

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

In the Matter of)	
)	
Abacus Television)	Facility ID Nos. 68395, 68403, and 257
Former Licensee of Stations WBYP-CD,)	NAL/Acct. Nos.: 20151420022,
Pittsburgh, Pennsylvania; WTOO-CD, Bolivar,)	201541420023, 201541420024 (respectively)
Pennsylvania; and WWAT-CD, Charleroi,)	FRN: 0008390981
Pennsylvania)	

FORFEITURE ORDER

Adopted: April 17, 2017

Released: April 17, 2017

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), (2) of the Commission's rules (Rules),¹ we find Abacus Television (Abacus), the former licensee of Stations WBYP-CD, Pittsburgh, Pennsylvania;² WTOO-CD, Bolivar, Pennsylvania; and WWAT-CD, Charleroi, Pennsylvania (collectively the "Stations") willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules³ by failing to file in a timely manner a total of 28 quarterly Children's Television Programming Reports. Based upon our review of the facts and circumstances before us, we conclude that Abacus is liable for a monetary forfeiture in the amount of Five Thousand, Two Hundred and Fifty Dollars (\$5,250).⁴

II. BACKGROUND

2. On August 11, 2015, the Video Division (Division) issued three separate *Notices of Apparent Liability (NAL)* proposing a monetary forfeiture in the amount of: (1) \$9,000 for WBYP-CD,⁵ (2) \$6,000 for WTOO-CD,⁶ and (3) \$6,000 for WWAT-CD.⁷ The *NALs* notified Abacus that its failure to

¹ 47 CFR §§ 0.61(f)(1), 1.80(a)(1), (2).

² Formerly licensed to Johnstown, Pennsylvania. See FCC File No. BRTTA-20150401ACX.

³ 47 CFR § 73.3526(e)(11)(iii).

⁴ An application for assignment of the licenses for the Stations to Fifth Street Enterprises, LLC, was granted on August 26, 2015 and consummated on October 2, 2015. See File No. BAL-20150409AAJ. The Division maintains authority to issue this Forfeiture Order as Abacus remains a Commission licensee and permittee. See 47 U.S.C. § 503(b). Abacus is licensee of one digital Class A station, four analog low power television stations, and the permittee of two digital low power television facilities.

⁵ *Abacus Television, Licensee of Station WBYP-CD*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8346 (Vid. Div. 2015) (proposing a forfeiture for failing to file Children's Television Programming Reports in a timely manner for twelve quarters).

⁶ *Abacus Television, Licensee of Station WTOO-CD*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8338 (Vid. Div. 2015) (proposing a forfeiture for failing to file Children's Television Programming Reports in a timely manner for eight quarters).

⁷ *Abacus Television, Licensee of Station WWAT-CD*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8342 (Vid. Div. 2015) (proposing a forfeiture for failing to file Children's Television Programming Reports in a timely manner for eight quarters).

timely file Children's Television Programming Reports (FCC Form 398) for each of the Stations constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.⁸ Abacus filed a timely Response to the *NALs* requesting reduction or cancellation of the proposed forfeitures. Abacus does not dispute that it committed the violations, but argued that cancellation of the proposed forfeitures are warranted since over the three years preceding release of the *NALs* the Stations have consistently operated with losses that significantly exceed their gross revenue. In the alternative, Abacus contends that reduction is appropriate because the forfeitures are excessive. Abacus provided financial documentation in an effort to demonstrate its inability to pay the proposed forfeiture,⁹ including Abacus's prior three years of tax returns, as well as information pertaining to sources of income that support the Stations' operations.

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 the United States for a forfeiture penalty.¹⁰ 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.¹¹ 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.¹²

4. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules state that 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)(E) 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."¹³ 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. While other financial indicators may be considered, typically the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.¹⁴ Operating losses alone do not mean a licensee cannot afford to pay.¹⁵

⁸ 47 CFR § 73.3526(e)(11)(iii).

⁹ Abacus has requested that its tax returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules. Response at 1-2. In some instances the gross revenue amounts listed in the Response do not match the gross revenue amounts provided in the tax returns. Accordingly, for purposes of calculating whether reduction is appropriate we have used the amounts listed in Abacus's tax returns. Because Abacus has requested certain financial document be treated as confidential, including its tax returns, we do not discuss those specific amounts here.

¹⁰ 47 U.S.C. § 503(b)(1)(A), (B); 47 CFR § 1.80(a)(1), (2).

¹¹ 47 U.S.C. § 503(b); 47 CFR § 1.80(f).

¹² See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

¹³ 47 U.S.C. § 503(b)(2)(E); 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, 17100-01; 47 CFR § 1.80(b)(8); 47 CFR § 1.80(b), note to paragraph (b)(8), Section II.

¹⁴ See *San Jose State Univ.*, 26 FCC Rcd 5908 (2011) (noting that, "[t]ypically, the Commission uses gross revenue (continued....)

5. While Abacus's net operating losses alone do not warrant reduction or cancellation, when evaluating the financial information provided by Abacus in its totality, including its average gross revenue for the three years (2012, 2013 and 2014) preceding issuance of the *NALs*, as well as other financial information provided by Abacus concerning the Stations' operations, we find that the proposed forfeitures are excessive based on the particular facts of this case.¹⁶ As a result, we find that reduction of the proposed forfeitures are warranted as follows: (1) \$2,250 for WBYP-CD, (2) \$1,500 for WTOO-CD, and (3) \$1,500 for WWAT-CD. Accordingly, we find that Abacus is liable in the total amount of \$5,250 for its willful and/or repeated violations of section 73.3526(e)(11)(iii) of the Rules.¹⁷

IV. ORDERLING CLAUSES

6. **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) and (2) of the Commission's rules,¹⁸ Abacus Television, the former licensee of Stations WBYP-CD, Pittsburgh, Pennsylvania; WTOO-CD, Bolivar, Pennsylvania; and WWAT-CD, Charleroi, Pennsylvania SHALL FORFEIT to the United States Treasury the sum of Five Thousand, Two Hundred and Fifty Dollars (\$5,250) for its willful and/or repeated violation Section 73.3526(e)(11)(iii) of Rules.¹⁹

7. 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*.²⁰ 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.²¹

8. Payments of the forfeiture should be allocated by Station as follows: (1) \$2,250 for WBYP-CD (2) \$1,500 for WTOO-CD and (3) \$1,500 for WWAT-CD. Payments must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.²² When 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). Abacus shall also send electronic notification of payment to Evan Morris, Attorney-Advisor, Video Division at evan.morris@fcc.gov on the date said payment is made. Below are

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as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").

¹⁵ See e.g., *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁶ See e.g., *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corp.*, Forfeiture Order, 14 FCC Rcd 3356 (Compl. & Inf. Bur. 1999), aff'd by Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁷ 47 CFR § 73.3526(e)(11)(iii).

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

¹⁹ 47 CFR § 73.3526(e)(11)(iii).

²⁰ 47 CFR § 1.80(h).

²¹ 47 U.S.C. § 504(a).

²² Payment may be made at the Commission's online Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

additional instructions you should follow based on the form of payment you select:²³

- 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.

9. Requests for full payment of the forfeiture in this *Forfeiture Order* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ If such a request is made, Abacus shall also send an electronic notification to Evan Morris, Attorney-Advisor, Video Division at evan.morris@fcc.gov.

10. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Abacus Television, C/O Benjamin Perez, 514 Chautauqua Street, Pittsburgh, PA 15214-3509 and via electronic mail to its contact representative, Mr. Benjamin Perez at abacuscommco@verizon.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²³ For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at ARINQUIRIES@fcc.gov.

²⁴ See 47 CFR § 1.1914.