

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

In the Matter of)	
)	
Studio 51 Multi Media Productions, Ltd.)	Facility I.D. No. 1104
Licensee of Station WMNO-CA)	NAL/Acct. No.: 20141420010
Bucyrus, Ohio)	FRN: 0018086967

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 7, 2014

Released: October 7, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION:

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),¹ the Commission finds that Studio 51 Multi Media Productions Ltd., (the "Licensee"), licensee of Station WMNO-CA, Bucyrus, Ohio ("WMNO-CA"), willfully and repeatedly violated: (1) Section 73.3539(a) the Commission's Rules by failing to timely file with the Commission its license renewal application (Form 303-S); (2) Section 301 of the Act by engaging in unauthorized operation of WMNO-CA after its authorization had expired; (3) Section 73.3526(e)(11)(iii) of the Rules² by failing to file with the Commission in a timely manner Children's Television Programming Reports (FCC Form 398) for eight quarters; (4) Section 73.3514(a) of the Rules for failing to report the late filings of its Children's Television Programming Reports in its license renewal application; and (5) Section 73.3615(a) of the Rules for failing to file in a timely manner its 2011 biennial ownership report. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of Sixteen Thousand Dollars (\$16,000).

II. BACKGROUND.

2. Section 73.3539(a) of the Rules requires a broadcast television license renewal application to be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed...."³ The last license renewal for WMNO-CA was granted on October 20, 2005, and expired on October 1, 2013. In accordance with Section 73.3539(a) of the Rules, the Licensee was required to file its license renewal application on or before June 1, 2013. On November 22, 2013, having failed to file its license renewal application prior to the expiration of the license, the Licensee sought special temporary authority ("STA") to continue operations. The Licensee filed its license renewal application on December 4, 2013, six months and three days late.⁴ Furthermore, for a 52

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

² 47 C.F.R. § 73.3526.

³ 47 C.F.R. § 73.3539(a).

⁴ See FCC File No. BRTTA-20131204AID.

day period between the license expiration and the filing of the STA, WMNO-CA operated without a valid instrument of authorization in violation of Section 301 of the Act.⁵

3. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.⁶ A review of the Station's online public file has revealed that the station failed to file eight Children's Television Programming Reports in a timely manner.

4. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . ."⁷ Section IV, Question 3 of the license renewal application requires licensees to certify "that the documentation, required by 47 C.F.R. Section 73.3526...has been placed in the station's public inspection file at the appropriate times."⁸ The license renewal application also requires licensees to certify that it has filed with the Commission its Children's Television Programming Reports according to the requirements of Section 73.3526 of the Commission's rules and if the Licensee has failed to do so to submit a statement of explanation as an exhibit.⁹ The Licensee failed to report the eight late filed Children's Television Programming Reports in its license renewal application.

5. Lastly, Section 73.3615(a) of the Rules requires that every two years all full-power AM, FM, TV, LPTV, and Class A stations, and entities with attributable interests are required to file a ownership report using FCC Form 323.¹⁰ In Exhibit 17 of its license renewal application, the Licensee reports that it inadvertently failed to file its 2011 ownership report with the Commission due to a lack of familiarity with Commission's electronic systems. Class A stations were required to file 2011 biennial ownership reports with the Commission on or before December 1, 2011.¹¹

III. DISCUSSION

6. The Licensee failed to file a timely application for renewal of its broadcast license for WMNO-CA. A license renewal application was not filed with the Commission until December 4, 2013—six months and three days after the filing deadline and two months and three days after the license to operate WMNO-CA expired. This late filing constitutes an apparent willful and repeated violation of Section 73.3539(a) of the Rules. The License also did not file a STA requesting permission to continue authorized operation of WMNO-CA for one month and 21 days following license expiration. The Licensee's continued unauthorized operation of WMNO-CA during this period represents an apparent willful and repeated violation of Section 301 of the Act. The Licensee also willfully and repeatedly

⁵ 47 U.S.C. § 301.

⁶ 47 C.F.R. § 73.3526(e)(11)(iii).

⁷ 47 C.F.R. § 73.3514(a).

⁸ FCC Form 303-S.

⁹ *Id.* at Section IV, Question 6.

¹⁰ 47 C.F.R. § 73.3615(a).

¹¹ See *Media Bureau Announces Opening of Filing Window for 2011 Biennial Ownership Reports, Form 323*, Public Notice, 26 FCC Rcd 13426 (MB 2011). A copy of a station's biennial ownership report is required to be kept in the station's public file pursuant to Section 73.3526(e)(5) of the Rules, 47 U.S.C. § 73.3526(e)(5).

violated Section 73.3526(e)(11)(iii) of the Rules by failing to file eight Children's Television Programming Reports in a timely manner. The Licensee's failure to report these violations on its license renewal application constitutes an apparent willful and repeated violation of Section 73.3514(a) of the Rules. Lastly, the Licensee willfully and repeatedly violated Section 73.3615(a) of the Rules by failing to file its 2011 Biennial Ownership Report in a timely manner.

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, 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."¹² 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.¹³ Furthermore, the Commission has held that any inadvertent errors, oversights or failures to become familiar with Commission requirements are willful violations.¹⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ Section 312(f)(2) of the Act also provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹⁷

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹⁸ The guidelines also specify a base forfeiture amount of \$10,000 for station construction and/or operation without an instrument of authorization for the service.¹⁹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "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."²⁰

¹² 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

¹³ 47 U.S.C. § 312(f)(1); See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "Commission interpretations of 'willful' do not require licensee intent to engage in a violation").

¹⁴ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that "[t]he fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional"); see also *Southern California*, 6 FCC Rcd at 4387 (finding that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *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").

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See *Southern California*, 6 FCC Rcd at 4388.

¹⁷ 47 U.S.C. § 312(f)(2); see also *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

¹⁸ 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) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd. 303 (1999); 47 C.F.R. § 1.80(b), note to paragraph (b)(8), Section I.

¹⁹ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²⁰ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8); 47 C.F.R. § 1.80(b), note to paragraph (b)(8), Section II.

9. In this case the Licensee filed its renewal application over three months, causing significant delay in consideration of the licensee's renewal application for both the public and the Commission. However, because the Licensee had previously been licensed to operate WMNO-CA, its transgressions are not comparable to "pirate" wireless operations, which in the past have been subject to forfeitures of approximately \$10,000.²¹ Typically, the Media Bureau has assessed forfeitures in the amount of \$7,000 against licensees for violations of Section 73.3539 of the Rules and Section 301 of the Act.²² In this instance, we find a forfeiture in the amount of \$7,000 to be appropriate. We also propose a forfeiture in the amount of \$3,000 for the Licensee's failure to file eight Children's Television Programming Reports in a timely manner; \$3,000 for the Licensee's failure to report these violations on its license renewal application; and \$3,000 for the Licensee's failure to file its 2011 Biennial Ownership Report in a timely manner. Accordingly, we propose a total forfeiture in the amount of \$16,000 for the Licensee's apparent willful and repeated violations of Sections 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615 of the Commission's Rules, and Section 301 of the Act.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Studio 51 Multi Media Productions, Ltd., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Sixteen Thousand Dollars (\$16,000) for its apparent willful and repeated violations of Sections 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615(a) of the Commission's Rules and Section 301 of the Communications Act of 1934, as amended.

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's Rules, that within thirty (30) days of the release date of this *NAL* Studio 51 Multi Media Productions, Ltd. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. In the event that Studio 51 Multi Media Productions, Ltd. wishes to revert WMNO-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the station.²³ Should Studio 51 Multi Media Productions, Ltd. elect to revert WMNO-CA to low power status, it would no longer be apparently liable for the forfeiture amount described herein.

13. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications

²¹ See *Gospel Media, Inc.*, Letter, 19 FCC Rcd 15600, 15601 (MB 2004) (citing *Jean R. Jonassaint*, 15 FCC Rcd 10422 (E.B. 2000)).

²² See, e.g., *Media Associates, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3703 (2007) (\$7,000 forfeiture issued for unauthorized operation of more than one year after station's license had expired).

²³ See 47 C.F.R. § 73.6001(d).

Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Evan S. Morris, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁴

16. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵

17. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Studio 51 Multi Media Productions, Ltd., 1995 Marion-Bucyrus Road, Marion, OH 43302, and to its counsel, Scott Woodworth, Edinger Associates PLLC, 1875 I Street, N.W., Suite 500, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁴ See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that "[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").

²⁵ See 47 C.F.R. § 1.1914.