

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

In the Matter of:)	
)	Facility I.D. No. 54983
Thunder Bay Broadcasting Corporation)	NAL/Acct. No. 201341420009
Licensee of Station WBKB)	FRN: 0021349188
Alpena, Michigan)	

FORFEITURE ORDER

Adopted: April 25, 2014

Released: April 25, 2014

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 Thunder Bay Broadcasting Corporation, licensee of Station WBKB, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file its Children's Television Programming Reports (FCC Form 398) in a timely manner. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Twenty Thousand Dollars (\$20,000.00).

II. BACKGROUND

2. 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.² 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. Those reports must be prepared and placed in the public file by 10 days after the close of the reporting quarter. That subsection also contains a separate and independent requirement that licensees file the reports with the Commission by 10 days after the close of the reporting quarter.

3. On May 31, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for the Station (the "Application").³ The Licensee amended its application on two separate occasions to report violations not identified in the original application, including its failure to file its Children's Television Programming Reports in a timely manner for 17 quarters since its last renewal application was filed. A review of Commission records showed that an additional 25 reports were filed late since the station's license term commenced.

4. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on February 12, 2014.⁴ The NAL notified the Licensee that its failure to file timely its Children's Television Programming Reports constituted an apparent willful or repeated violation of the provisions of Section

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

² 47 C.F.R. § 73.3526.

³ File No. BRC DT-20130531AAR.

⁴ *Thunder Bay Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, DA 14-183 (Vid. Div. Feb. 12, 2014).

73.3526(e)(11)(iii) of the Commission's rules.⁵ The Division concluded that the Licensee was apparently liable for a forfeiture of \$20,000. In a timely response dated March 14, 2014, the Licensee did not attempt to rebut the admitted violations but nonetheless asserted that the proposed forfeiture amount should be cancelled or reduced.⁶

III. DISCUSSION

5. 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.⁷ 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.⁸ 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.⁹ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Section 73.3526(e)(11)(iii) of the Commission's rules. We ultimately conclude that no reduction in the forfeiture amount is justified.

6. The Commission rules establish that full power television stations must (i) offer informational and educational children's programming; (ii) prepare and place in a public inspection file quarterly Children's Television Programming Reports; and (iii) electronically file those reports with the Commission.¹⁰ The Licensee does not dispute its earlier admission it failed to file in a timely manner its Children's Television Programming Reports for 17 quarters. Nor does the Licensee dispute our finding that it failed to file with the Commission in a timely manner the reports for an additional 25 quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

7. The Commission's Forfeiture Policy Statement establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹¹ In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include "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 such other matters as justice may require." In the NAL, the Video Division proposed a forfeiture amount of \$20,000.

⁵ 47 C.F.R. § 73.3526(e)(11)(iii).

⁶ Licensee Response to Notice of Apparent Liability ("Licensee Response") (Mar. 14, 2014).

⁷ 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).

⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁹ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

¹⁰ *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000); 47 C.F.R. § 73.3526 (a)(2) & (e)(11)(iii).

¹¹ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

Licensee argues that the forfeiture amount should be reduced or cancelled.

8. The Licensee first argues that the statute of limitations bars this action.¹² The Licensee claims that forfeiture is barred by either the Act or the general five-year statute of limitations on government enforcement of forfeitures.¹³

9. Section 2462 governs only the initiation of collection actions by the United States Department of Justice, not the Commission's issuance of forfeitures.¹⁴ The relevant statute of limitations for a Commission forfeiture proceeding is Section 503(b)(6) of the Act, which reads in part that "[no] forfeiture penalty shall be determined or imposed against any person . . . if . . . such person holds a broadcast station license . . . and if the violations charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability . . . or (ii) prior to the date of commencement of the current term of such license, whichever is earlier." The section goes on to state that the "date of commencement of the current term of such license" means "the date of commencement of the last term of license for which the licensee has been granted a license by the Commission." The current term of the license began on September 25, 1997, the date of the last license renewal.¹⁵ All of the violations addressed in the NAL occurred subsequent to this date and are therefore not barred under the statute of limitations.

10. The Licensee relies on a 2010 unpublished opinion from the District Court for the Southern District of California to support its argument.¹⁶ The case is factually distinguishable because the violations preceded the commencement of the Licensee's current license term.¹⁷ Here, all of the violations in question occurred after the commencement of the current license term and are therefore not barred under the statute of limitations.

11. The Licensee further argues that the forfeiture should be reduced given the station's "history of overall compliance," its "successful participation in . . . [the] Alternative Broadcast Inspection Program ("ABIP"), and "the remoteness in time of the violations identified."¹⁸ Given the extensive and egregious violations of the public file rule during the license period, we do not see a basis to reduce the forfeiture based on a past history of compliance.¹⁹ Nor are these violations remote in time given that they occurred during the current license period under evaluation. Finally, we do not believe a reduction is appropriate based on the Licensee's participation in the ABIP program.²⁰ Even if we considered participation in the ABIP program to be evidence of good faith, the egregiousness of the identified violations would outweigh that participation.²¹

12. The cases cited by the Licensee are distinguishable. In *KGAN License, LLC*, the Video

¹² Licensee Response at 3-4.

¹³ Licensee Response at 3-4 (citing 47 U.S.C. § 503(b)(6)(B) & 28 U.S.C. § 2462).

¹⁴ *Radio License Holdings, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10346, 10347-48 (Aud. Div. 2011) (citing Evergreen Media Corp. of Chicago AM, Memorandum Opinion and Order, 6 FCC Rcd 5950, 5950 n. 9 (MB 1991)).

¹⁵ File No. BRCT-19970602MF. License renewal applications filed in 2005 and 2013 remain pending.

¹⁶ *United States v. Channel 51 of San Diego, Inc.*, Licensee of KUSI-TV, San Diego, CA, Case No. 08-CV-01978-H (S.D. Cal. March 16, 2010).

¹⁷ *Id.* at 2.

¹⁸ Licensee Response at 4-6.

¹⁹ *Harpole Telecom, Inc.*, Forfeiture Order, DA 14-12, 2014 WL 60127 (Vid. Div. Jan. 7, 2014).

²⁰ *East Texas Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 22491 (EB 2004).

²¹ *Renacer Broadcasters Corp.*, Forfeiture Order, DA 14-67, 2014 WL 243323 (EB Jan. 22, 2014).

Division rejected a challenge to the completeness of the Licensee's public file based on a certification by the Iowa Broadcasters Association.²² Here, there is no such dispute; the Video Division has identified, and the Licensee has not dispute, the existence of extension violations. In *WNLB Radio, Inc.*, the Audio Division relied on the Licensee's voluntary inspection as evidence of good faith where the violation was the Licensee's temporary misplacement of three years of issues/programs lists.²³ Here, the Licensee has much more extensive violations in that it failed to file its Children's Television Program Reports timely in 42 separate quarters.

13. Finally, the Licensee argues the forfeiture would impose a significant financial burden on the station.²⁴ The Commission will not consider reducing or canceling a forfeiture in response to 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. Typically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.²⁵ The Licensee acknowledges it cannot meet the Commission's standard for demonstrating financial hardship. We therefore reject Licensee's request to reduce the forfeiture on this basis.

14. We thus conclude that Licensee's arguments in favor of a reduction or cancellation of the forfeiture amount proposed in the NAL are wholly unavailing.

IV. ORDERING CLAUSES

15. 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,²⁶ Thunder Bay Broadcasting Corporation SHALL FORFEIT to the United States the sum of Twenty Thousand Dollars (\$20,000) for repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's rules.

16. 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.

17. 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.

²² *KGAN Licensee, LLC*, Memorandum Opinion and Order, 25 FCC Rcd 2549, 2559 (Vid. Div. 2010).

²³ *WNLB Radio, Inc.*, Forfeiture Order, 25 FCC Rcd 1420, 1421 (Aud. Div. 2010).

²⁴ Licensee Response at 6.

²⁵ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

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

18. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Thunder Bay Broadcasting Corporation, 1390 N. Bagley Street, Alpena, Michigan, 49707, and to its counsel, David O'Connor, Wilkinson Barker Knauer, LLP, 2300 N Street NW, Suite 700, Washington, D.C., 20037.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'B A K', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau