

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

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| In the Matter of |) | |
| |) | |
| Western Slope Communications, LLC |) | File Nos.: EB-FIELDWR-12-00003820 |
| |) | and EB-FIELDWR-12-00003822 |
| Licensee of: |) | NAL/Acct. No.: 201332800006 |
| |) | FRN: 0004259552 |
| Station KRGS, Rifle, Colorado |) | Facility ID Nos.: 71960 and 88077 |
| Station KRVG, Glenwood Springs, Colorado |) | |

FORFEITURE ORDER

Adopted: September 4, 2014

Released: September 5, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$20,000 against Western Slope Communications, LLC (Western Slope) for failing to maintain complete public inspection files at two of its stations located in Colorado. Western Slope does not deny having incomplete public inspection files, but requests that we cancel or reduce the proposed forfeiture because the violations were due to inadvertent staff oversight and payment of the proposed forfeiture would present a significant financial burden. Inadvertent mistakes made by staff do not serve as mitigating circumstances justifying a forfeiture reduction. However, we reduce the penalty imposed based on Western Slope's good faith efforts to comply with the public inspection file rules. We also find that Western Slope demonstrated sufficient gross revenues to pay the penalty.

2. Specifically, we issue a monetary forfeiture to Western Slope, licensee of Station KRGS, Rifle, Colorado, and Station KRVG, Glenwood Springs, Colorado (collectively, the Stations), for willfully and repeatedly violating Section 73.3526 of the Commission's rules (Rules) by failing to maintain complete public inspection files at the Stations.¹

II. BACKGROUND

3. On July 10, 2013, the Enforcement Bureau's Denver Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) proposing a \$25,000 forfeiture against Western Slope for failing to maintain a complete public inspection file for each of the Stations.² Specifically, the *NAL* found that the public inspection files at the Stations were each missing multiple issues/programs lists, which summarize the programs that provided the Stations' most significant treatment of community issues.³ In its *NAL Response*, Western Slope does not deny the violations, but requests cancellation or reduction of the proposed forfeiture because the issues/programs lists were missing from the Stations' public inspection file due to inadvertent staff oversight and the proposed forfeiture would present a significant financial burden for Western Slope.⁴

¹ 47 C.F.R. § 73.3526.

² *Western Slope Communications, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Red 10047 (Enf. Bur. 2013) (*NAL*). A recitation of the facts of this case can be found in the *NAL* and is incorporated herein by reference.

³ *Id.* at 10047–48, para. 3. *See* 47 C.F.R. § 73.3526(e)(12).

⁴ *See* Response of Western Slope Communications, LLC, to Denver Office, Western Region, Enforcement Bureau (August 9, 2013) (on file in EB-FIELDWR-12-00003820 and EB-FIELDWR-12-00003822) (*NAL Response*).

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 *Forfeiture Policy Statement*.⁷ In examining Western Slope's *NAL Response*, Section 503(b)(2)(E) 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 As discussed below, we have fully considered Western Slope's *NAL Response* in light of these statutory factors and find that a reduction of the proposed forfeiture is warranted.

5. Western Slope does not deny any of the facts in the *NAL* and we therefore affirm the *NAL*'s findings that Western Slope violated Section 73.3526 of the Rules by failing to maintain multiple radio issues/programs lists and make them available in the Stations' public inspection files.⁹ In its *NAL Response*, Western Slope requests cancellation or reduction of the proposed forfeiture. Western Slope first argues that a cancellation or reduction is warranted because the issues/programs lists were missing due to inadvertent staff error. Following the inspection of the Stations, Western Slope located the missing issues/programs lists at a nearby co-owned studio and discovered that the lists were available via a shared computer network, although its staff was not yet trained to access the files.¹⁰ Western Slope contends that the absence of the required lists was a "temporary misplacement" of files and not a failure of the Stations to air programs addressing issues of interest to the community.¹¹ Western Slope further argues that the proposed forfeiture for maintaining the files at the wrong location seems out of proportion given the small market and public service provided by Western Slope.¹²

6. We find these arguments unpersuasive. Inadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction.¹³ As a Commission licensee, Western Slope is charged with knowledge of the full range of its obligations under the Rules.¹⁴ With respect to broadcast licensees' obligation to maintain a public inspection file under Section 73.3526 of the Rules, the Commission stated that:

The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period. In this

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 See *NAL supra* note 2.

¹⁰ *NAL Response* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ See, e.g., *S. Cal. Broad.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991) ("[I]nadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Emigrant Storage*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8920, para. 9 (Enf. Bur. 2012) (declining to downwardly adjust a forfeiture where the violation resulted from oversight and a change in personnel).

¹⁴ *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437, para. 12 (2004).

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.¹⁵

Therefore, the fact that the violations arose out of inadvertent staff error does not provide a basis to reduce or cancel the proposed forfeiture.

7. We similarly disagree with Western Slope's contention that the proposed forfeiture is out of proportion, given the violation. The forfeiture amount is consistent with recent precedent involving significant failures to maintain multiple issues/programs lists in a station's public inspection file.¹⁶ We acknowledge, however, Western Slope's good faith efforts to comply with the public inspection file rules and, consistent with precedent, reduce the proposed forfeiture to \$20,000.¹⁷

8. Western Slope also argues that it is experiencing financial hardship and that payment of the proposed forfeiture would present a significant financial burden on it and its ability to serve the public interest.¹⁸ We have reviewed the tax records provided by Western Slope and find that they do not justify a reduction to the proposed forfeiture based on inability to pay. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹⁹ While the Commission has in a few limited cases looked to other factors, including profits and losses, to determine ability to pay, those cases involved licensees in severe financial distress.²⁰ Western Slope has failed to demonstrate that it is experiencing a level of financial distress that would qualify it for an exception to our gross revenues policy.²¹ Based on our review of the financial documents provided by Western Slope, we decline to reduce on inability to pay grounds.²² Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$20,000 is warranted.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, Western Slope Communications, LLC, **IS LIABLE**

¹⁵ *Id.* at 7439, para. 18 (citations omitted).

¹⁶ *See, e.g., Vision Latina Broad., Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6258 (Enf. Bur. 2012) (proposing a \$15,000 forfeiture for failing to make any issues/programs lists available for inspection); *L. Stanley Wall*, Notice of Apparent Liability for Forfeiture, 26 FC Rcd 8506 (Enf. Bur. 2011) (proposing a \$15,000 forfeiture for failing to make all but one issues/programs list available for inspection).

¹⁷ *See Hispanic Target Media*, Forfeiture Order, 28 FCC Rcd 14670 (Enf. Bur. 2013) (reducing a proposed forfeiture by 20 percent for failure to make a public inspection file available when the station maintained the file at a different location in the vicinity).

¹⁸ *NAL Response* at 2–3.

¹⁹ *See, e.g., Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

²⁰ *See Martin Broad., Inc.*, Forfeiture Order, 28 FCC Rcd 1923 (Enf. Bur. 2013) (three years of an operating loss or no taxable income does not qualify as severe financial distress warranting deviation from gross revenues policy).

²¹ *See Alpha & Omega Commc'ns*, Forfeiture Order, DA 14-1134 (Enf. Bur. Aug. 4, 2014) (requests for waivers of Commission regulatory fees alone insufficient to demonstrate severe financial distress warranting deviation from gross revenues policy).

²² The \$25,000 proposed forfeiture and \$20,000 imposed forfeiture fall within the percentage range that the Commission has previously found acceptable. *See supra* note 19. If Western Slope finds it financially infeasible to make full payment of the forfeiture amount within 30 days, it can request an installment payment plan. *See infra* para. 11.

FOR A MONETARY FORFEITURE in the amount of twenty thousand dollars (\$20,000) for violations of Section 73.3526 of the Rules.²³

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.²⁴ 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 Act.²⁵ Western Slope Communications, LLC, shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. 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.²⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- 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.

11. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

²⁴ 47 C.F.R. § 1.80.

²⁵ 47 U.S.C. § 504(a).

²⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁷ See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Western Slope Communications, LLC, at 190 Turner Drive, Suite G, Durango, Colorado 81303, and to its counsel, Frank R. Jazzo, Esquire, at Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau