

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

In the Matter of:)
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)
Waters & Brock Communications, Inc.) FRN: 0003762069
Licensee of Station WARZ-LD) NAL/Acct. No. 201341420029
Smithfield-Selma, North Carolina) Facility ID No. 71089
)

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,¹ we find that Waters & Brock Communications, Inc., licensee of Station WARZ-LD, Smithfield-Selma, North Carolina, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to prepare, place in its public file, and 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 to report the violations in its renewal application. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Twelve Thousand Dollars (\$12,000.00).

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 for 29 quarters during the license period constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's rules³ and that the Station's failure to report the violations in its renewal application represented a violation of Section 73.3514(a) of the Rules.⁴ The Division concluded that the Licensee was apparently liable for a forfeiture of \$16,000.

3. In a timely response dated July 31, 2013, the Licensee admitted that it could not rebut the claimed violations with respect to the late filing of the Children's Television Programming Reports but disputed the forfeiture with respect to the failure to report the violations in the renewal application. The Licensee also asserted that the proposed forfeiture

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

² *Waters & Brock Communications, Inc.*, Notice of Apparent Liability for Forfeiture, DA 13-1547 (Jul. 11, 2013).

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ 47 C.F.R. § 73.3514(a).

amount should be reduced for various reasons, including its ability to pay.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 Section 73.3526(e)(11)(iii) and Section 73.3514(a) of the Commission's rules. We ultimately conclude that the forfeiture amount should be reduced from \$16,000 to \$12,000.

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 Commission rules further require that each application filed by a licensee "shall include all information called for by the particular form on which the application is required to be filed. ..." ¹¹

6. 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.¹² In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or

⁵ Licensee Response to Notice of Apparent Liability ("Licensee Response") (July 31, 2013) at 1-4.

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 47 C.F.R. § 73.3514(a).

¹² *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).

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 \$16,000.

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 29 quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules. 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.¹³ 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, in arguing for a reduction of the forfeiture amount, also cites to a recent matter in which the Commission issued a \$2.25 million forfeiture against a licensee for violations of the Commission’s retransmission consent rules but decided not to make an upward adjustment of the forfeiture based in part on the “relatively small size and limited operations” of the business in question.¹⁴ But the Commission limited that decision to the “unique facts of the case” in question and in fact did not reduce the proposed forfeiture based on the size of the business; it merely declined to make an upward adjustment to the proposed forfeiture.¹⁵

10. The Licensee also objects to the issuance of a forfeiture based on its failure to report the violations in its renewal application. The Licensee claims that it was not required to report the violations because the Commission’s April 11, 2012 letter of inquiry identifying potential violations cannot be deemed a finding that would require reporting under Section II, Question 4 of the renewal application.¹⁶ We conclude that the violations identified in the April 11, 2012 letter are just the type of preliminary finding required to be disclosed under the renewal application instructions, particularly given the Licensee’s admission of the violations in its May 10, 2012 response to the letter of inquiry.¹⁷

11. Regardless, however, the Licensee is required under Section IV, Question 3 of the renewal application to certify that the documentation required under Section 73.3526 of the Rules has been placed in the public file at the appropriate times and, if not, to submit an exhibit of explanation for why it has failed to do so. The Licensee certified that the documentation was placed in the public file at the appropriate times and did not submit an exhibit of explanation. Thus, even if the Licensee is correct that the violations identified in the April 11, 2012 were not required to be reported under Section II, Question 4, and we contend that the Licensee is not

¹³ Licensee Response at 1-2.

¹⁴ Licensee Response at 2 (citing *TV Max, Inc. and Broadband Ventures Six, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 9470 at *8 (2013)).

¹⁵ *TV Max, Inc. and Broadband Ventures Six, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 9470 at *8.

¹⁶ Licensee Response at 3.

¹⁷ See May 10, 2012 Letter from Peter Tannenwald and Michelle A. McClure to Joyce Bernstein, Video Division.

correct, the Licensee unquestionably omitted information that it was required to report under Section IV, Question 3.

12. The Licensee further argues that its history of compliance militates in favor of a reduction.¹⁸ Given the extensive and egregious violations of the public file rule during the license period—a total of 29 reports were filed late—we do not see a basis to reduce the forfeiture based on a past history of compliance.

13. Licensee finally argues that it cannot afford to pay the forfeiture.¹⁹ The Commission will not consider reducing or canceling a forfeiture in response to a claimed 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.²⁰ Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.²¹

14. In the NAL, the Video Division proposed a forfeiture amount of \$16,000. Having carefully reviewed the Licensee’s submitted documentation, we reduce the forfeiture to \$12,000, and we conclude the revised forfeiture amount is in line with previous forfeitures the Commission has determined are not excessive relative to the Licensee’s ability to pay.²²

IV. ORDERING CLAUSES

15. 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,²³ Waters & Brock Communications, Inc. SHALL FORFEIT to the United States the sum of Twelve Thousand Dollars (\$12,000) for repeatedly violating 47 C.F.R. § 73.3526(e)(11)(iii) and 47 C.F.R. § 73.3514(a).

16. 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.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

²¹ The Licensee submitted tax returns for 2010 and 2011 and a statement from a CPA for its 2012 records. Licensee Response at 4. 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.

²² *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).

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

17. 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.

18. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Waters & Brock Communications, Inc., P.O. Box 1826, Smithfield, North Carolina, 27577, and to its counsel, Peter Tannenwald, Esquire, and Michelle A. McClure, Esquire, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau