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

In the Matter of:	)	
	)	
	)	
Highland Park Broadcasting, LP	)	FRN: 0000014720
Licensee of Station W33BY	)	NAL/Acct. No. 201241420009
Detroit, Michigan	)	Facility ID No. 25722
	)	

FORFEITURE ORDER

Adopted: July 30, 2013 **Released: July 31, 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 Highland Park Broadcasting LP, licensee of Station W33BY, Detroit, Michigan, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to (i) file electronically with the Commission and (ii) place in its public inspection file 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 Thirteen Thousand Dollars ($13,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on November 21, 2012.[2] The NAL notified the Licensee that its failure to file timely its Children's Television Programming Reports for the first, second, and third quarters of 2006 and 2008 and all four quarters in 2007, 2009 and 2010 constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's rules[3] and that the Station's failure to prepare and upload the files also represented a violation of its obligation to maintain the reports in its public file. The Division concluded that the Licensee was apparently liable for a forfeiture of $13,000.

3. In a timely response dated June 24, 2013, the Licensee admitted that it could not rebut the claimed violations but nonetheless asserted that the proposed forfeiture amount should be reduced.[4]

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

[2] *Highland Park Broadcasting, LP*, Notice of Apparent Liability for Forfeiture, DA 12-1885 (Nov. 21, 2012).

[3] 47 C.F.R. § 73.3526(e)(11)(iii).

[4] Licensee Response to Notice of Apparent Liability ("Licensee Response") (June 24, 2013) at 1-2.

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 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 18 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 and a base forfeiture amount of $10,000 for public file violations.[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

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[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] *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).

require." In the NAL, the Commission proposed a forfeiture amount of $13,000. Licensee argues that the forfeiture amount should be reduced or cancelled.

8. The Licensee first argues that, despite the late filings, the Licensee met the intent of the Children's Television Act because the Station broadcast the children's programming in question.[11] We disagree. The preparation and filing of Children's Television Programming Reports with the Commission ensures that the public and the Commission are able to review on a real-time basis the adequacy of the station's efforts with respect to children's programming, and such public access is crucial to the success of the statute's goals.

9. The Licensee also argues that the forfeiture amount should be reduced or cancelled because its failure to file the required reports in a timely manner was based on funding and staff limitations.[12] The Commission has long held that inadvertence or human error is not a mitigating circumstance that would make the Licensee less culpable and therefore subject to a lesser forfeiture amount.[13] We have considered the Licensee's arguments and conclude that no reduction in the forfeiture amount is appropriate on this basis.

10. The Licensee further 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] Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.[16]

11. In the NAL, the Video Division proposed a forfeiture amount of $13,000. 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.[17]

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[11] Licensee Response at 1.

[12] Licensee Response at 1-2.

[13] *See Sage Broadcasting Corp.*, Letter Decision, 25 FCC Rcd 4556, 4558 (Vid. Div. 2010); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations"); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error).

[14] Licensee Response at 2-3.

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

[16] The Licensee states in its response that it was not required to file tax returns during the past three years but that the Licensee's general partner filed returns that reported the results of the station's operations from 2010 through 2012. Licensee Response at 2. The Licensee further requested that the returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules. *Id.* at 3.

[17] *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).

12. The Licensee has also requested a period of 120 days to pay the forfeiture imposed. We hereby grant this request for an extension of the normal forfeiture payment deadline.

IV. ORDERING CLAUSES

13. 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,[18] Highland Park Broadcasting, LP SHALL FORFEIT to the United States the sum of Thirteen Thousand Dollars ($13,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within one hundred and twenty (120) 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.

15. 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.

16. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Highland Park Broadcasting, LP, 160 Victor Street, Highland Park, Michigan, 48203, 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

[18] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).