

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

In the Matter of:

Aerco Broadcasting Corporation
Licensee of Station WSJU-TV
San Juan, Puerto Rico

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Facility ID No. 4077
NAL/Acct. No.: 201441420003
FRN: 0003759560

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2014

Released: August 14, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division ("Bureau") has before it a Petition for Reconsideration ("Petition"), filed by Aerco Broadcasting Corporation ("Petitioner"), licensee of Station WSJU-TV ("Station"). Licensee seeks reconsideration of a forfeiture in the amount of Twenty Thousand Dollars (\$20,000) issued by the Video Division for Licensee's failure to place in its public inspection file and file with the Commission electronically the Station's Children's Television Programming Reports in a timely manner.¹ For the reasons set forth below, we deny reconsideration.

II. BACKGROUND

2. On February 5, 2014, the Video Division issued a Notice of Apparent Liability for Forfeiture proposing a monetary forfeiture of \$20,000 for the above violations.² Petitioner filed a timely response on March 11, 2014 and a supplement on April 7, 2014. Petitioner did not attempt to rebut the established violations but nonetheless argued that the forfeiture amount should be reduced or cancelled for four reasons.

3. First, Petitioner argued that its failure to upload the issues/programs lists to the online public file should not result in a fine because the Licensee had completed the issues-responsive programming required under the Rules.³ Second, Petitioner argued that the late filings of the Children's Television Programming Reports should be excused because they were "filed within a few days" of the deadline.⁴ Third, Petitioner argued that it should have the opportunity to amend its renewal application to correct the improper reporting certifications.⁵ Fourth, and finally, Petitioner argued that it could not afford to pay the forfeiture, and that the Video Division should take into account operating losses in determining the station's ability to pay the forfeiture.⁶

¹ *Aerco Broadcasting Corp.*, Forfeiture Order, DA 14-714 (Vid. Div. May 28, 2014) ("Forfeiture Order").

² *Aerco Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, DA 14-124 (Vid. Div. Feb. 5, 2014).

³ Licensee Response at 1-2.

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.*

4. In the Forfeiture Order, the Video Division rejected these arguments and declined to reduce the forfeiture.⁷ Licensee filed a Petition for Reconsideration on June 27, 2014.

III. DISCUSSION

5. A petition for reconsideration that simply reiterates previously rejected arguments will be denied.⁸ Arguments in a petition for reconsideration being raised for the first time will be considered only if they are based on changed circumstances or additional facts not known or existing at the time of petitioner's last opportunity to present such matters, or if consideration of such arguments is required to serve the public interest.⁹

6. Petitioner raises three arguments in favor of reconsideration. First, Petitioner argues that no forfeiture should be assessed because it aired the issues-responsive programming required under the Rules.¹⁰ Second, Petitioner argued that the late filings of the Children's Television Programming Reports should be excused because certain of the reports were filed shortly after the deadline.¹¹ Third, and finally, Petitioner argues that it cannot afford to pay the forfeiture, and that the Video Division should have taken into account operating losses, rather than simply gross revenue in determining the station's ability to pay the forfeiture.¹²

7. All of the arguments raised in the petition are repetitive of arguments raised in the NAL response. Consistent with precedent, we therefore dismiss the Petition for Reconsideration.¹³

IV. ORDERING CLAUSES

8. Accordingly, for the reasons discussed above, IT IS ORDERED, that the Petition for Reconsideration filed by Aerco Broadcasting Corporation IS DENIED.

9. IT IS ALSO ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, that Aerco Broadcasting Corporation IS LIABLE FOR A MONETARY FORFEITURE in the amount of Twenty Thousand dollars (\$20,000) for its apparent willful and repeated violations of Section 73.3526 of the Commission's Rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within 30 days of the release date of this Memorandum Opinion and Order, that Aerco Broadcasting Corporation SHALL PAY the full amount of the proposed forfeiture.

⁷ Forfeiture Order at 1-4.

⁸ *Saga Communications of Illinois, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 5958, 5960 (MB 2011) (rejecting an argument from a petition for reconsideration because it did not raise any new information reflecting changed circumstances, did not present additional facts not know at the time of the last filing, and did not attempt to show anything more than a disagreement with the Commission's finding).

⁹ 47 C.F.R. § 1.106(c).

¹⁰ Petition for Reconsideration at 1-2.

¹¹ *Id.* at 2-3. To the extent that Petitioner claims that the absence of formal public complaints about its violations should excuse the violations, Petition for Reconsideration at 2, we reject this argument. Providing evidence that any member of the public was deprived of timely access to the information is not a necessary element of a public file violation.

¹² *Id.* at 3.

¹³ *Saga Communications of Illinois, LLC*, 26 FCC Rcd at 5960.

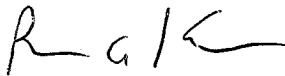
11. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at 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 by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

13. IT IS FURTHER ORDERED that copies of this Memorandum Opinion and Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Aerco Broadcasting Corporation, 1508 Calle Bori, Urb Antonsanti, San Juan, Puerto Rico, 00927, and to its counsel, John A. Borsari, Esq., Borsari & Associates, PLLC, 2111 Wilson Boulevard, Suite 700, Arlington, Virginia, 22201.

14. For further information concerning this proceeding, contact Peter D. Saharko, Video Division, Media Bureau, at Peter.Saharko@fcc.gov or (202) 418-1856.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See 47 C.F.R. § 1.1914.