

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

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| In the Matter of |) | |
| |) | |
| Mapleton License of San Luis Obispo, LLC |) | File No.: EB-10-LA-0032 |
| |) | NAL/Acct. No.: 201132900001 |
| Licensee of Broadcast Station KXDZ(FM) |) | FRN: 0017174020 |
| Templeton, California |) | |
| Facility ID # 70781 |) | |

FORFEITURE ORDER

Adopted: April 18, 2012

Released: April 19, 2012

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Mapleton License of San Luis Obispo, LLC (Mapleton), licensee of Station KXDZ(FM), in Templeton, California, for willfully and repeatedly violating Section 73.3526 of the Commission's rules (Rules), which requires broadcast stations to maintain a complete public inspection file.¹ The noted violations involve Mapleton's failure to maintain multiple issues/programs list in the Station KXDZ(FM) public inspection file. In addition, no later than thirty (30) calendar days from the date of this Forfeiture Order, Mapleton must submit a statement signed under penalty of perjury that the Station KXDZ(FM) public inspection file is in compliance with Section 73.3526 of the Rules.

II. BACKGROUND

2. On February 24, 2010, an agent from the Enforcement Bureau's Los Angeles Office inspected the main studio of Station KXDZ(FM), located in San Luis Obispo, California. The agent reviewed the content of Station KXDZ(FM)'s public inspection file and discovered that required issues/programs lists were missing for the fourth quarter of 2007, the first, second, and third quarters of 2008, and the first and fourth quarters of 2009. The agent discussed the file's deficiency with the Market Manager for the Mapleton stations. The Market Manager agreed that the documents were missing from the file and indicated that the period for which the issues/programs lists were missing appeared to coincide with the departure of the station employee who had previously maintained the lists.

3. On November 5, 2010, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of \$10,000 to Mapleton for failing to maintain a complete public inspection file.² Mapleton responded to the NAL on December 6, 2010.³ In its *Response*, Mapleton argues that the proposed forfeiture should be cancelled or reduced because Mapleton "is not responsible for

¹ 47 C.F.R. § 73.3526.

² *Mapleton License of San Luis Obispo*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 15550 (Enf. Bur. 2010).

³ See Response of Mapleton (filed Dec. 6, 2010, in EB-10-LA-0032) (*Response*).

maintaining public file material from the period of time prior to the Station's current ownership, and because the amount of the proposed forfeiture improperly exceeds the forfeiture amounts imposed in similar circumstances."⁴

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),⁵ Section 1.80 of the Rules,⁶ and the Commission's *Forfeiture Policy Statement*.⁷ In examining Mapleton's *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.⁸ We considered Mapleton's *Response* to the *NAL* in light of these statutory factors and find that neither cancellation nor reduction of the forfeiture is warranted for the reasons discussed below.

5. Section 73.3526(a)(2) of the Rules requires that every licensee of an AM or FM station shall maintain a public inspection file containing the material relating to that station described in Section 73.3526(e) of the Rules.⁹ Specifically, Section 73.3526(e)(12) requires 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.¹⁰ This list is known as the radio issues/programs list and copies of the lists must be maintained in the file until final action has been taken on the station's next renewal application.¹¹ Further, as required by Section 73.3526(b), the public inspection file shall be maintained at the station's main studio.¹² On February 24, 2010, a Los Angeles agent found that Mapleton failed to maintain a complete public inspection file for Station KXDZ(FM), by omitting from the station's file six quarterly issues/programs lists over three calendar years.

6. Mapleton does not dispute that the six quarterly issues/programs lists were missing from the Station KXDZ(FM) public inspection file. Rather, Mapleton contends that the violation occurred prior to the current license term and that the current license term began on November 4, 2009, when a long-form transfer of control of Mapleton was consummated.¹³ Mapleton further contends that because a transfer of control occurred, its current owners are not responsible for the potential violations incurred by its prior owners and that the Rules do not require its current owner to create documents that were missing from the Station KXDZ(FM) public inspection file at the time of the consummation of the transfer of control. Mapleton concludes that an order released by the Audio Services Division of the Commission's

⁴ *Id.* at 1.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *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*).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. § 73.3526(a)(2).

¹⁰ 47 C.F.R. § 73.3526(e)(12).

¹¹ *Id.*

¹² 47 C.F.R. § 73.3526(b).

¹³ *Response* at 2.

Media Bureau “compels” the dismissal of an NAL “issued to a licensee with respect to public file material that was required to be prepared and placed in the public file by the prior owner.”¹⁴

7. We disagree with Mapleton’s contentions, legal analysis, and conclusion.¹⁵ Regarding the responsibility of a licensee that is the subject of a transfer of control, Commission precedent is clear: “liability for violations of Commission’s rules inures to the licensee regardless of an intervening transfer of control.”¹⁶ The Commission has specifically stated that “[t]he fact that the ownership of the company changed hands does not affect the company’s liability.”¹⁷ Mapleton does not argue that it was not the licensee during the period of time covering the issues/programs lists at issue here; Mapleton only argues that its ownership changed on November 4, 2009.¹⁸ As the Commission has indicated in the past, however, the transfer of control of Mapleton is not relevant to our review here. Consequently, we affirm the findings of the Los Angeles Office and find that Mapleton failed to maintain a complete public inspection file for Station KXDZ(FM).¹⁹

8. Mapleton also argues that the proposed forfeiture amount is excessive and should be reduced because in other cases, where a licensee failed to produce seven or fewer issues/programs lists,

¹⁴ *Id.* (citing *Citadel Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 15060 (Media. Bur. 2010) (*Citadel Broadcasting*) (licensee not liable for violation of public inspection file rules that occurred during period prior to transfer of control to the current ownership).

¹⁵ Mapleton incorrectly asserts that the Station KXDZ(FM)’s license term commenced on the date of consummation of the transfer of control of Mapleton Licensee of San Luis Obispo, LLC., from Mapleton Radio, LLC to Mapleton Radio Holding, LLC. Section 503(b)(6) of the Act defines the “date of commencement of the current term of such license” as the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. 47 U.S.C. § 503(b)(6). Station KXDZ(FM)’s most recent renewal application was granted on November 29, 2005, for a term expiring December 1, 2013. *See* File No. BRH – 20050729DPU, granted November 29, 2005 (2005 Station KXDZ(FM) Renewal Application). Consequently, the Station KXDZ(FM) current license term began on November 29, 2005, not on November 4, 2009, and all of the issues/programs lists at issue here were required to be in the Station KXDZ(FM) public inspection file at the time of the Los Angeles agent’s inspection. *See* 47 C.F.R. § 73.3526(e)(12).

¹⁶ *WLDI, Inc.*, Order, 17 FCC Rcd 14750, 14752 (Enf. Bur. 2002) (entity liable for violations concerning broadcasting of indecent material regardless of a subsequent transfer of control) (citing *Winslow Communications, Inc.*, Memorandum Opinion and Order, 45 FCC 2d 662 (1974) (licensee responsible for compliance with Commission radiotelephone operator rules despite transfer of control of stock of the licensee subsequent to the violations)).

¹⁷ *EZ Sacramento*, Memorandum Opinion and Order, 16 FCC Rcd 4958, 4959 (2001) (licensee liable for violations concerning broadcast of telephone conversations despite intervening transfer of control).

¹⁸ Mapleton incorrectly cites to Section 73.3527(d)(1), the rule applicable to maintenance of the public inspection file for non-commercial educational stations involved in an assignment of the license, to support its contention that it is not responsible for maintaining the public inspection file from the commencement of the license term. *Response* at 2. The correct rule applicable to a commercial station involved with a transfer of control situation is Section 73.3526(d)(2), which provides that “[i]n cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station, the file . . . shall be maintained by the permittee or licensee.” As the licensee, Mapleton was clearly responsible for maintenance of the public inspection file throughout the license term.

¹⁹ Mapleton asserts that the *Citadel Broadcasting* case and its reliance on certification instructions on Media Bureau broadcast renewal forms requires a different result. We disagree. We have previously stated that “[t]he issues of where liability lies for violations that occurred prior to a transfer of control and whether a new owner can certify to actions that took place prior to the transfer of control are entirely different issues. With regard to liability, the licensee remains the same after a transfer of control and therefore liability, as a legal matter, remains with the licensee. In the context of a license renewal application, a transferee cannot, as a legal or practical matter, certify that the licensee complied with the Commission’s rules during a period of time prior to the transferee obtaining ownership.” *Hensley Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 115, 116 n.9 (Enf. Bur. 2009) (licensee liable for forfeiture assessed for failing to ensure that multiple issues/programs lists were placed in a station’s public inspection file despite intervening transfer of control) (*Hensley Broadcasting*).

the forfeiture proposed was \$4,000.²⁰ While the cases produced by Mapleton show smaller forfeitures proposed,²¹ other precedent proposed even larger forfeitures for similar numbers of missing issues/programs lists.²² As each case presents a unique set of considerations and facts, we must review this case consistent with the statutory factors listed above.²³ Upon review we find that Mapleton failed to maintain a complete public inspection file, beginning in 2008, and that public inspection file continued to be incomplete over two years later. Throughout its current license term, Mapleton failed to consistently comply with the Commission's public file requirements, both before and after it was transferred to its current owners.²⁴ Given these facts, we see no reason to reduce the proposed forfeiture amount.

9. We have examined Mapleton's *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mapleton willfully and repeatedly violated Section 73.3526 of the Rules. Considering the entire record and the factors listed above, we find that a forfeiture in the amount of \$10,000 is warranted. We also note that Mapleton has not indicated whether the public inspection file for Station KXDZ(FM) has come into compliance with the requirements of Section 73.3526 of the Rules. We therefore order Mapleton to submit a written statement pursuant to Section 1.16 of the Rules²⁵ signed under penalty of perjury by an officer or director of Mapleton within thirty (30) calendar days of the release date of this Forfeiture Order that Station KXDZ(FM) is now in compliance with Section 73.3526 of the Rules.

IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's Rules, Mapleton License of San Luis Obispo, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.3526 of the Commission's Rules.²⁶

²⁰ *Response* at 3.

²¹ *Wilson Broadcasting, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 15963 (Enf. Bur. 2007) (affirming a \$4,000 forfeiture for missing at least two issues/programs list in a public file); *Citadel Broadcasting, supra* note 14 (assessing a \$4,000 to a licensee for self-reporting seven missing issues/programs lists on a renewal); *Hensley Broadcasting, supra* note 19 (assessing a \$4,000 forfeiture for four missing issues/programs lists).

²² *Crocodile Broadcasting Corp., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 1173 (Enf. Bur. 2011) (proposing a \$10,000 forfeiture for missing eight issues/programs list from a public inspection file); *Entertainment Media Trust, Dennis J. Watkins, Trustee*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 6877 (Enf. Bur. 2011) (proposing a \$12,000 for eight issues/programs lists missing from a public inspection file).

²³ *See, e.g., Lazer Licenses*, Order on Review, 27 FCC Rcd 626 (2012) (affirming Enforcement Bureau determination to reduce, but not cancel, a forfeiture amount when licensee demonstrates a good-faith effort to produce missing issues/programs list); *Twenty-One Sound Communications, Inc.*, Order on Review, 23 FCC Rcd 2436, 2439 (2008) (affirming an Enforcement Bureau decision that an incomplete public inspection file, missing only three items, could subject a licensee to monetary forfeitures regardless of why or for how long the items were missing).

²⁴ Mapleton objects to the Los Angeles Office's reliance on a statement in the 2005 Station KXDZ(FM) Renewal Application concerning previous items missing from the KXDZ(FM) public inspection file along with Mapleton's promise to comply with the public file requirements going forward. *Response* at 4. We find no error as compliance with the public file rules is anticipated from licensees and despite being put on notice of prior public inspection file violations, Mapleton, even under its current owners, made no effort to ensure that the Station KXDZ(FM) public inspection file was completely compliant with the requirements of Section 73.3526.

²⁵ 47 C.F.R. § 1.16.

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

11. **IT IS FURTHER ORDERED** that Mapleton License of San Luis Obispo, LLC, **SHALL SUBMIT** a written statement, as described in paragraph 9, 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, Los Angeles Office, 18000 Studebaker Road, Suite 660, Cerritos, CA, 90703. Mapleton License of San Luis Obispo, LLC, shall also e-mail the written statement to WR-Response@fcc.gov.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days of the release 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 collection pursuant to Section 504(a) of the Act.²⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account number and FRN number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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 under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Mapleton License of San Luis Obispo, LLC, shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov

13. **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 Mapleton License of San Luis Obispo, LLC, 10900 Wilshire Boulevard, Los Angeles, CA, 90024, and Kevin P. Latek, Esquire, Dow Lohnes PLLC, 1200 New Hampshire Avenue NW, Suite 800, Washington, DC 20024, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁷ 47 U.S.C. § 504(a).