

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

In the Matter of)	
)	
Digital TV of Orlando, LLC)	Facility I.D. No. 10521
Licensee of Station WHDO-CD)	NAL/Acct. 201441420035
Orlando, Florida)	FRN: 0016748303

FORFEITURE ORDER

Adopted: July 8, 2015**Released: July 8, 2015**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. Digital TV of Orlando, LLC ("Digital TV"), former licensee of television station WHDO-CD, Orlando, Florida (the "Station"),¹ joined by WP Stations, LLC ("WP Stations"), current licensee of WHDO-CD (collectively "Parties"), seeks a cancellation or deferral of a Notice of Apparent Liability of Forfeiture released by the Video Division for the amount of twenty thousand dollars (\$20,000).² For the reasons described below, we dismiss as moot the Parties' request for deferral and deny their request for cancellation of the NAL. With this Forfeiture Order ("Order"), we therefore issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000), to Digital TV, for apparently willfully and/or repeatedly violating the Commission's Rules by: (1) failing to file timely the Station's issues/programs lists, in violation of Section 73.3526(e)(11)(i);³ (2) failing to file timely the Station's Children's Television Programming Reports, in violation of Section 73.3526(e)(11)(iii);⁴ and (3) discontinuing service for a period of greater than 30 days without authority from the Commission, in violation of Section 73.1740(a)(4).⁵

II. BACKGROUND

2. On March 23, 2011, the Video Division sent Digital TV a letter of inquiry regarding its failure to file Children's Television Programming Reports⁶ during the third and fourth quarters of 2007 and all four quarters of 2008 through 2010. In an April 18, 2011 letter, Digital TV admitted its failure to file the reports timely. Subsequent review also showed that Digital TV failed to file issues/programs lists for the third and fourth quarters of 2007 and that the Station was on the air for approximately only one

¹ The Video Division granted the assignment application for station WHDO-CD from Digital TV of Orlando to WP Stations, LLC on January 30, 2015. File No. BALDTA - 20130226AGO (consummated Feb. 29, 2015).

² *Digital TV of Orlando, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11646 (Vid. Div. 2014) ("NAL").

³ 47 C.F.R. § 73.3526(e)(11)(i).

⁴ *Id.* at § 73.3526(e)(11)(iii).

⁵ *Id.* at § 73.1740(a)(4).

⁶ *Id.* at § 73.3526(e)(11)(iii).

week between September 17, 2010 and September 21, 2012.⁷ Moreover, due to Digital TV's default to a creditor,⁸ station WHDO-CD was placed under receivership, which the Video division approved on August 24, 2012.⁹

3. On October 1, 2014, the Video Division issued a Notice of Apparent Liability for Forfeiture in the amount of twenty thousand dollars (\$20,000) to Digital TV for its violations.¹⁰ On October 31, 2014, in response to the NAL, Parties filed a Request for Cancellation or Deferral of Forfeiture ("Petition"). In support of its Petition, Parties requests that: (1) the forfeiture should be cancelled as the Commission has held payment of a forfeiture by a receiver, when parties responsible for violation no longer holds any interest in the station, does not serve the public interest; and (2) in the alternative, if the forfeiture is not cancelled, to defer payment until after the assignment of station WHDO-CD is final and is consummated.¹¹

III. DISCUSSION

4. 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.¹² 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.¹³ 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.¹⁴ As we set forth in greater detail below, we conclude that the Digital TV is liable for a forfeiture for violating Sections 73.3526 and 73.1740 of the Commission's rules. We ultimately conclude that a cancelation or deferral of this forfeiture is not warranted in this case.

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁵ Section 1.80 of the Rules,¹⁶ and the Commission's *Forfeiture Policy Statement*.¹⁷ In

⁷ *Id.* at § 73.1740(a)(4) (requires a station to receive authority from the Commission for any discontinuance of service longer than 30 days).

⁸ Digital TV defaulted on a number of tower leases controlled by Richland Towers, the ultimate parent company of WP Stations. Richland Towers obtained judgment against Digital TV by the Circuit Court for the Thirteenth Judicial Circuit and For Hillsboro County. Petition at 2.

⁹ File No. BTCTTA - 20120810ABP.

¹⁰ NAL, 29 FCC Rcd 11646.

¹¹ Richland Towers, joined by WP Stations, states it is "willing to agree to payment of the Forfeiture on behalf of Digital TV, contingent on grant and consummation of the pending Assignment Application." Petition at 4.

¹² 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).

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

¹⁴ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

¹⁵ 47 U.S.C. § 503(b).

assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account 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.¹⁸

6. Parties do not dispute that Digital TV failed to timely submit the Station's Issues/Program lists and Children's television Reports in violation of Sections 73.3526(e)(11)(I)¹⁹ and 73.3526 (e)(11)(iii).²⁰ Nor do Parties dispute that the Station discontinued service for a period of greater than 30 days without authority from the Commission, in violation of Section 73.1740(a)(4).²¹ Rather Parties cite to cases where a trustee or receiver was appointed, who was not involved in the violations, and Commission rescinded the forfeiture.²² While we recognize the line of cases cited by the Parties, here WP Stations, through its parent company Richland Towers, has agreed to pay the forfeiture amount on behalf of Digital TV upon consummation of the assignment of WHDO-CD to WP Stations. With the assignment of station WHDO-CD to WP stations, assets are now available to pay the forfeiture amount. Furthermore, unlike the line of cases cited by Parties, Richland towers, parent company of WP Stations, is the creditor that sought judgment to place Digital TV under receivership. As such, WP Stations had full knowledge of the pending forfeiture amount at the time of the assignment and consummation of the transaction. Finally, Parties have not submitted financial documentation demonstrating an inability to pay, as required for the Commission to consider such a claim.²³

7. We have considered the Parties' Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Digital TV willfully and repeatedly violate sections 73.3526(e)(11)(i),²⁴ 73.3526 (e)(11)(iii),²⁵ and 73.1740(a)(4)²⁶ of the Rules.

IV. ORDERING CLAUSES

8. Accordingly, IT IS 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,²⁷ that Digital TV of

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¹⁶ 47 C.F.R. § 1.80.

¹⁷ *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), *recon. denied*, 15 FCC Rcd 303 (1999). ("Forfeiture Policy Statement").

¹⁸ 47 U.S.C. § 503(b)(2)(D).

¹⁹ 47 C.F.R. § 73.3526(e)(11)(i).

²⁰ *Id.* at § 73.3526(e)(11)(iii).

²¹ *Id.* at § 73.1740(a)(4).

²² Petition at 2 – 3 (citing *Spirit of Alaska Broadcasting, Inc.*, Order, 26 FCC Rcd 10418 (EB 2011); *Diamond Broadcasting of California, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 7388 (1996); *David Ryder, Receiver*, Order, 23 FCC Rcd 10499 (Enf. Bur., South Central Region 2008); *Multimedia Development Corp.*, Memorandum Opinion and Order, 17 FCC Rcd 22649 (WTB, Public Safety & Private Wireless Div. 2002); *Dennis Elam, Trustee*, Memorandum Opinion and Order, 11 FCC Rcd 1137 (1996), *Interstate Savings, Inc. d/b/a ISI Telecommunications*, Memorandum Opinion and Order, 12 FCC Rcd 2934 (CCB 1997).

²³ NAL, 29 FCC Rcd 11646, para. 14.

²⁴ 47 C.F.R. § 73.3526(e)(11)(i).

²⁵ *Id.* at § 73.3526(e)(11)(iii).

²⁶ *Id.* at § 73.1740(a)(4).

²⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

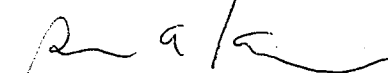
Orlando, LLC, SHALL FORFEIT to the United States the sum of \$20,000 for willfully and repeatedly violating sections 73.3526(e)(11)(i),²⁸ 73.3526 (e)(11)(iii),²⁹ and 73.1740(a)(4)³⁰ of the Commission's Rules.

9. 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 Act. Parties shall send electronic notification of the payment to Adrienne Denysyk at Adrienne.denysyk@fcc.gov on the date payment is made.

10. 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.

11. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Digital TV of Orlando, LLC, c/o Larry Hyman, Court-Appointed Receiver, 106 S. Tampianna Avenue, Suite 200, Tampa, Florida, 33609, and to counsel, Dan J. Alpert, Esq., Law Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, Virginia, 22201. Copies of this Forfeiture Order shall also be sent by Certified Mail Return Receipt Requested and by First Class Mail, to WP Stations LLC, 400 N. Ashley Drive, Suite 3010, Tampa, FL 33602 and to counsel, M. Scott Johnson, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th Street, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁸ 47 C.F.R. § 73.3526(e)(11)(i).

²⁹ *Id.* at § 73.3526(e)(11)(iii).

³⁰ *Id.* at § 73.1740(a)(4).