

"FCC Violations"

Reluctantly, Waitt Broadcasting, Inc. ("Waitt"), an independent television licensee with a spotless compliance history spanning more than 20 years,¹ is compelled to answer "No" to this renewal certification due to an unjustified and precedent-shattering Commission decision issued near the end of KMEG's license term.²

This exhibit seeks to persuade FCC staff, despite the very recent issuance of this legally dubious decision, and which has been timely appealed by Waitt and numerous others, that delaying or withholding grant of KMEG's renewal application, possibly for years, is not justified and in fact disservices the public interest. Waitt is confident that, either through reconsideration or eventual court action, it will ultimately be proven that Waitt has not violated either the Communications Act or the Commission's Rules, and that its long-term legacy of adherence to law and regulation remains intact. Accordingly, KMEG's license renewal should be routinely processed and granted.

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The Forfeiture Order does not specify any misconduct by Waitt. Waitt is individually mentioned *only once* throughout the entire 25-page Forfeiture Order -- at its very end. In para, 57 on p. 23, and without ever having so much as previously considered Waitt, the Order declares that Waitt is "liable" for a gargantuan \$512,288 forfeiture for purported legal and regulatory violations involving retransmission consent negotiation. But the Order never specifically articulates its basis of this "liability," by a licensee it has not even deigned to name, much less attempts to describe what role, if any, Waitt played in these supposed offenses. Was Waitt a major participant in negotiations (fact: it wasn't)? or even a minor contributor?; perhaps it was merely a silent party to massive misconduct, which the Commission is so apparently appalled by

¹ Waitt is and has been licensee of KMEG-DT, Sioux City, IA, since June 1998. Since then, license renewals have been routinely granted. Waitt and its parent Waitt Media, Inc. have owned and operated other television and radio stations in strict conformance with the Commission's Rules and without any suggestion any time of a violation.

² *DIRECTV, LLC, AT&T Services, Inc. v. Deerfield Media, Inc., et al*, MB Dkt No. 19-168, FCC 21-89, rel. July 28, 2021, *recon. pending*. (the "Forfeiture Order" or the "Order")

that it assesses fines across the board aggregating in excess of \$8.7 million? The Commission never even attempts to explain. It says nothing at all. The silence is deafening.

Waitt, therefore, is left in the dark. Surely, to be the recipient of a shocking half million dollar penalty, Waitt is entitled to know what if anything it did -- or if it did anything at all -- regarding the subject retransmission consent negotiation, that was wrong, or that had not been done before and considered perfectly proper. The Forfeiture Order's conclusion that all 15 broadcasters are equally blameworthy, whatever their individual role, for actions newly determined to be unlawful, is indefensible.³ For Waitt, which does not even merit a mention in the Order, it is especially abhorrent.

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Thus, and in conclusion, with only months remaining in KMEG's renewal term, and for the first time ever in its history as a licensee, Waitt is alleged to have violated the law and rules. Waitt must therefore respond to this certification in the negative. Waitt strenuously believes that this is unjust. As the foregoing analysis establishes, the non-character-related violations in the Forfeiture Order lack merit and are likely to be ultimately overturned. Accordingly, and for these reasons, Waitt respectfully requests that the staff not place a hold on KMEG's license renewal application until the time when, possibly years from now, this case is finally terminated.⁴ Waitt urges that the renewal application be processed and approved by the Bureau in the normal course.

³ This exhibit does not purport to be a legal brief. Bureau staff are respectfully urged to review Defendants' August 27, 2021 Petition for Reconsideration, which thoroughly documents the Commission's erroneous decision making.

⁴ As indicated, that could prove to be quite a long time. The Forfeiture Order was not issued until nearly 11 months after the Commission's initially ruled against the 15 broadcaster-defendants. This proceeding has already dragged on for two years and is still being appealed; thus potentially withholding approval of KMEG's renewal well into its new license term, scheduled to commence February 1, 2022. That would serve neither Waitt's nor the FCC's best interests.