

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

| | | |
|------------------------------|---|----------------------------|
| In the Matter of: |) | |
| |) | |
| Liberty Communications, Inc. |) | FRN: 0021232889 |
| Licensee of Station W50CH |) | NAL/Acct. No. 201441420006 |
| Alton, Illinois |) | Facility ID No. 37238 |

FORFEITURE ORDER

Adopted: April 25, 2014

Released: April 25, 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,¹ we find that Liberty Communications, Inc, licensee of Station W50CH, Alton, Illinois, repeatedly violated (i) Section 73.3526(e)(11)(i) by failing to file the Station's quarterly issues/programs lists and (ii) 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. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Four Thousand Two Hundred Dollars (\$4,200.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on February 10, 2014.² The NAL notified the Licensee that its failure to file its issues/programs lists for 26 quarters and its failure to file timely its Children's Television Programming Reports for 17 quarters during the license period constituted an apparent willful or repeated violation of Sections 73.3526(e)(11)(i) & (iii) of the Commission's rules.³ The Division concluded that the Licensee was apparently liable for a forfeiture of \$13,000. In a timely response dated March 26, 2014, the Licensee did not dispute the violations but asserted that the proposed forfeiture amount should be reduced based on its ability to pay.⁴

III. DISCUSSION

3. 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

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

² *Liberty Communications, Inc.*, Notice of Apparent Liability for Forfeiture, DA 14-169 (Feb. 10, 2014).

³ 47 C.F.R. § 73.3526(e)(11)(i) & (iii).

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") (Mar. 26, 2014).

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 Sections 73.3526(e)(11)(i) & (iii) of the Commission's rules. We ultimately conclude that the forfeiture amount should be reduced from \$13,000 to \$4,200.

4. 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 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. ..." ¹⁰ Moreover, each Class A television station must prepare and place in its public inspection file on a quarterly basis an issues/programs list demonstrating that the station aired programming that meets the needs and interests of its community of license ¹¹ and must upload the issues/programs lists to the Commission's website. ¹²

5. Commission policy establishes a base forfeiture amount of \$10,000 for public file violations and \$3,000 for failure to file a required form or provide required information.¹³ 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."

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 47 C.F.R. § 73.3514(a).

¹¹ 47 C.F.R. § 73.3526(e)(11)(i).

¹² *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 27 FCC Rcd at 4568-69; 47 C.F.R. § 73.3526(b)(2); and § 73.3526(e)(17).

¹³ *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).

6. The Licensee does not dispute that it failed to file its issues/programs lists and Children's Television Programming Reports with the Commission in a timely manner. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

7. The Licensee argues that the forfeiture amount should be reduced because it cannot afford to pay the forfeiture.¹⁴ 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.¹⁵ Here, the Licensee provided financial documentation in an effort to support its argument that it cannot pay the forfeiture amount.¹⁶

8. In the NAL, the Video Division proposed a forfeiture amount of \$13,000. Having carefully reviewed the Licensee's submitted documentation, we reduce the forfeiture to \$4,200, 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.¹⁷

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,¹⁸ Liberty Communications, Inc. SHALL FORFEIT to the United States the sum of Four Thousand Two Hundred Dollars (\$4,200) for repeatedly violating 47 C.F.R. § 73.3526(e)(11)(i) & (iii).

10. In the event that the Licensee wishes to revert W50CH to low power television status, the Licensee need only notify us of this election and request a change in status for the station.¹⁹ Should the Licensee elect to revert the station to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

11. 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 *Id.* at 4.

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

¹⁶ The Licensee submitted accounting statements for 2011-2013.

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).

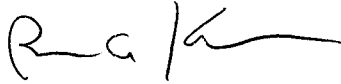
¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

¹⁹ See 47 C.F.R. § 73.6001(d).

12. 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.

13. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Liberty Communications, Inc., P.O. Box 1044, Alton, Illinois, 62002, and to its counsel, Michael Couzens, P.O. Box 3642, Oakland, California, 94609.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau