

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

In the Matter of:)	
)	
Vernon Watson)	FRN: 0003789047
Licensee of Station WBQP-CD)	NAL/Acct. No. 201241420014
Gulf Breeze, Florida)	Facility ID No. 69993

FORFEITURE ORDER

Adopted: May 22, 2013

Released: May 23, 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 Vernon Watson, licensee of Station WBQP-CD, Gulf Breeze, Florida, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to make the required electronic filings of the Station's Children's Television Programming Reports (FCC Form 398) with the Commission. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of One Thousand Dollars (\$1,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture in the amount of Three Thousand Dollars (\$3,000) on November 28, 2012.² The NAL notified the Licensee that the failure to file the reports electronically constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's rules.³ The NAL further noted that the violations appeared to result from inadvertence but that the Commission has repeatedly rejected human error and inadvertence as a basis for excusing a rule violation.

3. The Video Division received the Licensee's response on December 26, 2012. The Licensee claimed that he took immediate action to correct the deficiencies once he learned of them and that there was no willful intent to violate the Commission's rules. The Licensee acknowledged that the reports were not filed electronically as required under the Rules but blamed the deficiency on technical issues with the filing process.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

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

² *Vernon Watson*, Notice of Apparent Liability for Forfeiture, DA 12-1901 (Nov. 28, 2012).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ Licensee Response to Notice of Apparent Liability at 2.

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.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, however, that the forfeiture amount should be reduced to \$1,000.00.

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 admits it failed to file electronically its Children's Television Programming Reports with the Commission for six consecutive quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

7. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹⁰ 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."

8. In the NAL, the Commission proposed a forfeiture amount of \$3,000. The Commission exercises its discretion here to reduce the proposed forfeiture amount from \$3,000.00

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 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). In his response, the Licensee questions whether he received immediate notice of the Commission's letters, which were mailed to his address on record with the Commission. This issue is of no consequence as the Licensee ultimately received notice of both the letters and the Notice of Apparent Liability and was given the opportunity to respond in writing to both.

⁷ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (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 *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).

to \$1,000.00. The Commission reduces the forfeiture because (i) the Licensee has not been cited for any other deficiencies and (ii) the Licensee has demonstrated through the submission of financial documentation that the proposed forfeiture amount would cause financial hardship to the station.¹¹ The tax documentation submitted by Mr. Watson, as required under our Rules when seeking a reduction, shows that the Station has averaged just over \$37,000 in gross revenue for the three most recent years preceding the issuance of the NAL. Mr. Watson further states that his financial circumstances were uniquely challenged by the need to rebuild the Station in full following its destruction by Hurricane Ivan in 2004. Based on these factors, we exercise our discretion to reduce the forfeiture amount.

IV. ORDERING CLAUSES

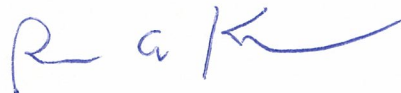
9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,¹² Vernon Watson SHALL FORFEIT to the United States the sum of One Thousand Dollars (\$1,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within fifteen (15) 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.

11. 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.

12. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Vernon Watson, 312 East Nine Mile Road, Suite 29D, Pensacola, Florida, 32514.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ Licensee Response at 2-3.

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