

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

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

FORFEITURE ORDER

Adopted: April 25, 2014

Released: April 25, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules,¹ we find that Kelley Enterprises of Muskegon, Inc., licensee of Station WMKG-CA, Muskegon, Michigan, repeatedly violated Sections 73.3526(b)(2) & (e)(11)(i) of the Commission's Rules by failing to file the Station's issues/programs lists. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Four Thousand Dollars (\$4,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on October 28, 2013.² The NAL notified the Licensee that: (i) its failure to file issues/programs lists for six quarters constituted an apparent willful and/or repeated violation of Sections 73.3526(b)(2) & (e)(11)(i) of the Commission's Rules.³ The Division concluded that the Licensee was apparently liable for a forfeiture of \$4,000.

3. In a timely response dated November 22, 2013, the Licensee did not attempt to rebut the claimed violations but asserted that the proposed forfeiture amount should be reduced based on the Licensee's inability to pay.⁴

III. DISCUSSION

4. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

² *Kelley Enterprises of Muskegon, LLC*, Notice of Apparent Liability for Forfeiture, DA 13-2070 (Oct. 28, 2013).

³ 47 C.F.R. § 73.3526(b)(2) & (e)(11)(i).

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") (Nov. 22, 2013) at 1-2.

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.⁵ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁶ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁷ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(b)(2) & (e)(11)(i) of the Commission's rules. We ultimately conclude that the forfeiture amount should not be reduced from the \$4,000 amount proposed in the NAL.

5. The Community Broadcasters Protection Act requires that Class A television stations comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.⁸ Commission rules require Class A licensees to prepare, place in its public inspection file, and file with the Commission an issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three month period.⁹

6. In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include "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." In the NAL, the Video Division proposed a forfeiture amount of \$4,000.

7. In its response, the Licensee does not dispute that the issues/programs lists were not filed with the Commission. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

8. The Licensee argues that it cannot afford to pay the forfeiture.¹⁰ The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee 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 licensee's current financial status. Typically, the Commission uses gross revenue as the primary measuring stick by which it

⁵ 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁷ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

⁸ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

⁹ 47 C.F.R. § 73.3526(b)(2) & (e)(11)(i).

¹⁰ Licensee Response at 2 (and exhibits).

evaluates a licensee's ability to pay.¹¹ All of a violator's sources of revenue must be identified, and the requisite financial information regarding them provided, in order for us to consider a request to reduce a forfeiture for inability to pay.¹² Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.¹³

9. In the NAL, the Video Division proposed a forfeiture amount of \$4,000. Having carefully reviewed the Licensee's submitted documentation, we decline to reduce the forfeiture and conclude the amount is in line with previous forfeitures the Commission has determined are not excessive relative to the Licensee's ability to pay.¹⁴

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,¹⁵ Kelley Enterprises of Muskegon, Inc. SHALL FORFEIT to the United States the sum of Four Thousand Dollars (\$4,000) for repeatedly violating 47 C.F.R. § 73.3526(b)(2) & (e)(11) (i).

11. 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.¹⁶ Should the Licensee elect to revert the station to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order. 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 Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

13. 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. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID)

¹¹ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

¹² *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1436 (EB 2007) (citing *Forfeiture Policy Statement*, 12 FCC Rcd at 17158 ¶ 113 ("As for forfeitures that a licensee believes it cannot afford to pay relative to its financial situation, we must look to the totality of the circumstances surrounding the individual case."); *Radio X Broadcasting Corporation*, 21 FCC Rcd 12209, 12217 (2006) (subsidiary and parent company financial information are both relevant to inability to pay determination by the Commission); *A-O Broadcasting*, 20 FCC Rcd 756, 761 (2005) (financial information of the corporate owner is relevant to the Commission evaluation of an inability to pay claim)).

¹³ Licensee Response at 2 & Exhibits.

¹⁴ *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Bruno Goodworth Network, Inc.*, Forfeiture Order, DA 13-1585, 2013 WL 3777827 (Vid. Div. Jul. 18, 2013) (forfeiture amount reduced to approximately 7 percent of the violator's gross revenues).

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

¹⁶ See 47 C.F.R. § 73.6001(d).

and enter the "FORF" in block number 24A (payment type code). 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.

14. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by 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