

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

In re Applications of)	
)	
KXEO Radio, Inc.)	Facility I.D. Nos. 35951/35952
)	NAL/Acct. Nos. MB201241410047/48
For Renewal of Licenses for)	FRN: 0002539856
Stations KXEO(AM)/KWWR(FM))	File Nos. BR-20120928AGY
Mexico, Missouri)	BRH-20120928AHA

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: June 27, 2013

Released: June 27, 2013

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (“Bureau”) has before it the applications of KXEO Radio, Inc. (“Licensee”) for renewals of its licenses for KXEO(AM) and KWWR(FM), Mexico, Missouri (“Stations”).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (“NAL”),² we find that the Licensee apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to retain all required documentation in the Stations’ public inspection files.³ Based upon our review of the record before us, we conclude that Licensee is apparently liable for a monetary forfeiture in the amount of two thousand dollars (\$2,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. The purpose of this requirement is to provide the public with timely information about the station at regular intervals throughout the license period.⁴ Among the materials required for inclusion in the file are the station’s quarterly issues/programs lists, which must be retained until final Commission action on the station’s next license renewal application.⁵

3. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 has been placed in each

¹ Licensee filed separate amendments to each application on May 1, 2013, in further response to Section III, Question 3 of each application.

² This NAL is issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (“Act”), and Section 1.80 of the Commission’s Rules (“Rules”). See 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80. The Bureau has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3526.

⁴ Cf. *Letter to Kathleen N. Benfield*, 13 FCC Rcd 4102 (MMB 1997), citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993).

⁵ See 47 C.F.R. 73.3526(e)(12).

station's public inspection file at the appropriate times. Licensee answered "No" to that certification in each of the applications and attached an Exhibit stating, in pertinent part:

The former long-time (32 years) general manager of the stations walked out of the station never to return in September of 2010. At one time the issues and program files were in the public file. Numerous station personnel can speak to that. However, when the former GM left, he took the issues and programs files with him and offered to supply them back to the station for \$100,000. Upon my hiring, I conducted an extensive search of the premises and could not locate any of the issues and programs information for the years 2004 to Sept. 2010. The rest of the public file is intact. The former GM has since passed.⁶

III. DISCUSSION

4. *Proposed Forfeiture.* As Licensee has acknowledged, at the time of the filing of the Stations' license renewal applications, and during periods within the license term, the Stations' public inspection files did not contain many of the items required to be retained in the files by Section 73.3526 of the Rules. In this regard, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁷

5. Under Section 503(b)(1)(B) of the Act, a person who is found 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ 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."¹²

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.¹³ In determining the

⁶ Exhibit 12, Applications.

⁷ See *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709 (MMB 1999), citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962); *Surrey Front Range Limited Partnership*, Letter, 7 FCC Rcd 6361 (FOB 1992).

⁸ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. 1.80(a)(1).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) *recon denied*, 7 FCC Rcd 3454 (1992).

¹² 47 U.S.C. § 312(f)(2).

¹³ 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)(4), note to paragraph (b)(4), Section I.

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.”¹⁴

7. In this case, Licensee indicates that the required items were prepared and placed in the public inspection files but were subsequently removed by the former general manager upon his less-than amicable departure from the Stations. Although the violations were extensive, occurring over a period of nearly six years – from 2004 through September 2010 -- and involving at least 20 issues/programs lists, taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement*, we reduce the proposed forfeiture from the \$10,000 base amount to \$1,000 for the public file violations at each Station.¹⁵

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.¹⁶ That Section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁸

9. We find that Licensee’s apparent violations of Section 73.3526 of the Rules do not constitute “serious violations” warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁹ Further, we find that the Stations served the public interest, convenience, and necessity during the subject license terms. We will therefore grant the license renewal applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant of the applications.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act

¹⁴ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁵ *See, e.g., Creek Broadcasting Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18669 (MB 2007) (proposing a \$1,000 forfeiture where numerous items were missing from the station's public inspection file but licensee alleged that the required items had been prepared and placed in the file, but were subsequently removed by a former employee when his employment was terminated).

¹⁶ 47 U.S.C. § 309(k).

¹⁷ 47 U.S.C. § 309(k)(1).

¹⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁹ For example, we do not find here that the Licensee's Stations operations "[were] conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200. *See also Center for Study and Application of Black Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

of 1934, as amended, and Section 1.80 of the Commission's Rules, that KXEO Radio, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) for its apparent willful and repeated violation of Section 73.3526 of the Commission's Rules.

11. 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*, KXEO Radio, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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). Licensee will also send electronic notification on the date said payment is made to Penelope.Dade@fcc.gov and Stephen.Svab@fcc.gov.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. 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 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.

15. 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, DC 20554.²⁰

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mr. Michael Daugherty, KXEO Radio, Inc., 1705 East Liberty, P.O. Box 475, Mexico, MO 65265, and to its counsel, James P. Riley, Esq., Fletcher Heald & Hildreth, PC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.