

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

In the Matter of)
)
)
Glen Iris Baptist School) FRN: 001754217
) NAL/Acct. Nos. 201241420002 and
Licensee of Stations W15AZ, Alabaster, Alabama) 201241420005
and W49AY, Birmingham, Alabama) Facility ID Nos. 17320, 67891
)

FORFEITURE ORDER

Adopted: May 22, 2013

Released: May 23, 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 Glen Iris Baptist School, licensee of Stations W15AZ, Alabaster, Alabama, and W49AY, Birmingham, Alabama, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to: (i) file with the Commission and (ii) prepare and place in its public inspection file the Station's Children's Television Programming Reports (FCC Form 398). Based on our review of the facts, we find the Licensee liable for a forfeiture of Ten Thousand Four Hundred Dollars (\$10,400) for the violations of Station W15AZ and Ten Thousand Four Hundred Dollars (\$10,400) for the violations of Station W49AY, for a total forfeiture of Twenty Thousand Eight Hundred Dollars (\$20,800.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on March 7, 2012.² The NAL notified the Licensee that the failure to prepare, place in the public file, and file electronically the reports constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's rules.³ The Division concluded that the Licensee was apparently liable for a forfeiture of \$26,000, \$13,000 each for the violations at the two stations.

3. In its April 6, 2012 response, the Licensee admitted that it could not rebut the violations but nonetheless asserted that the proposed forfeiture should be reduced or rescinded.⁴

III. DISCUSSION

4. The Commission is authorized to license radio and television broadcast stations and

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

² *Glen Iris Baptist School*, Notice of Apparent Liability for Forfeiture, DA 12-349 (Mar. 7, 2012).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") (May 26, 2011) at 2.

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.⁵ 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.⁶ 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.⁷ 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, however, that the forfeiture amount should be reduced to \$20,800.00.

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.⁸ The Commission rules establish that Class A licensees 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.⁹

6. The Licensee does not dispute that it failed to prepare, place in its public file, and file electronically with the Commission its Children's Television Programming Reports for a total of 18 quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

7. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form and a base forfeiture amount of \$10,000 for public file violations.¹⁰ 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 \$26,000 forfeiture amount.

⁵ 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).

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

⁷ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

⁸ 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).

⁹ *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).

¹⁰ *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).

8. The Licensee argues that the forfeiture amount should be reduced because its failure to prepare and file the required reports was based on a “reasonable interpretation of the Commission’s rules.”¹¹ The Commission has long held that inadvertence or human error is not a mitigating circumstance that would make the Licensee less culpable and therefore subject to a lesser forfeiture amount.¹² We further reject the Licensee’s argument that its violations were based on a reasonable interpretation of the Commission’s rules. The requirement that Class A stations prepare and file Children’s Television Programming Reports is clear, and the Licensee had no reasonable basis to interpret the rule differently.

9. The Licensee also argues that it is unfair to assess forfeitures to both stations.¹³ The fact that the same entity controls both licensees is irrelevant to the determination. The Commission can assess independent forfeitures against the same licensee for violations at multiple stations.¹⁴

10. The Licensee further argues that it lacks the revenue necessary to pay the forfeiture.¹⁵ 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.¹⁶

11. The Licensee has provided financial reports for its broadcast operations, but this information alone is not a sufficient basis on which to assess Licensee’s inability to pay.¹⁷ Licensee has provided no information regarding the Licensee’s overall finances. Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to cancel or reduce the proposed forfeiture on the basis of inability to pay.

¹¹ Licensee Response at 4.

¹² See *Sage Broadcasting Corp.*, Letter Decision, 25 FCC Rcd 4556, 4558 (Vid. Div. MB 2010); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error).

¹³ Licensee Response at 5.

¹⁴ See *Opus Broadcasting Tallahassee, LLC*, Forfeiture Order, 27 FCC Rcd 11154, 11155 (Aud. Div. MB 2012) (assessing forfeitures against each of a licensee’s four stations).

¹⁵ Licensee Response at 2.

¹⁶ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

¹⁷ See *Metropolitan School District of Washington Township*, Forfeiture Order, 23 FCC Rcd 9995, 9997 (Aud. Div. MB 2008) (provision of financial information about the radio program but not the Licensee itself insufficient to demonstrate an inability to pay); *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756, 759 (2005) (finding that licensee failed to provide sufficient information needed to evaluate an inability to pay claim); *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1434 (2007) (same); *Pang Cheng*, Memorandum Opinion and Order, 20 FCC Rcd 2351, 2353 (2005) (same).

12. Finally, the Licensee argues that its history of compliance militates in favor of a reduction.¹⁸ Given that history of compliance and consistent with precedent, we reduce the forfeiture amount to \$20,800.¹⁹

IV. ORDERING CLAUSES


13. 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,²⁰ Glen Iris Baptist School SHALL FORFEIT to the United States the sum of Twenty Thousand Eight Hundred Dollars (\$20,800) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80(h) of the Commission's rules within fifteen (15) 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.

15. 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.

16. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Glen Iris Baptist School, 1137 Tenth Place South, Birmingham, Alabama, 35205, and to its counsel, Harry C. Martin and Anne Goodwin Crump, Esquire, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION


Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁸ Licensee Response at 6.

¹⁹ See *Woods Comm. Corp.*, Forfeiture Order, 25 FCC Rcd 5215, 5217 (MB 2010) (reducing forfeiture from \$14,000 to \$11,200 based on history of compliance).

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