



Federal Communications Commission
Washington, D.C. 20554

July 26, 2013

DA 13-1641
Released: July 26, 2013

WAGT Television, Inc.
1336 Augusta West Parkway
Augusta, Georgia 30909

Notice of Apparent Liability for
Forfeiture, DA 13-777
WAGT-DT, Augusta, Georgia
Facility I.D. No. 70699

Dear Licensee:

We write in response to your "Request for Partial Remission or Reduction in Forfeiture" filed on June 11, 2013. WAGT Television, Inc. (the "Licensee") seeks remission or reduction of a Notice of Apparent Liability of Forfeiture released by the Video Division¹ and already paid in full by the Licensee. For the reasons described below, we dismiss your request as untimely.

Section 1.80 of the Commissions' Rules states that the party against whom the Notice of Apparent Liability is issued shall "be afforded a reasonable period of time (usually 30 days from the date of the notice) to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture."² The NAL was issued against WAGT Television, Inc. for failure to publicize adequately the existence and location of the Station's Children's Television Programming Reports on April 18, 2013. The Licensee paid the forfeiture in full on April 24, 2013 and did not request the remission or reduction until June 11, 2013. We thus dismiss the request as untimely, as the 30 day period in which to respond to the Notice of Apparent Liability had expired before the request was filed.³

Although we dismiss the request on procedural grounds, we nonetheless respond to your substantive arguments below. The failure to publicize adequately the Station's Children's Television Programming Reports is a violation of the public file rule.⁴ The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of The Rules establish a base forfeiture amount of \$10,000 for public file violations.⁵ Thus, the forfeiture assessed against WAGT Television is identical to the amount suggested in the *Forfeiture Policy Statement*.

¹ WAGT Television, Inc., Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5179 (Vid. Div. 2013).

² 47 C.F.R. § 1.80(d)(2).

³ Moreover, Licensee's payment of the forfeiture made the Commission's action final and forecloses any further agency action related to this matter.

⁴ 47 C.F.R. § 73.3526(e)(11)(iii).

⁵ 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*").

Nonetheless, we retain discretion to determine forfeiture amounts on a case-by-case basis.⁶ Licensee relies on an NAL issued to Station WUSA⁷ to argue that the agency has treated similarly situated parties in different ways.⁸ Licensee's argument is misplaced.

In assessing forfeitures, Section 503(b) of the Communications 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 other matters as justice may require.⁹ The Commission's *Forfeiture Policy Statement* specifically identifies "prior violations of any FCC requirements" as an upward adjustment criterion from the base forfeiture amount and "good faith" and "history of overall compliance" as downward adjustment criteria.¹⁰

Licensee admits that it was assessed a forfeiture for the exact same violation during the previous renewal cycle, which represents a history of prior offenses.¹¹ In contrast, Detroit Free Press, Inc., the licensee of WUSA, demonstrated a history of compliance and had no prior history of violating the rule in question here. Moreover, Detroit Free Press, Inc. submitted a detailed exhibit with its renewal application demonstrating its additional efforts to provide and promote core educational and informational programming for children. Based on these factors, we exercised our discretion to reduce the standard forfeiture amount for Detroit Free Press, Inc. for the violation in question. In the case of the instant Licensee, based on its repeated history of violating the rule, we found no basis to reduce the standard forfeiture amount.

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

⁶ See 47 C.F.R. § 1.80(b)(8), Note ("The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute."); *see also, e.g., World Communications*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 837, 841-842 (2004) (noting that, "[a]s provided by the Commission's rules, the Commission and its staff retain the discretion to issue a higher or lower forfeiture, as permitted by statute").

⁷ *Detroit Free Press, Inc.*, Notice of Apparent Liability for Forfeiture, 2013 WL 2146011 DA 13-1118 (Vid. Div. May 17, 2013).

⁸ Request for Partial Remission or Reduction in Forfeiture at 4-7.

⁹ 47 U.S.C. § 503(b)(2)(E); *see also Entercom Wichita License, LLC*, Forfeiture Order, 24 FCC Rcd 1270, 1272 (EB 2009).

¹⁰ *Forfeiture Policy Statement*, 12 FCC Rcd at 17116.

¹¹ Request for Partial Remission or Reduction in Forfeiture at 6 (citing *WAGT, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 19241 (MB 2005)).

Therefore, your "Request for Partial Remission or Reduction in Forfeiture" is DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read 'B A / a' followed by a long horizontal stroke.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc:

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