KSQA, LLC, 800 SW Jackson Street, #1407, Topeka, Kansas 66612, and to its counsel James L. Winston, Esq., Winston, Diercks, Harris, & Cooke, LLP, 1201 Connecticut Ave., NW, Suite 200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[31] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by email at ARINQUIRIES@fcc.gov.