

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

In the Matter of:

D.T.V., LLC

Licensee of Station WPHA-CD

Philadelphia, Pennsylvania

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FRN: 0013224662

NAL/Acct. No. 201341420031

Facility ID No. 72278

FORFEITURE ORDER

Adopted: August 14, 2014

Released: August 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 D.T.V. LLC, licensee of Station WPHA-CD, Philadelphia, Pennsylvania, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file with the Commission 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 Nine Thousand Dollars (\$9,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on July 11, 2013.² The NAL notified the Licensee that its failure to file timely its Children's Television Programming Reports in 15 quarters 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 \$9,000.

3. After requesting numerous extensions to respond, Licensee filed a response dated July 10, 2014, in which it admitted that it could not rebut the claimed violations but nonetheless asserted that the proposed forfeiture amount should 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

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

² *DTV, L.L.C.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 10112 (Vid. Div. 2013).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") (July 10, 2014) at 1-2.

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 that the forfeiture amount should not be reduced from the amount proposed in the NAL.

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 or file electronically its Children's Television Programming Reports with the Commission in a timely manner for 15 quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules. Contrary to Licensee's assertions, providing evidence that any member of the public was deprived of timely access to the information¹⁰ is not a necessary element of a public file violation.

7. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹¹ 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

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 Licensee Response at 2.

¹¹ *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).

\$9,000. Licensee argues that the forfeiture amount should be reduced or cancelled because it cannot afford to pay the forfeiture.¹²

8. 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.¹³ Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.¹⁴

9. In the NAL, the Video Division proposed a forfeiture amount of \$9,000. Having carefully reviewed the Licensee's submitted documentation, we do not find a basis to reduce the forfeiture, as the forfeiture amount is in line with previous forfeitures the Commission has determined are not excessive relative to the Licensee's ability to pay.¹⁵

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,¹⁶ D.T.V., LLC SHALL FORFEIT to the United States the sum of Nine Thousand Dollars (\$9,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

11. In the event that the Licensee wishes to revert WPHA-CD to low power television status, the Licensee need only notify us of this election and request a change in status for the station.¹⁷ Should the Licensee elect to 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 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

¹² Licensee Response at 2-3.

¹³ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

¹⁴ The Licensee provided tax returns and requested that the returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules.

¹⁵ *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Bruno Goodworth Network, Inc.*, Forfeiture Order, DA 13-1585, 2013 WL 3777827 (Vid. Div. Jul. 18, 2013) (forfeiture amount reduced to approximately 7 percent of the violator's gross revenues). We only evaluate the Licensee's ability to pay the \$9,000 forfeiture issued by the Media Bureau nearly a year ago. The Licensee is free to submit a request for reduction or cancellation separately in response to the NAL issued by the Enforcement Bureau in April 2014.

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

¹⁷ See 47 C.F.R. § 73.6001(d).

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 D.T.V. LLC, 1903 South Greeley Highway, #127, Cheyenne, Wyoming, 82007-3447, and to its counsel, Peter Tannenwald, Esquire, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau