

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

In the Matter of
Son Broadcasting, Inc.
Licensee of Station KCHF
Santa Fe, New Mexico
Facility I.D. No. 60793
NAL/Acct. No.: 201541420005
FRN: 0005765680

FORFEITURE ORDER

Adopted: November 19, 2015

Released: November 19, 2015

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 ("Rules"), we find that Son Broadcasting, Inc., licensee of Station KCHF, Santa Fe, New Mexico, willfully and/or repeatedly violated: (1) 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 in a timely manner; and (2) Section 73.3514(a) of the Rules by failing to report the violations in its license renewal application. Based upon our review of the facts and circumstances, we find the Licensee liable for a forfeiture in the amount of four thousand, five hundred dollars (\$4,500).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on May 4, 2015. The NAL notified the Licensee that the station's failure to timely file its Children's Television Programming Reports for eight quarters during the license period constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules and that the Station's failure to report the violations in its license renewal application constituted an apparent willful and/or repeated violation of Section 73.3514(a) of the Rules. The Division concluded that the Licensee was apparently liable for a monetary forfeiture in the amount of \$6,000.

3. In a timely response dated May 29, 2015, the Licensee admitted that it failed to file its Children's Television Programming Reports in a timely manner and failed to disclose this in its license renewal application. However, the Licensee pointed out that it did in fact file an amendment to its renewal application on December 15, 2014 which disclosed the late-filed children's television programming reports once it became aware of its error in failing to report these late-filings. Therefore, the Licensee argues that it should not be treated the same as a Licensee who fails to comply entirely with this disclosure rule. The Licensee also notes that it has a history of complying with Commission Rules and

1 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).
2 Son Broadcasting, Inc., Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 4517 (Vid. Div. 2015).
3 See 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

has never before been assessed a forfeiture. Taking these facts into consideration, the Licensee requests a downward adjustment in any forfeiture that is assessed by the Commission.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.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)(iii) and 73.3514(a) of the Commission's rules. We ultimately conclude that the proposed forfeiture amount should be reduced from \$6,000 to \$4,500.

5. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form or information.⁸ 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) of the Communications Act of 1934, as amended (the "Act"), 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."

6. In its Response, the Licensee does not dispute that it failed to file its Children's Television Programming Reports with the Commission in a timely manner and that it failed to report this in its license renewal application as described in the NAL. These deficiencies, regardless of the cause, constitute a violation of Commission rules. The Licensee nonetheless requests a reduction in the forfeiture amount because it attempted to correct its failure to disclose these late-filings after realizing its error. This effort, the Licensee argues, should not result in receipt of the same forfeiture the Commission assesses those who fail entirely to comply with this rule. The Licensee thus requests a downward adjustment in forfeiture.

7. In determining the appropriate forfeiture amount, we have considered the factors set forth in Section 503(b)(2)(E) of the Act. We have decided to make a downward adjustment of the forfeiture based

⁴ Licensee Response to Notice of Apparent Liability ("Licensee Response") (May 29, 2015).

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 *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).

on the Licensee's attempt to mitigate its non-compliance with Section 73.3514(a) of the Commission's rules by amending its license renewal application to provide disclosure, albeit six months late. We believe that although the station violated Section 73.3514(a) of the rules, its good faith attempt to correct its error via an amendment justifies a reduction in forfeiture. Having carefully reviewed the Licensee's response and the facts and circumstances before us, we reduce the forfeiture from \$6,000 to \$4,500.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Act, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Rules,⁹ Son Broadcasting, Inc. SHALL FORFEIT to the United States the sum of four thousand, five hundred dollars (\$4,500) for violating 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

9. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Electronic notification of payments should also be sent to Alison Nemeth at Alison.Nemeth@fcc.gov on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code).¹¹

- 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.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then 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.

10. Any request for full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹² If there are questions regarding payment procedures, the respective Company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

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

¹⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹¹ Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

¹² See 47 C.F.R. § 1.1914.

Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Alison L. Nemeth, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. In addition, to the extent practicable, a copy of the response, if any, should be sent via e-mail to Alison.Nemeth@fcc.gov.

12. 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 practices (“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.¹³

13. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Son Broadcasting, Inc., P.O. Box 4338, Albuquerque, New Mexico 87196, and to its counsel, A. Wray Fitch III, Esq., Gammon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, Virginia 22102-3807.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹³ 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....”).