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

In the Matter of:	)	
	)	
Lake Superior Community Broadcasting	)	FRN: 0010932978
Corporation	)	NAL/Acct. No. 201441420007
Licensee of Stations WBKP, Calumet, MI &	)	Facility ID Nos. 76001 & 59281
WBUP, Ishpeming, MI	)	

FORFEITURE ORDER

Adopted: May 14, 2014 **Released: May 14, 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 Lake Superior Community Broadcasting Corporation, licensee of Stations WBKP, Calumet, MI, and WBUP, Ishpeming, MI, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file electronically with the Commission in a timely manner the Station's Children's Television Programming Reports (FCC Form 398). Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Six Thousand Dollars ($6,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on February 12, 2014.[2] The NAL notified the Licensee that its failure to file timely its Children's Television Programming Reports on behalf of both stations 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 $6,000. The Licensee filed a timely response arguing the forfeiture should be reduced or cancelled.[4]

III. DISCUSSION

3. 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] *Lake Superior Community Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, DA 14-184 (Feb. 12, 2014).

[3] 47 C.F.R. § 73.3526(e)(11)(iii).

[4] Licensee Response to Notice of Apparent Liability ("Licensee Response") (Mar. 14, 2014).

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 not be reduced from the amount proposed in the NAL.

4. The Commission rules establish that full power television stations 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.[8] The Licensee does not dispute that it failed to file in a timely manner its Children's Television Programming Reports for both stations for multiple quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

5. The Commission's Forfeiture Policy Statement establishes a base forfeiture amount of $3,000 for failure to file a required form.[9] 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 $6,000. Licensee argues that the forfeiture amount should be reduced or cancelled.

6. The Licensee first argues that the statute of limitations bars this action.[10] The Licensee claims that forfeiture is barred by either the Act or the general five-year statute of limitations on government enforcement of forfeitures.[11]

7. Section 2462 governs only the initiation of collection actions by the United States Department of Justice, not the Commission's issuance of forfeitures.[12] The relevant statute of

[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] *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).

[9] *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).

[10] Licensee Response at 3-4.

[11] Licensee Response at 3-4 (citing 47 U.S.C. § 503(b)(6)(B & 28 U.S.C. § 2462).

[12] *Radio License Holdings, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10346, 10347-48 (Aud. Div.

limitations for a Commission forfeiture proceeding is Section 503(b)(6) of the Act, which reads in part that "[no] forfeiture penalty shall be determined or imposed against any person . . . if . . . such person holds a broadcast station license . . . and if the violations charged occurred (i) more than 1 year prior to the date of issuance of the required notice or notice of apparent liability . . . or (ii) prior to the date of commencement of the current term of such license, whichever is earlier."

8. The section goes on to state that the "date of commencement of the current term of such license" means "the date of commencement of the last term of license for which the licensee has been granted a license by the Commission." All of the violations for both stations addressed in the NAL occurred subsequent to the date of commencement of the last term of license for each station and are therefore not barred under the statute of limitations.[13]

9. The Licensee relies on a 2010 unpublished opinion from the District Court for the Southern District of California to support its argument.[14] The case is factually distinguishable because the violations at issue in that case preceded the commencement of the Licensee's current license term.[15] Here, all of the violations in question occurred after the commencement of the current license term and are therefore not barred under the statute of limitations.

10. The Licensee further argues that the forfeiture should be reduced given the stations' "history of overall compliance," its "successful participation in . . . [the] Alternative Broadcast Inspection Program ("ABIP"), and "the remoteness in time of the violations identified."[16] Given the extensive violations of the public file rule during the license period, we do not see a basis to reduce the forfeiture based on a past history of compliance.[17] Nor are these violations remote in time given that they occurred during the current license period under evaluation. Finally, we do not believe a reduction is appropriate based on the Licensee's participation in the ABIP program.[18] Even if we considered participation in the ABIP program to be evidence of good faith, the repeated nature of the identified violations would outweigh that participation.[19]

11. The cases cited by the Licensee are distinguishable. In *KGAN License, LLC*, the Video Division rejected a challenge to the completeness of the Licensee's public file based on a certification by the Iowa Broadcasters Association.[20] Here, there is no such dispute; the Video Division has identified, and the Licensee has not disputed, the existence of such violations. In *WNLB Radio, Inc.*, the Audio Division relied on the Licensee's voluntary inspection as evidence of good faith where the violence was the Licensee's temporary misplacement of three years of

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2011) (citing Evergreen Media Corp. of Chicago AM, Memorandum Opinion and Order, 6 FCC Rcd 5950, 5950 n. 9 (MB 1991)).

[13] See File No. BLCT-20030206AAH (reflecting start of current license term for WBUP); File Nos. BLCT-19961112KF & BALCT-2003022AGQ (reflecting start of current license term for WBKP and the date of assignment to the current Licensee).

[14] *United States v. Channel 51 of San Diego, Inc.*, Licensee of KUSI-TV, San Diego, CA, Case No. 08-CV-01978-H (S.D. Cal. March 16, 2010).

[15] *Id.* at 2.

[16] Licensee Response at 4-6.

[17] *Harpole Telecom, Inc.*, Forfeiture Order, DA 14-12, 2014 WL 60127 (Vid. Div. Jan. 7, 2014).

[18] *East Texas Broadcasting, Inc.*, Forfeiture Order, 19 FCC Rcd 22491 (EB 2004).

[19] *Renacer Broadcasters Corp.*, Forfeiture Order, DA 14-67, 2014 WL 243323 (EB Jan. 22, 2014).

[20] *KGAN Licensee, LLC*, Memorandum Opinion and Order, 25 FCC Rcd 2549, 2559 (Vid. Div. 2010).

issues/programs lists.[21] Here, the Licensee does not contend that the reports were misplaced; it in fact does not dispute that the late filings occurred.

12. Finally, the Licensee argues the forfeiture would impose a significant financial burden on the station.[22] 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.[23] The Licensee acknowledges it cannot meet the Commission's standard for demonstrating financial hardship. We therefore reject Licensee's request to reduce the forfeiture on this basis.

13. We thus conclude that Licensee's arguments in favor of a reduction or cancellation of the forfeiture amount proposed in the NAL are wholly unavailing.

IV. ORDERING CLAUSES

14. 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,[24] Lake Superior Community Broadcasting Corporation SHALL FORFEIT to the United States the sum of Six Thousand Dollars ($6,000) for repeatedly violating 47 C.F.R. § 73.3526(e)(11)(iii).

15. 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.

16. 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.

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[21] *WNLB Radio, Inc.*, Forfeiture Order, 25 FCC Rcd 1420, 1421 (Aud. Div. 2010).

[22] Licensee Response at 6.

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

[24] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

17. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Lake Superior Community Broadcasting Corporation, 1705 Ash Street, Suite 5, Ishpeming, Michigan, 49849, and to its counsel, David O'Connor, Esq., Wilkinson Barker Knauer LLP, 2300 N Street NW, Suite 700, Washington, D.C., 20037.

FEDERAL COMMUNICATIONS COMMISSION

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Chief, Video Division
Media Bureau