

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

In the Matter of:
ZGS Broadcasting of Orlando, Inc.
Licensee of Station WTMO-CD
Orlando, Florida
FRN: 0011198512
NAL/Acct. No. 201341420033
Facility ID No. 10073

FORFEITURE ORDER

Adopted: September 12, 2013

Released: September 16, 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, we find that ZGS Broadcasting of Orlando, Inc., licensee of Station WTMO-CD, Orlando, Florida, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file electronically with the Commission the Station's Children's Television Programming Reports (FCC Form 398) in a timely manner and Section 73.3514(a) of the Rules by failing report the violations in its license renewal application. 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 July 18, 2013. The NAL notified the Licensee that the station failed to file timely its Children's Television Programming Reports for numerous quarters during the license period constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's Rules and that the Station's failure to report the violations in its renewal application constituted an apparent willful or repeated violation of Section 73.3514(a) of the Rules. The Division concluded that the Licensee was apparently liable for a forfeiture of \$9,000.

3. In a timely response dated August 16, 2013, the Licensee admitted that numerous reports were filed late but provided evidence supporting a reduction in the forfeiture amount.

1 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).
2 ZGS Broadcasting of Orlando, Inc., Notice of Apparent Liability for Forfeiture, DA 13-1586 (Jul. 18, 2013).
3 47 C.F.R. § 73.3526(e)(11)(iii).
4 47 C.F.R. § 73.3514(a).
5 Licensee Response to Notice of Apparent Liability ("Licensee Response") (Aug 16, 2013) at 1-5.

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.⁶ 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.⁷ 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.⁸ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's rules. We ultimately conclude that the forfeiture amount should be reduced from \$9,000 to \$6,000 based on the evidence provided by the Licensee.

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.⁹ 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.¹⁰

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

7. 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 several

⁶ 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).

⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁸ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

⁹ 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).

¹⁰ *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).

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).

quarters.¹² These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules. Moreover, the Licensee does not dispute that it failed to report the late filings in its renewal application. These deficiencies also constitute a violation of the relevant Commission rule.

8. The Licensee, however, provided evidence that the license for WTMO-CD was assigned from Tiger Eye Finance, Inc. to ZGS Broadcasting of Orlando, Inc. on January 23, 2007.¹³ Licensee argues that the forfeiture amount should be reduced given that certain of the late-filed reports occurred during the time when the previous licensee owned the station. We agree with the Licensee that the forfeiture amount should be reduced based on the evidence provided, and we thus reduce the proposed forfeiture for the late-filed reports from \$6,000 to \$3,000.

9. The Licensee also 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.¹⁴ 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.

10. The Licensee further argues that the forfeiture issued for the Licensee's failure to report the violations in its renewal application should be cancelled because the Licensee was unaware of the requirement to report violations in the renewal application and therefore the act was not "willful."¹⁵ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁶ As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the Commission's rules are willful violations.¹⁷ Licensees are expected to be aware of and comply with all Commission rules, and its failure to abide by the rule represented a willful violation.

11. In the NAL, the Video Division proposed a forfeiture amount of \$9,000. Having carefully reviewed the Licensee's submitted documentation, we reduce the forfeiture to \$6,000, given that certain of the violations occurred prior to the assignment of the station to ZGS Broadcasting of Orlando, Inc.¹⁸

¹² Licensee Response at 2.

¹³ Licensee Response at 2-3 (attaching consent to assignment form for File No. BALTTA-20061013ADD).

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ *Communication Systems, Inc.*, Forfeiture Order, 25 FCC Rcd 12516, 12517 (MB 2010). *See also Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

¹⁸ *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).

IV. ORDERING CLAUSES

12. 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 ZGS Broadcasting of Orlando, Inc. 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) and 47 C.F.R. 73.3514(a).

13. 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.

14. 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.

15. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to ZGS Broadcasting of Orlando, Inc., 2000 North 14th Street, Suite 400, Arlington, Virginia, 22201, and to its counsel, David M. Silverman, Esq., Davis Wright Tremaine, 1919 Pennsylvania Avenue N.W., Suite 800, Washington, D.C. 20006-3401.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

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