
Federal Communications Commission

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

In the Matter of)	
)	
Mark V. Aulabaugh)	File Number: EB-07-DL-0249
)	
Licensee of Radio Station KSEY)	
Seymour, TX)	NAL/Acct. No.: 200832500004
Facility ID # 71536)	
)	
Licensee of Radio Station KSEY-FM)	FRN: 0004931952
Seymour, Texas)	
Facility ID # 71535)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 18, 2008

By the District Director, Dallas Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Mark V. Aulabaugh (“Aulabaugh”), licensee of stations KSEY and KSEY-FM, in Seymour, Texas, apparently willfully and repeatedly violated Section 73.3526 of the Commission's Rules (“Rules”)¹ by failing to maintain and make available a complete public inspection file. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Mr. Aulabaugh is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

II. BACKGROUND

2. Stations KSEY and KSEY-FM are co-located, co-owned stations. On February 20, 2008, agents of the Commission’s Dallas Office of the Enforcement Bureau (“Dallas Office”), accompanied by Mr. Aulabaugh, conducted an inspection of the radio stations’ main studio during normal business hours. During the inspection, the agents requested to inspect the public inspection file for each station. The public inspection files presented did not contain any quarterly issues/programs lists. No one at the station was able to produce any issues/programs lists, and there was no evidence that the lists had been compiled.

III. DISCUSSION

3. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term

¹ 47 C.F.R. § 73.3526.

² 47 U.S.C. § 503(b).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any

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“repeated” means the commission or omission of such act more than once or for more than one day.⁴

4. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection, a file containing materials listed in that section.⁵ Section 73.3526(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.⁶ Section 73.3526(e)(12) of the Rules requires a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period (“issues/programs list”) to be placed in the public inspection file.⁷ The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. On February 20, 2008, in response to a request to inspect the station’s public inspection file during normal business hours, stations KSEY and KSEY-FM were unable to produce any issues/programs lists, and there was no evidence that the station had ever compiled or maintained such lists in the public inspection file. Based on the evidence before us, we find that Mr. Aulabaugh apparently willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file, and apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a complete public inspection file.

5. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain quarterly issues/programs lists in the Public File is \$10,000. Because the public inspection files for stations KSEY and KSEY-FM contained a portion of the required items a downward adjustment of the base amount to \$4,000 for each station is warranted (total of \$8,000). In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Aulabaugh is apparently liable for a \$8,000 forfeiture.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Mark V. Aulabaugh is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 73.3526 of the Rules.⁹

7. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Mark V. Aulabaugh

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intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....”
See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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.”

⁵ 47 C.F.R. § 73.3526(a)(2).

⁶ 47 C.F.R. § 73.3526(c)(1).

⁷ 47 C.F.R. § 73.3526(e)(12).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.3526.

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SHALL PAY the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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[s] 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. Mr. Aulabaugh also will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

9. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Dallas Office, 9330 LBJ Freeway, Suite 1170, Dallas, TX, 75243 and must include the NAL/Acct. No. referenced in the caption.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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.

11. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Mark V. Aulabaugh at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
District Director
Dallas Office
South Central Region
Enforcement Bureau