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

In the Matter of	)	
	)	
SATV10, LLC	)	Facility I.D. No. 55762
Licensee of Station KYVV-TV	)	NAL/Acct. 201441420029
Del Rio, Texas	)	FRN: 0014562839

FORFEITURE ORDER

Adopted: May 20, 2016 **Released: May 20, 2016**

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 SATV10, LLC (Licensee), licensee of full power television station KYVV-TV, Del Rio, Texas (Station), willfully and/or repeatedly violated the Commission's Rules (Rules) by: (1) failing to place in its public file quarterly TV issues/programs lists, in violation of section 73.3526(e)(11)(i)[2] of the Rules and (2) failing to file timely with the Commission the Station's Children's Television Programming Reports (FCC Form 398), in violation of section 73.3526(e)(11)(iii) of the Rules.[3] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is liable for a monetary forfeiture in the amount of Sixteen Thousand Dollars ($16,000).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability (*NAL*) for Forfeiture on August 7, 2014.[4] The *NAL* notified the Licensee that: (1) its failure to place in its public file quarterly issues/programs lists for 21 quarters constituted an apparent willful and/or repeated violation of section 73.3526(e)(11)(i)[5] of the Rules and (2) its failure to file timely with the Commission the Station's Children's Television Programming Reports (FCC Form 398) for four quarters constituted an apparent willful and/or repeated violation of section 73.3526(e)(11)(iii) of the Rules.[6] The Division concluded that the Licensee was apparently liable for a forfeiture in the amount of $16,000.

3. In a timely response dated August 20, 2014, the Licensee does not attempt to rebut the claimed violations, but asserts that the proposed forfeiture amount should be reduced based on the

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[1] 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1)-(2).

[2] 47 C.F.R. § 73.3526(e)(11)(i).

[3] 47 C.F.R. § 73.3526(e)(11)(iii).

[4] *SATV10, LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9552 (Vid. Div. 2014) (*NAL*).

[5] 47 C.F.R. § 73.3526(e)(11)(i).

[6] 47 C.F.R. § 73.3526(e)(11)(iii).

Licensee's inability to pay.[7] The Licensee has provided its tax returns for the most recent three-year period, from the date of the *NAL*, to support its claim of inability to pay.[8]

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 Communications Act of 1934, as amended (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.[9] 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.[10] 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.[11] As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture in the amount of $16,000 for its repeated and/or willful violations of sections 73.3526(e)(11)(i)[12] and 73.3526(e)(11)(iii)[13] of the Rules.

5. In its response, the Licensee does not dispute that during the license term it failed to place the Station's quarterly TV issues/programs lists in its public file for 21 quarters or that it failed to timely file with the Commission the Station's Children's Television Programming Reports for four quarters. These deficiencies, regardless of the cause, constitute willful and/or repeated violations of the relevant Commission rules.

6. The Licensee argues that it cannot afford to pay the forfeiture.[14] 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.[15] All

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[7] Licensee Response to Notice of Apparent Liability (Licensee Response) (Aug. 7, 2014) at 2-3.

[8] Licensee provided its tax returns for the years 2011, 2012, and 2013. Licensee requests that the Commission treat as confidential the content of the submitted tax returns. Licensee Response at Exhibits 2-4.

[9] 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 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).

[10] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

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

[12] 47 C.F.R. § 73.3526(e)(11)(i).

[13] 47 C.F.R. § 73.3526(e)(11)(iii).

[14] Licensee Response at 2-3, Exhibits 2-4.

[15] *See San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011) (noting that "[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").

of a violator's sources of revenue must be identified, and the requisite financial information regarding them provided, in order for us to consider a request to reduce a forfeiture for inability to pay.[16]

7. Here, the Licensee provides financial documentation, its tax returns for the years 2011, 2012, and 2013, in an effort to support its argument that it cannot pay the forfeiture amount.[17] The Commission evaluates the totality of the circumstances surrounding a Licensee's ability to pay the forfeiture. The parent company's ability to pay is also relevant in evaluating a subsidiary's ability to pay the forfeiture.[18] Because the Licensee has not provided information from which we can evaluate the financial condition of Licensee's parent company and its ownership,[19] we must reject Licensee's claim of inability to pay.

8. 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.[20] 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 Division considered such factors and proposed a forfeiture amount of $16,000.[21] Because the Licensee has not provided sufficient financial information from which we can evaluate its claim of inability to pay, we find the Licensee's violations warrants the forfeiture proposed in the *NAL*. Accordingly, we find that the Licensee is liable in the amount of $16,000 for its willful and/or repeated violations of sections 73.3526(e)(11)(i)[22] and 73.3526(e)(11)(iii)[23] of the Rules.[24]

IV. ORDERING CLAUSES

9. 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) and (2) of the Commission's rules,[25] SATV10, LLC SHALL FORFEIT to the United States the sum of Sixteen

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[16] *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1436 (EB 2007) (citing *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, 17158 *recon. denied*, 15 FCC Rcd 303 (1999) ("As for forfeitures that a licensee believes it cannot afford to pay relative to its financial situation, we must look to the totality of the circumstances surrounding the individual case."); *Radio X Broadcasting Corporation*, 21 FCC Rcd 12209, 12217 (2006) (subsidiary and parent company financial information are both relevant to inability to pay determination by the Commission); *A-O Broadcasting*, 20 FCC Rcd 756, 761 (2005) (financial information of the corporate owner is relevant to the Commission evaluation of an inability to pay claim).

[17] Licensee Response at 2-3, Exhibits 2-4.

[18] *See, e.g., 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, 17158 (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.

[19] *Supra* n.16.

[20] *See Forfeiture Policy Statement* at 17113-15.

[21] *SATV10, LLC*, 29 FCC Rcd at 9953.

[22] 47 C.F.R. § 73.3526(e)(11)(i).

[23] 47 C.F.R. § 73.3526(e)(11)(iii).

[24] 47 C.F.R. § 73.3526(e)(11)(iii).

[25] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1)-(2).

Thousand Dollars ($16,000) for repeatedly violating sections 73.3526(e)(11)(i) and 73.3526(e)(11)(iii) of the Rules.[26]

10. 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*.[27] 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.[28]

11. Payments of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.[29] When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:[30]

- 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.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then 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.

12. Requests for full payment of the forfeiture in this *Forfeiture Order* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[31]

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[26] 47 C.F.R. §§ 73.3526(e)(11)(i), (iii).

[27] 47 C.F.R. § 1.80(h).

[28] 47 U.S.C. § 504(a).

[29] Payment may be made at the Commission's online Fee Filer website: https://www.fcc.gov/encyclopedia/fee-filer. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

[30] For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at ARINQUIRIES@fcc.gov.

[31] *See* 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED THAT a copy of this *Forfeiture Order* shall be sent by Certified Mail Return Receipt Requested to SATV10, LLC, 3680 South Maryland Parkway, Suite 102, Las Vegas, NV, 89169, and to its counsel, David O'Neil, Esq., 1200 New Hampshire Avenue, NW, Suite 600, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau