

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

In the Matter of)	
)	
Una Vez Mas Las Vegas License, LLC)	File No. EB-06-LA-132
Licensee of KHDF-CA, Las Vegas, NV)	NAL/Acct. No. 200632900012
Facility ID No. 66807)	FRN: 0014855969
)	

FORFEITURE ORDER

Adopted: March 28, 2007

Released: March 30, 2007

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of six thousand, four hundred dollars (\$6,400) to Una Vez Mas Las Vegas License, LLC (“Una Vez”), licensee of Class A Television Broadcast station KHDF-CA, serving Las Vegas, Nevada, for willfully and repeatedly violating Section 73.3526 of the Commission’s Rules (Rules).¹ On August 9, 2006, the Enforcement Bureau’s Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of \$8,000 to Una Vez for failing to maintain a complete public inspection file.² In this *Order*, we consider Una Vez’s arguments that the proposed forfeiture amount exceeds other forfeitures proposed to broadcast stations with partially complete public inspection files; that Una Vez has a history of compliance with the Commission’s Rules; and that Una Vez took steps to correct the violation after the inspection by a Los Angeles Office agent.

II. BACKGROUND

2. On May 16, 2006, an agent of the Enforcement Bureau’s Los Angeles Office conducted an inspection of the KHDF-CA’s public inspection file at the main studio for KHDF-CA at 600 Whitney Ranch, Suite C12, Henderson, Nevada. While examining the public inspection file, the agent observed that the file was not complete. Specifically, there were no TV issues/program lists for any quarter before the third quarter of 2005³ and there were no records or certifications concerning commercial limits during children’s programming for the fourth quarter of 2004, the first and third quarters of 2005, and the first quarter of 2006.⁴ Additionally, there was no documentation in the public inspection file that demonstrated that KHDF-CA was continuing to meet the eligibility requirements for a Class A station.⁵

3. On June 1, 2006, Una Vez filed with the Commission an application to renew the KHDF-

¹ 47 C.F.R. § 73.3526.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900012 (Enf. Bur., Western Region, Los Angeles Office, released August 9, 2006).

³ 47 C.F.R. § 73.3526(e)(11)(i).

⁴ 47 C.F.R. § 73.3526(e)(11)(ii).

⁵ 47 C.F.R. § 73.3526(e)(17).

CA license.⁶ In its renewal application, Una Vez states that it acquired KHDF-CA on September 14, 2004.⁷ In its original renewal application, Una Vez certified that the documentation required by Section 73.3526 of the Rules had been placed in the station's public inspection file at the appropriate times.⁸ In an amended renewal application, dated September 8, 2006, Una Vez states that there were deficiencies in its public inspection file and that such deficiencies were not corrected until May 2006.⁹

4. On August 9, 2006, the Los Angeles Office issued a *NAL* in the amount of \$8,000 to Una Vez, finding that Una Vez apparently willfully and repeatedly failed to maintain a complete public inspection file for KHDF-CA. Una Vez filed a response ("*Response*") on September 8, 2006, arguing that the proposed forfeiture exceeds other forfeitures proposed to broadcast stations with partially complete public inspection files; that Una Vez has a history of compliance with the Commission's Rules; and that Una Vez took steps to correct the violation after the inspection by a Los Angeles Office agent.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*").¹² In examining Una Vez'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.¹³

6. Section 73.3526 of the Rules requires that every licensee of a Class A TV station shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(11) and paragraphs (e)(13) through (e)(17) of this section.¹⁴ Further, as required by Section 73.3526(b) the location of the public file shall be maintained at the station's main studio location.¹⁵ Section 73.3526(e)(11)(i) of the Rules requires licensees to place in their public inspection file a list for each calendar quarter, to be filed by the tenth day of the succeeding calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.¹⁶ This list is known as the TV issues/programs list. The public inspection file for KHDF contained no issues/programs lists for any calendar quarter before the third quarter of

⁶ See File No. BRTTA-20060601ACQ, filed June 1, 2006 ("*Original 2006 Renewal Application*").

⁷ See File No. BALTTA-20040317ADY, granted April 30, 2004. According to Commission records, the transaction was consummated on September 14, 2004.

⁸ *Original 2006 Renewal Application* at Part IV, Question 3.

⁹ See File No. BRTTA-20060601ACQ, amended September 8, 2006, Exhibit 17.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 C.F.R. § 73.3526.

¹⁵ 47 C.F.R. § 73.3526(b).

¹⁶ 47 C.F.R. § 73.3526(e)(11)(i).

2005. Una Vez became the licensee of KHDF-CA on September 14, 2004, but failed to place in the public inspection file TV issues/programs lists for the third and fourth quarter of 2004 and the first and second quarter of 2005.

7. Section 73.3526(e)(11)(ii) of the Rules requires that a commercial TV station maintain records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in Section 73.670 of the Rules.¹⁷ The records for each calendar quarter must be filed in the station's public inspection file by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October – December, etc.).¹⁸ These records shall be retained until final action has been taken on the station's next license renewal application. Una Vez failed to place in the KHDF-CA public inspection file certification letters or records concerning compliance with the commercial limits for children's programming for the fourth quarter of 2004, the first and third quarters of 2005, and the first quarter of 2006.

8. Section 73.3526(e)(17) of the Rules requires that a Class A television station maintain documentation sufficient to demonstrate the station is continuing to meet the eligibility requirements set forth in Section 73.6001 of the Rules.¹⁹ Specifically, Section 73.6001(b) requires Class A TV stations to "[b]roadcast a minimum of 18 hours per day; and . . . [b]roadcast an average of at least three hours per week of locally produced programming each quarter."²⁰ The public inspection file for KHDF-CA contained no documentation relating to the station's compliance with these requirements.

9. Una Vez does not dispute that the documents listed above were missing from the KHDF-CA public inspection file at the time of the inspection. However, Una Vez does argue that the proposed forfeiture amount exceeds the amount imposed in other orders where a Commission licensee maintained an incomplete public inspection file. Una Vez points to *Snow Hill Broadcasting*,²¹ where the Enforcement Bureau's Northeast Region reduced a proposed forfeiture from \$10,000 to \$4,000 where a licensee failed to include four quarters of issues/programs lists in the file, along with a copy of "The Public and Broadcasting," a political file and a file containing emails and letters from the public. Una Vez also cites to *Twenty-One Sound Communications, Inc.*,²² in which the Enforcement Bureau's South Central Region reduced a proposed public inspection file forfeiture from \$10,000 to \$3,000 where the public inspection file was missing four quarters of issues/programs lists along with a copy of the station's most recent renewal and ownership report.

10. The *Snow Hill* and *Twenty-One Sound Communications* cases, however, are not dispositive in this case. Both cases involve radio broadcast licensees which have no specific public file

¹⁷ 47 C.F.R. § 73.3526(e)(11)(ii). In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991). See *Libco, Inc.*, 20 FCC Rcd 16541 (MB 2005).

¹⁸ 47 C.F.R. § 73.3526(e)(11)(ii).

¹⁹ 47 C.F.R. § 73.3526(e)(17).

²⁰ 47 C.F.R. § 73.6001(b).

²¹ 20 FCC Rcd 14415 (EB 2005).

²² 20 FCC Rcd 12497 (EB 2005), *recon. denied*, 20 FCC Rcd 18064 (EB 2005), *application for review pending*.

obligations concerning commercial limits for children's programming. The Commission's Media Bureau has proposed numerous forfeitures, ranging from \$4,000 to more than \$10,000, where television broadcast licensees failed to include, for multiple quarters, both the issues/programs lists and certifications and records concerning the station's compliance with the commercial limits for children's programming.²³ We note that the violations in each of the Media Bureau's cases were self-reported by the licensees. Una Vez was apparently unaware of the deficiencies in the KHDF-CA public inspection file until the inspection by the Los Angeles agent.

11. Moreover, along with the missing issues/programs lists and missing certifications and records of commercial limits for children's programming, Una Vez maintained no documentation in the KHDF-CA public inspection file that demonstrated that KHDF-CA was continuing to meet the eligibility requirements for a Class A station.²⁴ Because a Class A station only maintains its primary status as a television broadcaster "as long as the station continues to meet the minimum operating requirements for Class A status,"²⁵ the availability of this information in the public inspection file is critical for the public to review. Given these three categories of missing material for multiple quarters, and the fact that the Los Angeles Office also took into account that the KHDF-CA public inspection file was partially complete, and reduced the base forfeiture proposed to Una Vez from \$10,000 to \$8,000, we affirm the Los Angeles Office's determination.

12. Una Vez also argues that it has an overall history of compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Una Vez's forfeiture amount from \$8,000 to \$6,400. However, we disagree with Una Vez's suggestion that as a first-time violator, a warning may be an effective compliance tool. We are required to "determine whether to issue a warning or assess a forfeiture based on the nature and circumstances of the violation."²⁶ As the cases discussed above reveal, a licensee that maintains a deficient public inspection file is not entitled to a warning in the first instance. This is particularly true here, given the categories of material missing from the KHDF-CA public inspection file.

13. Una Vez also argues that after the May inspection it took steps to rectify the public inspection file deficiencies. The Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture.²⁷ Additionally, where lapses occur in maintaining the public inspection file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.²⁸

14. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that reduction of the proposed forfeiture to \$6,400 is warranted.

²³ See, e.g., *Meredith Corporation*, 20 FCC Rcd 19244 (MB 2005); *LeSea Broadcasting of Tulsa, Inc.*, DA 07-603, 2007 WL 37852 (rel. February 9, 2007); *UPN Television Stations, Inc. (WUPL(TV))*, 20 FCC Rcd 15807 (MB 2005); *Telefutura Orlando, Inc. (WOTF-TV)*, 20 FCC Rcd 20051 (MB 2005).

²⁴ 47 C.F.R. § 73.3526(e)(17).

²⁵ 47 C.F.R. § 73.6001(c).

²⁶ *Forfeiture Policy Statement*, 12 FCC Rcd at 17102.

²⁷ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

²⁸ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)).

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Una Vez Mas Las Vegas License, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,400 for willfully and repeatedly violating Section 73.3526 of the Rules.²⁹

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁰ 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911- 6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.³¹

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Una Vez Mas Las Vegas License, LLC, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

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

³⁰ 47 U.S.C. § 504(a).

³¹ See 47 C.F.R. § 1.1914.