

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

In the Matter of:

Abacus Television
Licensee of Station WJKF-CA
Jacksonville, Florida

)
)
)
)
)
)
)

FRN: 0008390981
NAL/Acct. No. 201341420019
Facility ID No. 4754

FORFEITURE ORDER

Adopted: October 29, 2013

Released: October 30, 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 Abacus Television, licensee of Station WJKF-CA, repeatedly violated Section 73.3526(e)(11)(iii) by failing to file timely with the Commission the Station's Children's Television Programming Reports. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Four Thousand Five Hundred Dollars (\$4,500).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on June 21, 2013.² The NAL notified the Licensee that the station's failure to file its Children's Television Programming Reports in a timely manner constituted apparent willful or repeated violations 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 \$9,000.

3. In a timely response dated July 22, 2013, the Licensee requested that the proposed forfeitures be reduced.⁴

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

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

² *Abacus Television*, Notice of Apparent Liability for Forfeiture, DA 13-1417 (June 21, 2013).

³ 47 C.F.R. § 73.3526(e)(11)(i).

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") (Jul. 22, 2013).

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 that the forfeiture amount should be reduced from \$9,000 to \$4,500.

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 Moreover, each Class A television station must prepare and place in its public inspection file on a quarterly basis an issues/programs list demonstrating that the station aired programming that meets the needs and interests of its community of license¹⁰ and must upload the issues/programs lists to the Commission's website.¹¹

6. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹² 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 Commission proposed a forfeiture amount of \$9,000.

7. The Licensee does not dispute that it failed file certain Children's Television

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 47 C.F.R. § 73.3526(e)(11)(i).

¹¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 27 FCC Rcd at 4568-69; 47 C.F.R. § 73.3526(b)(2); and § 73.3526(e)(17).

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), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

Programming Reports with the Commission in a timely manner as described in the NAL.¹³ These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

8. Licensee argues that it cannot afford to pay the forfeiture.¹⁴ 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. Typically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.¹⁵ Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.¹⁶

9. In the NAL, the Video Division proposed a forfeiture amount of \$9,000. The Commission exercises its discretion here to reduce the proposed forfeiture amount from \$9,000.00 to \$4,500. We reduce the forfeiture because the Licensee has demonstrated through the submission of financial documentation that the proposed forfeiture amount would cause financial hardship to the station.¹⁷ We therefore conclude that a reduction in the forfeiture amount is appropriate.¹⁸

IV. ORDERING CLAUSES

10. 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,¹⁹ Abacus Television SHALL FORFEIT to the United States the sum of four thousand five hundred dollars (\$4,500) for repeatedly violating 47 C.F.R. 73.3526(e)(11)(iii).

11. In the event that the Licensee wishes to revert WJKF-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the station.²⁰ Should the Licensee revert the station to low power status, the Licensee would no longer be liable for the forfeiture amount described herein.

12. 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

¹³ The Licensee did provide evidence that two of the 14 reports identified in the station's public file as being late were in fact timely filed. Licensee Response at 3-4. We accept this evidence as persuasive that the two reports identified were timely filed but conclude that no reduction in the proposed forfeiture amount is appropriate based on this showing, as 12 of the 17 reports filed during the license period were in fact late.

¹⁴ *Id.* at 4.

¹⁵ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

¹⁶ The Licensee submitted tax returns and financial records for 2010-2012. Licensee Response; Licensee Supplemental Response. The Licensee further requested that the returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules.

¹⁷ Licensee Response at 2-3.

¹⁸ *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002).

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

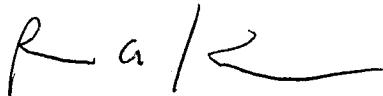
²⁰ 47 C.F.R. § 73.6001(d).

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.

13. 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.

14. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Abacus Television c/o Benjamin Perez, 514 Chautauqua Street, Pittsburgh, Pennsylvania, 15124-3509.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Ra / K' with a long horizontal stroke extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau