

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

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

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 9, 2013**

**Released: July 10, 2013**

By the District Director, Denver Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that Western Slope Communications, LLC (Western Slope), licensee of Station KRGS, Rifle, Colorado, and Station KRVG, Glenwood Springs, Colorado (Stations), apparently willfully and repeatedly violated Section 73.3526 of the Commission's rules (Rules)<sup>1</sup> by failing to maintain complete public inspection files. We conclude that Western Slope is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

**II. BACKGROUND**

2. On August 21, 2012, an agent from the Enforcement Bureau's Denver Office (Denver Office) conducted an inspection of the Stations at their main studios co-located at 818 Taughenbaugh Blvd., Suite 107, Rifle, Colorado. The Denver agent reviewed the Stations' public inspection files and found that the files were each missing issues/programs lists for twenty (20) quarters.<sup>2</sup> Each station was required to retain twenty-seven (27) quarters of lists since the Stations' last renewals, which were granted on December 21, 2005.

3. On November 1, 2012, the Denver Office issued Notices of Violation to Western Slope concerning the KRGS and KRVG inspections.<sup>3</sup> In its Consolidated NOV Response to the KRGS NOV and KRVG NOV,<sup>4</sup> Western Slope acknowledged that the issues/programs lists for the Stations were not in the public inspection files located in the Rifle studio at the time of the inspection.<sup>5</sup> Western Slope stated that it quickly located the documents in their entirety at the studio of a co-owned station in Grand Junction,

<sup>1</sup> 47 C.F.R. § 73.3526.

<sup>2</sup> Specifically, the Stations were missing the issues/programs lists for the following quarters: fourth quarter of 2005; first through fourth quarters of 2006, 2007, 2008 and 2009; and first, second, and fourth quarters of 2011.

<sup>3</sup> See *Western Slope Communications, LLC*, Notice of Violation, V201332800008 (Nov. 1, 2012) (KRGS NOV); *Western Slope Communications, LLC*, Notice of Violation, V201332800007 (Nov. 1, 2012) (KRVG NOV).

<sup>4</sup> See Consolidated NOV Response of Western Slope Communications, LLC (filed Nov. 20, 2012) (on file in EB-FIELDWR-12-00003820) (Consolidated NOV Response).

<sup>5</sup> Consolidated NOV Response at 4.

Colorado, and that because its Grand Junction stations are part of the same employment unit as the Stations, Western Slope believes an employee inadvertently misplaced the lists at the wrong studio.<sup>6</sup> Western Slope further stated that the oversight had been corrected and included copies of all the required issues/programs lists for both Stations for the applicable license terms in its Consolidated NOV Response.<sup>7</sup>

### III. DISCUSSION

4. Section 503(b) of the Communications Act of 1934, as amended (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.<sup>8</sup> Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>9</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>12</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>13</sup>

#### A. Failure to Maintain the Issues and Programs Lists in the Public Inspection File

5. Section 73.3526(a)(2) of the Rules requires that broadcast stations maintain for public inspection a file containing materials listed in that section.<sup>14</sup> Section 73.3526(c)(1) of the Rules specifies that the file shall be available for public inspection at any time during regular business hours,<sup>15</sup> and Section 73.3526(e)(12) of the Rules specifically 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

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, Exhibit B.

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”).

<sup>11</sup> *See, e.g., Application for Review of Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>12</sup> *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>13</sup> 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.” *See Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

<sup>14</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>15</sup> 47 C.F.R. § 73.3526(c)(1).

issues during the preceding three month period.<sup>16</sup> This list is known as the issues/programs lists and must include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. Copies of the issues/programs lists must be retained in the public inspection file until final action has been taken on the station's next license renewal application.<sup>17</sup> The license renewals for the Stations were granted on December 21, 2005, and expired April 1, 2013.<sup>18</sup> At the time of the August 21, 2012, inspection, the Stations' public inspection files were each missing twenty (20) of twenty-seven (27) quarters of radio issues/programs lists. In its Consolidated NOV Response, Western Slope acknowledged the missing issues/programs lists for both Stations.<sup>19</sup> Based on the evidence before us, we find that Western Slope apparently willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain the issues/programs lists and make them available in the Stations' public inspection files.

#### B. Proposed Forfeiture Amount

6. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for violating the public file rules is \$10,000.<sup>20</sup> 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, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>21</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we find no downward adjustments are warranted, but conclude that an upward adjustment is warranted because of the large number of issues/programs lists missing from the Stations' public inspection files.<sup>22</sup> Accordingly, we propose a forfeiture amount of twelve thousand five hundred dollars (\$12,500) for each of the Stations, rather than the base forfeiture amount. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Western Slope is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

#### IV. ORDERING CLAUSES

7. 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 of the Commission's rules, Western Slope Communications, LLC, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violation of Section 73.3526 of the Rules.<sup>23</sup>

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<sup>16</sup> 47 C.F.R. § 73.3526(e)(12).

<sup>17</sup> *Id.*

<sup>18</sup> Both Stations have renewal applications pending. See File No. BR-20121203BQX (accepted for filing Dec. 5, 2012) (for KRGS); File No. BRH-20121203BQU (accepted for filing Dec. 5, 2012) (for KRVG).

<sup>19</sup> See Consolidated NOV Response at 4.

<sup>20</sup> *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) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>21</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>22</sup> See *Gulf-California Broad. Co.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11421 (Enf. Bur. 2012) (forfeiture of \$15,000 proposed for licensee who failed to place twenty-five (25) consecutive issues/programs lists in a station's public inspection file) (forfeiture paid).

<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 73.3526.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Western Slope Communications, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Western Slope shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>24</sup> 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.

10. 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.<sup>25</sup> 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](mailto:ARINQUIRIES@fcc.gov).

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>26</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Denver Office, 215 S. Wadsworth Blvd., Suite 303, Lakewood, Colorado, 80226, and include the NAL/Acct. No. referenced in the caption. Western Slope Communications, LLC, also shall e-mail the written response to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

12. 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.

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<sup>24</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>25</sup> See 47 C.F.R. § 1.1914.

<sup>26</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Western Slope Communications, LLC, at 190 Turner Drive, Suite G, Durango, Colorado 81303, and to its counsel, at Fletcher, Heald & Hildreth, PLC, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
District Director  
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