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

In the Matter of:	)	
	)	FRN: 0008231706
Billy Ray Locklear Evangelical Association	)	NAL/Acct. No. 201241420042
Licensee of Station WLPS-CD	)	Facility ID No. 167158
Lumberton-Pembroke, North Carolina		

FORFEITURE ORDER

Adopted: December 18, 2013 **Released: December 19, 2013**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules,[1] we find that Billy Ray Locklear Evangelical Association willfully and/or repeatedly violated (i) Section 73.3526(e)(11)(iii) of the Rules by failing to file timely with the Commission the Station's Children's Television Programming Reports[2] and (ii) Section 1.17 of the Rules by failing to provide accurate information to the Commission.[3] Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Seven Thousand Two Hundred Dollars ($7,200.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on August 13, 2013.[4] The NAL notified the Licensee that its failure to file timely with the Commission the Station's Children's Television Programming Reports[5] constituted apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules and the Licensee's failure to provide accurate information to the Commission constituted apparent willful and/or repeated violations of Section 1.17 of the Commission's rules.[6] The Division concluded that the Licensee was apparently liable for a forfeiture of $9,000. The Licensee filed a timely Response to the Notice of Apparent Liability for Forfeiture on September 26, 2013.[7]

III. DISCUSSION

[1] 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

[2] *See* 47 C.F.R. § 73.3526(e)(11)(iii).

[3] 47 C.F.R. § 1.17.

[4] *Billy Ray Locklear Evangelical Association,* Notice of Apparent Liability, DA 13-1745 (Aug. 13, 2013). The notice was sent to the Licensee's address on record by certified mail, return receipt requested, and was signed for by a representative of the licensee on July 26, 2013.

[5] *See* 47 C.F.R. § 73.3526(e)(11)(iii).

[6] 47 C.F.R. § 1.17.

[7] Licensee Response to Notice of Apparent Liability for Forfeiture (Aug. 28, 2013) ("Licensee Response").

3. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[8] In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.[9] The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.[10] As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(e)(11)(iii) and 1.17 of the Commission's rules. We ultimately conclude that the forfeiture amount should be reduced to $7,200.

4. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.

5. Section 1.17 of the Rules precludes any applicant for a Commission authorization from providing "material factual information that is incorrect or omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading. . . ."[11]

6. The Licensee does not dispute the violations identified in the NAL occurred but nonetheless argues that the forfeiture should be reduced or cancelled.[12] First, the Licensee argues that it demonstrated a good faith intent to comply with the rules and that the lateness of the reports was not egregious.[13] We take into account both how late a filing is and how often a Licensee has made late filings in determining the appropriate forfeiture for a violation. The preparation and filing of Children's Television Programming Reports with the Commission in a timely manner ensures that the public and the Commission are able to review on a real-time basis the adequacy of the station's efforts with respect to children's programming, and such public access is crucial to the

[8] 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.,* Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[9] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[10] *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

[11] 47 C.F.R. § 1.17.

[12] Billy Ray Locklear Evangelical Association, Response to Notice of Apparent Liability for Forfeiture (Sept. 26, 2013) ("Licensee Response") at 4.

[13] Licensee Response at 4-5.

success of the statute's goals.[14] The Licensee's late filings, five of which were filed over a month after the deadline, deprived the public and the Commission of that ability for real-time review. We therefore conclude that the forfeiture amount is appropriate given the violations.

7. Second, the Licensee argues that the filing of incorrect Class A certifications represents a harmless error.[15] We disagree. Class A television stations are accorded primary spectrum use status pursuant to the Community Broadcasters Protection Act of 1999 ("CBPA").[16] To maintain Class A status, a Class A licensee must: (1) broadcast a minimum of 18 hours per day and (2) broadcast an average of at least three hours per week of programming produced within the market area served by the station.[17] The Commission must rely on Licensees to certify to their continuing compliance with these requirements. Any incorrect information provided in such certifications undermines this system of review. We thus conclude that the failure to provide correct information regarding a station's continued compliance with our Rules represents a significant harm to the public interest.

8. Third, the Licensee claims an inability to pay the forfeiture amount. The Commission will not consider reducing or canceling a forfeiture in response to a claimed inability to pay unless the licensee 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 licensee's current financial status. Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.[18]

9. Typically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.[19] Indeed, "[i]f gross revenues are sufficiently great . . . the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture."[20] The Licensee notes that we have reduced forfeitures when gross revenues were less than or slightly more than the proposed forfeiture, but then conflates gross revenues and net revenues in arguing for a reduction here.[21] Here, the Licensee's documented gross revenues are sufficiently great that we do not find a reduction appropriate.[22]

10. Fourth, and finally, the Licensee argues that its history of compliance with Commission rules favors a reduction in the forfeiture amount.[23] Given the Licensee's history of compliance, we reduce the forfeiture amount to $7,200.

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[14] *Highland Park Broadcasting, LP*, Forfeiture Order, 28 FCC Rcd 11076, 11078 (Vid. Div. 2013).

[15] Licensee Response at 5.

[16] Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 -l501A-598 (1999), *codified at* 47 U.S.C. § 336.

[17] 47 U.S.C. § 336(f)(2)(A)(i); 47 U.S.C.. § 336(f)(1)(A)(ii); 47 C.F.R. § 73.6001(b).

[18] Licensee Response at 5-6. The Licensee further requested that the returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules.

[19] *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

[20] *Forfeiture Policy Statement*, 12 FCC Rcd at 17106 (citing *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992)).

[21] Licensee Response at 5-6.

[22] *Ayustar Corp.*, Memorandum Opinion and Order, 25 FCC Rcd 16249 (EB 2010).

[23] Licensee Response at 4.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,[24] Billy Ray Locklear Evangelical Association SHALL FORFEIT to the United States the sum of seven thousand two hundred dollars ($7,200) for repeatedly violating 47 C.F.R. § 73.3526(e)(11) and 47 C.F.R. § 73.117.

12. In the event that the Licensee wishes to revert WLPS-CD to low power television status, the Licensee need only notify us of this election and request a change in status for the station.[25] Should the Licensee elect to revert the station to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order. 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 Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

14. 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. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). 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.

15. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Billy Ray Locklear Evangelical Association, 3463 Oak Grove Church Road, Lumberton, North Carolina, 28360, and to its counsel, David G. O'Neil, Esq. and Rini O'Neil, Esq., 1200 New Hampshire Avenue NW, Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

[24] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

[25] *See* 47 C.F.R. § 73.6001(d).