

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

In the Matter of:	)	
	)	
Harpole Telecom Inc.	)	
Licensee of Station WUWT-CD	)	FRN: 0021840418
Union City, Tennessee	)	NAL/Acct. No. 201341420051
	)	Facility ID No. 32216

**FORFEITURE ORDER**

**Adopted: January 6, 2014**

**Released: January 7, 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,<sup>1</sup> we find that Harpole Telecom Inc., licensee of Station WUWT-CD, Union City, Tennessee, 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) 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 Four Thousand Five Hundred Dollars (\$4,500.00).

**II. BACKGROUND**

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on September 27, 2013.<sup>2</sup> The NAL notified the Licensee that its failure to file timely its Children's Television Programming Reports for multiple quarters during the license period constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Commission's rules<sup>3</sup> 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.<sup>4</sup> The Division concluded that the Licensee was apparently liable for a forfeiture of \$20,000.

3. In a timely response dated October 24, 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 amount should be reduced for various reasons, including its ability to pay.<sup>5</sup>

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

<sup>2</sup> *Harpole Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, DA 13-1995 (Sept. 27, 2013).

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>4</sup> 47 C.F.R. § 73.3514(a).

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

### 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 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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 \$20,000 to \$4,500.

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.<sup>9</sup> 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.<sup>10</sup> 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. ..."<sup>11</sup>

6. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form or provide required information.<sup>12</sup> 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."

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<sup>6</sup> 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).

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

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

<sup>9</sup> 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).

<sup>10</sup> *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).

<sup>11</sup> 47 C.F.R. § 73.3514(a).

<sup>12</sup> *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).

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 multiple 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, in arguing for a reduction of the forfeiture amount, 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.<sup>13</sup> 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.<sup>14</sup>

9. 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.<sup>15</sup> Section IV, Question 3 of the application clearly requires the Licensee to certify that the documentation required by Section 73.3526 . . . has been placed in the station's public inspection file at the appropriate times."<sup>16</sup>

10. The Licensee further argues that its history of compliance militates in favor of a reduction.<sup>17</sup> Given the extensive and egregious violations of the public file rule during the license period, we do not see a basis to reduce the forfeiture based on a past history of compliance.

11. Licensee finally argues that it cannot afford to pay the forfeiture.<sup>18</sup> 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.<sup>19</sup> Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.<sup>20</sup>

12. In the NAL, the Video Division proposed a forfeiture amount of \$20,000. Having carefully reviewed the Licensee's submitted documentation, we reduce the forfeiture to \$4,500, and

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<sup>13</sup> Licensee Response at 4 (citing *TV Max, Inc. and Broadband Ventures Six, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 9470 at \*8 (2013)).

<sup>14</sup> *Waters & Brock Communications, Inc.*, Forfeiture Order, DA 13-1894 (Sept. 16, 2013 (citing *TV Max, Inc. and Broadband Ventures Six, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 9470 at \*8).

<sup>15</sup> Licensee Response at 3.

<sup>16</sup> *Harpole Telecom, Inc.*, Notice of Apparent Liability for Forfeiture at 1 (quoting Section IV, Question 3 of the Form 303-S license renewal application).

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

<sup>20</sup> The Licensee submitted tax returns for 2010-2012. The Licensee further requested that the returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules. Licensee Response at 3.

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.<sup>21</sup>

#### 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,<sup>22</sup> Harpole Telecom, Inc. SHALL FORFEIT to the United States the sum of Four Thousand Five Hundred Dollars (\$4,500) for repeatedly violating 47 C.F.R. § 73.3526(e)(11)(iii) and 47 C.F.R. § 73.3514(a).

14. 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.

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 Harpole Telecom, Inc., 3008 Lake Drive, Union City, Tennessee, 38261-2916, and to its counsel, Peter Tannenwald, Esquire, and Davina Sashkin, Esquire, Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

<sup>21</sup> *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).

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).