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

In the Matter of	)	
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Studio 51 Multi Media Productions, Ltd.	)	Facility ID No. 1104
Licensee of Station WMNO-CD (f/k/a WMNO-	)	NAL/Acct. No.: 20141420010
CA), Bucyrus, Ohio	)	FRN: 0018086967

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 2015 **Released: June 10, 2015**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division ("Division") has before it a Petition for Reconsideration ("Petition") filed by Studio 51 Multi Media Productions Ltd., (the "Licensee"), licensee of Station WMNO-CA, Bucyrus, Ohio ("WMNO-CA"). The Licensee seeks reconsideration of a forfeiture in the amount of Six Thousand Dollars ($6,000) issued against it for violations of: (1) Section 73.3539(a) the Commission's Rules (the "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 Rules 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 on a review of the facts and circumstances, we find that cancellation of the forfeiture is warranted.

II. BACKGROUND

2. On October 7, 2014, the Division issued a *Notice of Apparent Liability for Forfeiture* proposing a monetary forfeiture in the amount of $16,000 against the Licensee for violations of the Rules and the Act.[1] Petitioner filed a timely response on November 6, 2014, in which it did not dispute that it committed the violations, but requested a reduction or cancellation of the forfeiture due to its inability to pay. On March 19, 2015, the Video Division issued a *Forfeiture Order* reducing the forfeiture to $6,000 based on the tax documents demonstrating the Licensee's inability to pay.[2] The Licensee filed a timely Petition for Reconsideration on April 20, 2015, stating that the Division did not properly calculate the reduced forfeiture amount and reasserted that as a result of the Licensee's inability to pay cancellation of the forfeiture is warranted.

III. DISCUSSION

3. In *the Forfeiture Order* we determined that the Licensee did not provide enough evidence for the Division to find that the Station is in severe financial distress and could not afford to pay any forfeiture. While other financial indicators may be considered, typically the Commission uses gross

[1] *Studio 51 Multi Media Productions, Ltd.,* Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11798 (Vid. Div. 2014).

[2] *Studio 51 Multi Media Productions, Ltd.,* Forfeiture Order, DA 15-345 (Vid. Div. 2014)("*Forfeiture Order*").

revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.[3] Operating losses alone do not mean a licensee cannot afford to pay.[4] In the past, we have cancelled forfeitures based on operating losses only in extreme cases of severe financial distress, including if as a result of operating losses the licensee was facing foreclosure, was unable to secure funding to cover its losses, that its owners personally guaranteed loans on its behalf, or that the station was of an inherently low value.[5] In its Response the Licensee failed to make such a showing and the Division was left to evaluate whether cancellation was appropriate based solely on operating losses as listed in the Station's tax returns. While the Licensee cited the Audio Division's decision in *Valley Air* as an example of where a forfeiture was canceled solely on the grounds of operating losses,[6] the Division did not find the circumstance in *Valley Air* to be analogous.[7] Furthermore, upon examination, a majority of the Licensee's purported operating losses were made up of undisclosed "deductions" and "depreciation." The Division determined that not enough evidence was provided to independently support cancelling the forfeiture based on operating losses alone.[8]

4. A petition for reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.[9] In its Petition the Licensee provides additional support for its claim that the Station is in severe finical distress and that cancellation of the forfeiture is warranted. In addition to providing additional documents regarding the significance and relevance of various "deductions" and "depreciation" listed on the Station's tax returns, the Petition notes the owner and Station and employees of the Station have had to guarantee personal loans in order to keep the Station operating.[10] While the Petition relies on facts that were previously known to the Licensee and not presented to the Division, under Section 1.106(c)(2) of the Rules we may consider these arguments if such consideration is required in the public interest.[11] We find that consideration of the facts presented in the Petition is in the public interest given the financial state of the Station and based on the evidence presented cancellation of the forfeiture is warranted.

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[3] *See e.g., San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

[4] *See e.g., PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992)

[5] *See e.g., First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996)(considering that the station's losses exceeded its income and that the sole shareholder funded those losses and received no income from the station when reducing proposed forfeiture); *Pinnacle Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15496 (1996)(considering that the licensee was in default of a loan personally guaranteed by licensee's owner, that the loan was entered into to avoid foreclosure, and that the licensee and its owner would receive no cash from sale of the license when cancelling forfeiture); *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995)(considering the fact that the station was a directional daytime-only radio station licensed to a community of 425 when reducing proposed forfeiture).

[6] *Valley Air, LLC*, Letter Decision, 24 FCC Rcd 5505 (Aud. Div. 2009)(cancelling a $4,000 forfeiture because the Station's operating losses exceeded its revenue by nearly fifty percent).

[7] *Forfeiture Order* at ¶ 7.

[8] *Id.* at ¶ 8.

[9] *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *see generally* 47 C.F.R. § 1.106(c).

[10] In its Petition the Licensee provides supporting documents relating to operating losses reported on its tax returns for 2011-2013. It also includes its 2014 tax returns. This includes information related to loans obtained by the owner (Mr. Ron Scheiderer) and employees of the Station in order to support continued operations. The Licensee has requested that the financial documents attached to the Petition be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules. 47 C.F.R. § 0.457(d)(2).

[11] 47 C.F.R. 1.106(c)(2).

5. Nonetheless, in light of the numerous violations that have occurred, which the Licensee has not disputed, we admonish the Licensee for its willful and/or repeated violations of Sections 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615 of the Rules and Section 301 of the Act. We note that cancellation or reduction of a forfeiture based on an entities inability to pay is not required by the Rules or the Act, but wholly within the discretion of the Commission or its designated authority.[12] Therefore, we remind the Licensee that a request for cancellation or reduction of a forfeiture in the may not yield the same result.[13]

IV. ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that the Petition for Reconsideration filed by Studio 51 Multi Media Productions Ltd. IS GRANTED and the forfeiture in the amount of $6,000 forfeiture **IS CANCELLED**.

7. **IT IS FURTHER ORDERTED** that Studio 51 Multi Media Productions, Ltd., IS **ADMONISHED** for its willfully and/or repeated violations of Section 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615 of the Commission's Rules,[14] and Section 301 of the Act.[15]

8. **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

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[12] In determining the appropriate forfeiture amount, the Commission may adjust the forfeiture 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." 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.

[13] The Licensee also points out in its Petition that the reduced forfeiture amount of $6,000 was based on the Licensee's aggregate gross revenue. The Licensee correctly asserts that the reduction should have been based on the average gross revenue, not the aggregate gross revenue. Since we have canceled the forfeiture the amount the forfeiture should have bene reduced is now moot.

[14] 47 C.F.R. §§ 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615.

[15] 47 U.S.C. § 301.