

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

In the Matter of)	
)	
Aerco Broadcasting Corporation)	Facility I.D. No. 4077
Licensee of Station WSJU-TV)	NAL/Acct. 201441420003
San Juan, Puerto Rico)	FRN: 0003759560

FORFEITURE ORDER

Adopted: May 28, 2014

Released: May 28, 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 Aerco Broadcasting Corporation, licensee of Station WSJU-TV, San Juan, Puerto Rico, apparently willfully and/or repeatedly violated the Commission's Rules by: (1) failing to file the Station's quarterly TV issues/programs lists, in violation of Section 73.3526(b)(2) & (e)(11)(i)²; (2) failing to file timely with the Commission the Station's Children's Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)³; and (3) failing to report the violations in its renewal application, in violation of Section 73.3514(a).⁴ 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. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on September 27, 2013.⁵ The NAL notified the Licensee that its failure to: (i) file timely the Station's quarterly TV issues/programs lists; (ii) file timely its Children's Television Programming Reports for multiple quarters during the license period; and (iii) report the violations in its renewal application constituted apparent willful or repeated violation of the Commission's rules.⁶ The Division concluded that the Licensee was apparently liable for a forfeiture of \$20,000.

3. In a timely response dated March 11, 2014 and supplement dated April 7, 2014, the Licensee did not attempt to rebut the claimed violations but asserted that the proposed forfeiture

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

² 47 C.F.R. § 73.3526(b)(2) & (e)(11)(i).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ 47 C.F.R. § 73.3514(a).

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

⁶ *Id.*

amount should be reduced for various reasons, including its ability to pay.⁷

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.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)(i) & (iii) and Section 73.3514(a) of the Commission's rules. We ultimately conclude that the forfeiture amount should not be reduced from \$20,000.

5. The Community Broadcasters Protection Act requires that Class A television stations comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.¹¹ As set forth in subsections 73.3526(b)(2) & (e)(11)(i), each commercial television licensee must prepare, place in its public inspection file, and upload to the Commission's website a quarterly TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three month period. 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.

6. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . ." Section IV, Question 3 of the Form 303-S license renewal application requires licensees to certify "that the documentation, required by 47 C.F.R. Section 73.3526 . . . has been placed in the station's public inspection file at the appropriate times." Section IV, Question 6 of the license renewal application requires licensees to certify that it has filed with the Commission its

⁷ Licensee Response to Notice of Apparent Liability ("Licensee Response") (Mar. 11, 2014) at 1-8; Licensee Supplemental Response to Notice of Apparent Liability ("Licensee Supplemental Response") (Apr. 7, 2014).

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

Children's Television Programming Reports according to the requirements of Section 73.3526 of the Commission's rules and requires the Licensee to submit a statement of explanation as an exhibit if the Licensee has failed to do so.

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information and a base forfeiture amount of \$10,000 for public file violations.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "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."¹³

8. The Licensee does not dispute that it failed to file electronically its issues/programs lists and Children's Television Programming Reports with the Commission in a timely manner for multiple quarters. Nor does the Licensee dispute that it failed to report the violations in its renewal application. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules. Licensee argues that the forfeiture amount should be reduced or cancelled.

9. The Licensee first argues that the Licensee's 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.¹⁴ We disagree. The preparation and filing of issues/programs lists with the Commission 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 issues-responsive programming, and such public access is crucial to ensuring that licensees meet their responsibilities to the community.¹⁵

10. The Licensee next argues 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.¹⁶ Since the station's last renewal in March 2006, the Licensee has filed the reports late in 20 separate quarters, including 10 reports that were filed more than a month after the reporting deadline. 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 success of the statute's goals. The Licensee's late filings deprived the public and the Commission of that ability for real-time review.¹⁷ We therefore conclude that the forfeiture amount is

¹² 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) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹³ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

¹⁴ Licensee Response at 1-2.

¹⁵ See *Elliott B. Block*, Forfeiture Order, 28 FCC Rcd 14844 ¶ 8 (Vid. Div. Oct. 30, 2013).

¹⁶ Licensee Response at 3-4.

¹⁷ *Billy Ray Locklear Evangelical Association*, Forfeiture Order, 28 FCC Rcd 16846 ¶ 6 (Dec. 19, 2013).

appropriate given the violations.

11. The Licensee also argues that it should have the opportunity to amend its renewal application to correct the improper reporting certifications.¹⁸ The Licensee certified that the documentation was placed in the public file at the appropriate times and that it complied with the requirements of Section 73.3526. 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.¹⁹ We thus see no basis to reduce this forfeiture.

12. Licensee finally argues that it cannot afford to pay the forfeiture.²⁰ 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.²¹

13. The Licensee argues that we should take into account operating losses in determining the station's ability to pay the forfeiture.²² Typically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.²³ Indeed, "if 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."²⁴

14. Here, the Licensee's documented gross revenues are an average of \$703,520 from 2011-2013.²⁵ The Licensee's gross revenues are sufficient such that a forfeiture reduction is not supported by the demonstrated operating losses.²⁶ This position is consistent with Commission precedent where losses have only been considered in cases of severe financial distress.²⁷ For example, unlike the entities in *First Greenville Corporation*,²⁸ the Licensee here has not indicated that it is facing foreclosure, that it is unable to secure funding to cover its losses, or that its

¹⁸ Licensee Response at 4.

¹⁹ *Billy Ray Locklear Evangelical Association*, 28 FCC Rcd 16846 ¶ 7.

²⁰ *Id.* at 4.

²¹ The Licensee submitted tax returns for 2011 and 2012 and an income statement for 2013.

²² Licensee Response at 4-7.

²³ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

²⁴ *Unity Broadcasting, Inc.*, Forfeiture Order, DA 14-241 ¶ 20 (Feb. 24, 2014) (quoting *Forfeiture Policy Statement*, 12 FCC Rcd at 17106)).

²⁵ Licensee Response and Licensee Supplemental Response.

²⁶ *Unity Broadcasting, Inc.*, DA 14-241 ¶ 20 (citing *Ayustar Corp.*, Memorandum Opinion and Order, 25 FCC Rcd 16249 (EB 2010)).

²⁷ *Id.*

²⁸ *First Greenville Corporation*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996).

owners have personally guaranteed loans on its behalf.²⁹ Moreover, unlike in *Benito Rish*³⁰ the station here is not a daytime-only, directional radio station facing “inherently low station value.”³¹

15. In the NAL, the Video Division proposed a forfeiture amount of \$20,000. Having carefully reviewed the Licensee’s submitted documentation, we conclude the forfeiture should not be reduced as it is in line with previous forfeitures the Commission has determined are not excessive relative to the Licensee’s ability to pay.³²

IV. ORDERING CLAUSES

16. 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,³³ Aerco Broadcasting Corporation SHALL FORFEIT to the United States the sum of Twenty Thousand Dollars (\$20,000) for repeatedly violating 47 C.F.R. § 73.3526(b)(2), (e)(11)(i) & (e)(11)(iii) and 47 C.F.R. § 73.3514(a).

17. 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.

18. 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.

²⁹ *Unity Broadcasting, Inc.*, DA 14-241 ¶ 20 (citing *Ayustar Corp.*, 25 FCC Rcd at 16250)).

³⁰ *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995).

³¹ *Unity Broadcasting, Inc.*, DA 14-241 ¶ 20 (quoting *WLTV, Inc.*, Forfeiture Order, 24 FCC Rcd 7715, 7717 (Aud. Div. 2009) (citing *Benito Rish*, 10 FCC Rcd at 2862))).

³² *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues); *Bruno Goodworth Network, Inc.*, Forfeiture Order, DA 13-1585, 2013 WL 3777827 (Vid. Div. Jul. 18, 2013) (forfeiture amount reduced to approximately 7 percent of the violator’s gross revenues).

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

19. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by 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.

FEDERAL COMMUNICATIONS COMMISSION



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