

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
D.T.V., LLC)	File No.: EB-FIELDNER-13-00006557
)	NAL/Acct. No.: 201432400003
Licensee of Station WPHA-CD)	FRN: 0013224662
Philadelphia, Pennsylvania)	Facility ID No.: 72278

FORFEITURE ORDER

Adopted: March 30, 2016

Released: March 31 2016

By the Commission:

I. INTRODUCTION

1. We impose a penalty of \$89,200 against D.T.V., LLC (D.T.V.), licensee of Class A Television Station WPHA-CD (Station WPHA or the Station) in Philadelphia, Pennsylvania, for failing to make the Station available for inspection by FCC agents on multiple occasions, maintain a fully staffed main studio for the Station, and operate the Station's transmitter from its authorized location. The Commission's ability to conduct unannounced inspections to assess compliance is essential to its responsibility to promote safety of life and property. Failing to make stations available for "on-the-spot" inspections frustrates the Commission's ability to judiciously and efficiently deploy its resources to monitor the thousands of broadcasters subject to our oversight. In addition, requiring broadcasters to maintain fully staffed main studios ensures that stations provide adequate service and remain responsive to their communities of license. Finally, unauthorized transmitter operations pose a risk of interference to licensed broadcasters and threaten the Commission's licensing regime.

2. The key facts of this case are undisputed. In its July 10, 2014 response to the Notice of Apparent Liability for Forfeiture (*NAL*),¹ D.T.V. does not deny that FCC agents twice attempted to inspect the Station without success as a result of absent Station personnel or other delays resulting from actions by the Station Manager. D.T.V. also does not deny that it failed to maintain staff at the Station's main studio during one attempted inspection or that it operated the Station's transmitter from an unauthorized location for approximately eight years. D.T.V. nevertheless requests forfeiture cancellation or reduction for four reasons. First, D.T.V. contends that its failures to permit inspection of and fully staff the Station's main studio do not merit a forfeiture because they resulted from purported "medical considerations" and miscommunications with FCC agents.² Second, D.T.V. challenges the Commission's determination in the *NAL* that its repeated failure to make the Station available for inspection constituted egregious misconduct deserving a significant penalty.³ Third, D.T.V. argues that it is not at fault for the unauthorized transmitter operations and it should receive a reduced forfeiture because of its corrective efforts to come into compliance following the Commission's investigation and notification to D.T.V. of its unauthorized operation.⁴ Finally, D.T.V. states that it does not have sufficient income to pay the

¹ See D.T.V., LLC, Response to Notice of Apparent Liability for Forfeiture (July 10, 2014) (on file in EB-FIELDNER-13-00006557) (NAL Response).

² NAL Response at 5.

³ *Id.* at 5-7.

⁴ *Id.* at 9.

proposed penalty.⁵ After reviewing D.T.V.'s arguments, we find no reason to cancel, withdraw, or reduce the penalty, and we therefore assess the \$89,200 forfeiture the Commission previously proposed.

II. BACKGROUND

3. Requiring broadcast licensees to make their stations available for inspection upon request by FCC agents represents a “fundamental component of our regulatory scheme.”⁶ As a result, the Commission’s rules (Rules) require broadcast licensees to make a station “available for inspection by representatives of the FCC during the station’s business hours, or at any time it is in operation.”⁷ The Rules further require broadcast licensees to maintain a main studio with a “meaningful management and staff presence” during normal business hours.⁸ At a minimum, this main studio rule requires at least one person to be on duty at all times at a station’s main studio during normal business hours.⁹ Finally, the Commission’s rules require a broadcast licensee to “maintain[] and operat[e] its broadcast station in a manner which complies with the technical rules . . . and in accordance with the terms of the station authorization.”¹⁰

4. On August 17, 2011, agents from the Enforcement Bureau’s Philadelphia Office (Philadelphia Office) attempted to inspect Station WPHA’s main studio.¹¹ After observing that the main studio was inaccessible due to a locked gate, the agents called the Station Manager on the telephone and requested access to the main studio to conduct an inspection.¹² Instead of providing timely access to the Station, the Station Manager instructed the agents to wait for him at the gate, and then emerged ten minutes later and informed them that he could not facilitate the inspection because he was leaving for a medical appointment and requested that the agents return the next day.¹³ When asked about staffing at the main studio, the Station Manager responded that no one else was available at the Station to facilitate the inspection.¹⁴ One of the agents then left a voicemail message for D.T.V.’s sole principal advising him that the Station Manager had failed to make the Station available for inspection. Although the agent left a return phone number and asked the principal to call back, he did not do so.¹⁵

5. On the morning of September 30, 2011, the Philadelphia Office agents returned to the Station and again attempted to inspect its main studio.¹⁶ The Station Manager appeared at the gate and the agents requested entry to conduct an inspection.¹⁷ Instead of providing timely access to the Station, the Station Manager again asked the agents to wait outside the gate, which remained locked, and returned

⁵ *Id.* at 9–10.

⁶ *D.T.V., LLC*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5483, 5486, para. 10 (2014). The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

⁷ 47 C.F.R. § 73.1225(a).

⁸ *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 24 (1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29 not at issue here).

⁹ *NAL*, 29 FCC Rcd at 5486, para. 12.

¹⁰ 47 C.F.R. § 73.1350(a).

¹¹ *NAL*, 29 FCC Rcd at 5483–84, para. 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 5483–84, para. 3.

¹⁵ *Id.* at 5484, para. 4.

¹⁶ *Id.* at 5484, para. 5.

¹⁷ *Id.*

inside the building.¹⁸ After waiting over ten minutes for the Station Manager to return, the agents left the scene.¹⁹ The agents returned that afternoon and observed that the main studio remained inaccessible because the Station's main access gate was still locked.²⁰ One of the agents called the main studio number and spoke again to the Station Manager, who claimed that the main access gate must remain locked for security reasons and that the public must contact the station to obtain access.²¹ The agents noted that no information was posted at the gate to inform the public how to obtain access to the Station.²² One of the agents again attempted to contact D.T.V.'s sole principal regarding the failed inspection. He left a voicemail message, advising that the agents had again been unable to conduct an inspection because the Station gate was locked. Although he requested that the owner return his call, the principal again failed to do so.²³

6. On March 6, 2012, a Philadelphia Office agent used direction-finding equipment to locate the source of Station WPHA's transmissions to an antenna structure located more than 0.2 miles from the one listed in Station WPHA's license.²⁴ Agents subsequently determined that D.T.V. had operated the Station's transmitter from the unauthorized location for approximately eight years.²⁵

7. On April 28, 2014, the Commission issued the *NAL* proposing an \$89,200 forfeiture against D.T.V. for its apparent willful and repeated violations of Sections 73.1225(a) and 73.1350(a) of the Rules by twice failing to make the Station available for inspection, and by operating the Station's transmitter from an unauthorized location, and its willful violation of Section 73.1125(a) of the Rules by failing to adequately staff the Station's main studio.²⁶ As noted above, in its *NAL* Response, D.T.V. states that its failures to make the Station available for inspection and fully staff its main studio were not willful, but rather the result of medical problems and purported miscommunications with the FCC agents.²⁷ D.T.V. further argues that, even if its failures to permit inspection violated the Rules, the Commission incorrectly determined that its actions constituted egregious misconduct warranting the application of the statutory maximum forfeiture.²⁸ D.T.V. also claims that its unauthorized operation of the Station's transmitter constituted a "minor mislocation" caused by its reliance on the tower site's owner that it immediately took action to correct following the investigation.²⁹ Finally, D.T.V. asserts that it does not have sufficient income to pay the penalty proposed in the *NAL*.³⁰

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 5484, para. 6.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 5484, para. 7. Later that day, counsel for D.T.V. e-mailed the agent, "offering to respond to any questions the agent might have about the station." *NAL* Response at 4.

²⁴ *NAL*, 29 FCC Rcd at 5484–85, para. 8.

²⁵ *Id.*

²⁶ *Id.* at 5489, para. 20.

²⁷ *NAL* Response at 3–5, 7–8.

²⁸ *Id.* at 5–7.

²⁹ *Id.* at 8–9.

³⁰ *Id.* at 9–10, Attachment.

III. DISCUSSION

8. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),³¹ Section 1.80 of the Rules,³² and the Commission's *Forfeiture Policy Statement*.³³ When we assess forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account 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."³⁴ As discussed below, we have fully considered D.T.V.'s NAL Response but find none of its arguments persuasive. We therefore affirm the \$89,200 forfeiture proposed in the *NAL*.

A. D.T.V.'s Failures to Make the Station Available for Inspection and Fully Staff the Station's Main Studio Warrant Forfeitures

9. D.T.V. argues that it did not willfully refuse access to the Station or fail to fully staff its main studio and that its Station Manager acted reasonably and in compliance with the Rules during both attempted inspections.³⁵ While D.T.V. concedes that "access to the station was not immediately accorded," it contends that the delay was "in one case, attributable to medical considerations and, in the other, the earliness of the agents' arrival."³⁶ According to D.T.V., due to these "unusual circumstances coupled with unfortunate misunderstanding" between its Station Manager and the agents, no violations occurred and no forfeiture should be imposed.³⁷

10. We disagree. D.T.V. acknowledges that "it is undisputed that the station's manager was unavailable" on August 17, 2011, and that no other personnel were present to make the Station available for inspection when the FCC agents visited the Station that day.³⁸ Without the ability to conduct unannounced inspections, "[t]he Commission has no means of determining whether a station is being operated as licensed."³⁹ Although D.T.V. claims that the Station Manager asked the agents to come back the next day to conduct the inspection, the Commission has repeatedly warned broadcasters that its inspection authority does not depend on the convenience of the licensee or the availability of station personnel.⁴⁰

11. In any event, the main studio rules require a licensee to maintain a "meaningful management and staff presence" at its main studio during normal business hours.⁴¹ As we stated in the

³¹ 47 U.S.C. § 503(b).

³² 47 C.F.R. § 1.80.

³³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³⁴ 47 U.S.C. § 503(b)(2)(E).

³⁵ NAL Response at 4.

³⁶ *Id.* at 4–5.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ FCC Inspection Fact Sheet (Mar. 2005), available at <http://www.fcc.gov/guides/inspection-fact-sheet> (Inspection Fact Sheet) (last visited Dec. 10, 2015).

⁴⁰ *See, e.g., NAL*, 29 FCC Rcd at 5488, para. 18 (citing *Allen's TV Cable Serv., Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 1438, 1439, para. 4 (Enf. Bur. 2012); *Christopher H. Bennett Broad. of Wash., Inc.*, Forfeiture Order, 23 FCC Rcd 11285, 11288, para. 16 (Enf. Bur. 2008); *Gaston Coll.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4556 (Enf. Bur. 2007); FCC Inspection Fact Sheet).

⁴¹ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 3 FCC Rcd at 5026, para. 24. *See Jones Eastern of*

(continued....)

NAL, this means “that at least one person must be on duty at all times at the main studio during normal business hours.”⁴² But far from providing the meaningful management and staff presence required, D.T.V. undeniably failed to provide *any* staff presence at the Station’s main studio during normal business hours on August 17, 2011: its Station Manager advised the agents that he was leaving for a doctor’s appointment and there was no one left at the Station to allow the agents to conduct their inspection.⁴³ Although D.T.V. may have believed that “the station did not and does not need full-time human attention at the studio,” our Rules require otherwise.⁴⁴ As a result, we find that D.T.V. willfully violated Sections 73.1225(a) and 73.1125(a) of the Rules by failing to make the Station available for inspection and failing to fully staff its main studio on August 17, 2011.

12. We also find that D.T.V. again violated Section 73.1225(a) of the Rules by failing to make the Station available for inspection on September 30, 2011. D.T.V. suggests that its failure to permit the inspection is somehow excused by “the earliness of the agents’ arrival,” claiming that the agents arrived at 8:50 a.m., ten minutes before the Station’s normal business hours began.⁴⁵ D.T.V.’s account contradicts the agents’ contemporaneous notes and digital records showing that, in fact, the inspection occurred during normal business hours at 11:35 a.m. Even assuming, *arguendo*, that the inspection occurred earlier, as D.T.V. claims, Section 73.1225(a) of the Rules requires that broadcast licensees must make a station available for inspection “during the station’s business hours, *or at any time it is in operation.*”⁴⁶ D.T.V. provided no evidence that the Station was not in operation when the agents arrived on September 30, 2011. Indeed, D.T.V.’s *NAL* Response indicates that the Station “operates 24 hours a day, seven days per week.”⁴⁷ As we stated in the *NAL*, effective enforcement of the Rules “requires licensees to provide FCC agents with *timely* access to their facilities.”⁴⁸ “[I]t is the FCC’s policy to conduct immediate on-the-spot inspections *without any delay.*”⁴⁹ Here, even in response to a face-to-face request from identified FCC agents, the Station Manager again failed to make the Station available for inspection and instead left the agents waiting outside the main studio gate, which remained locked, and returned inside the building.⁵⁰ The agents had no idea when the Station would be made

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the Outer Banks, Inc., Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 & n.2, para. 9 (1991), *clarified by*, 7 FCC Rcd 6800 (1992); *Birach Broad. Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 2635 (Enf. Bur. 2010).

⁴² *NAL*, 29 FCC Rcd at 5486, para. 12.

⁴³ *Id.* at 5483–84, para. 3.

⁴⁴ *NAL* Response at 8.

⁴⁵ *Id.* at 3, 5.

⁴⁶ 47 C.F.R. § 73.1225(a) (emphasis added).

⁴⁷ *NAL* Response at 2.

⁴⁸ *NAL*, 29 FCC Rcd at 5488, para. 18 (emphasis added). *See, e.g., William L. Leavell*, Forfeiture Order, 15 FCC Rcd 2718, 2719, para. 5 (Enf. Bur. 2000) (“A refusal to allow or a significant delay in inspection can often shelter egregious violations and . . . can frustrate enforcement efforts.”); *Q.M. Tomlinson, Inc.*, Order, 12 FCC Rcd 2981, 2982, para. 6 (Compliance & Info. Bur. 1997) (“A refusal to allow inspection or a significant delay in allowing the inspection can often shelter egregious violation and is thus a serious violation.”); *Norfolk S. Ry. Co.*, Order, 11 FCC Rcd 519, 519, para. 3 (Compliance & Info. Bur. 1996) (same); *Jan Mar Courier, Inc.*, Order, 8 FCC Rcd 7570, 7570, para. 7 (Field Ops. Bur. 1993) (“[I]mmediate on-the-spot inspections are necessary.”) (internal quotations omitted); *see also Greenwood Acres Baptist Church*, Memorandum Opinion and Order, 22 FCC Rcd 1442, 1444, para. 8 (Enf. Bur. 2007) (“[N]o advance notice or **appointment** is necessary for the Commission to conduct an **inspection.**”). It is for this reason that the offer by D.T.V.’s counsel following the Station Manager’s refusal to provide the agents access that he would answer any questions the agent had about the Station was inadequate. The availability of counsel to answer questions is not a substitute for providing FCC agents with access to the station.

⁴⁹ *Jan Mar Courier, Inc.*, 8 FCC Rcd at 7571, para. 10 (emphasis added).

⁵⁰ *NAL*, 29 FCC Rcd at 5484, paras. 5–6.

available for inspection, if at all, or whether a delayed inspection would accurately assess the Station's compliance.⁵¹ Consequently, we affirm our findings that D.T.V. willfully violated Section 73.1225(a) of the Rules by failing to make the Station available for inspection on September 30, 2011, and that D.T.V.'s inspection and main studio violations warrant monetary forfeitures.

B. D.T.V.'s Repeated Failure to Make the Station Available for Inspection Constituted Egregious Misconduct Warranting a Significant Upward Forfeiture Adjustment

13. D.T.V. challenges the Commission's determination that its repeated failure to make the Station available for inspection constituted egregious misconduct warranting application of the statutory maximum forfeiture for these violations.⁵² Specifically, D.T.V. contends that the situation is just the result of a misunderstanding between its Station Manager and the FCC agents and that its "conduct is far less problematic than conduct which, in other cases, has resulted in far smaller forfeitures," particularly considering that D.T.V. has undergone multiple prior FCC inspections with no violations identified.⁵³

14. We disagree. D.T.V.'s repeated failure to make the Station available for inspection warrants imposition of the statutory maximum forfeiture.⁵⁴ The Act, the Rules, and the *Forfeiture Policy Statement* afford the Commission considerable flexibility in determining the appropriate forfeiture based on a case's particular circumstances.⁵⁵ In particular, the Commission may upwardly adjust the base forfeiture for a particular violation if the violator's actions constitute egregious misconduct.⁵⁶ Here, notwithstanding multiple visits to the Station and unanswered phone calls to D.T.V.'s sole principal, the agents were never allowed access to the Station to inspect its facilities.⁵⁷ D.T.V.'s repeated refusals to make the Station available for inspection "threaten[ed] to compromise the Commission's ability to fully investigate potential violations of its rules . . . [and] prevented the agents from conducting a comprehensive inspection of the Station's facilities and filings."⁵⁸ Denied access to the Station, the agents could not assess whether D.T.V. had met its obligations as a broadcast licensee, including its

⁵¹ See *supra* note 48 (finding delay in inspection can shelter egregious violations).

⁵² NAL Response at 5–7.

⁵³ *Id.* at 5, 7 (emphasis omitted) (citing *Brian R. Ragan*, Forfeiture Order, 29 FCC Rcd 2613 (Enf. Bur. 2014); *Nathaniel Johnson*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 7034 (Enf. Bur. 2013); *Taylor Broad. Co.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 1536 (Enf. Bur. 2012); *Ira Jones*, Forfeiture Order, 27 FCC Rcd 8317 (Enf. Bur. 2012); *Christopher H. Bennett Broad. of Wash., Inc.*, Forfeiture Order, 23 FCC Rcd 11285).

⁵⁴ *NAL*, 29 FCC Rcd at 5489, para. 19.

⁵⁵ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01, para. 27.

⁵⁶ See, e.g., *M.C. Dean, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 15-146, 2015 WL 6735577, paras. 38–42 (Nov. 2, 2015) (proposing upward forfeiture adjustment for apparent indiscriminate Wi-Fi blocking at convention center); *AT&T Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 856, 861, para. 12 (2015) (proposing upward forfeiture adjustment for numerous unauthorized operation and notice violations as well as inexcusable delay in reporting and correcting such violations); *Towerstream Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 11604, 11614, paras. 29–30 (2013) (proposing the statutory maximum of \$192,000, or \$16,000 per unlawful operation and interference violation impacting public safety).

⁵⁷ In its NAL Response, D.T.V. states that, on August 17, "upon arriving at the station the Commission's agents spoke with the station's on-site manager, who was just then leaving to attend to a medical situation that had arisen." NAL Response at 3. In fact, faced with the locked gate upon the agents' arrival, when one agent called the Station Manager to gain access to conduct an inspection of the Station, the Station Manager made no mention of his supposedly imminent departure for a medical appointment; instead, he asked the agents to wait by the gate. The Station Manager first advised the agents of the appointment only when he came out ten minutes later, denied them access, and then drove away. See *NAL*, 29 FCC Rcd at 5483, para. 2.

⁵⁸ *Id.* at 5488, para. 17.

compliance with Rules aimed at protecting public safety like the Emergency Alert System. D.T.V. failed to make the Station available for inspection on September 30 even after the agents, having been rebuffed on August 17, had advised the Station Manager and D.T.V.'s sole principal of the Station's obligation to provide timely access and had warned them both that further failures to permit inspection could result in enforcement action.⁵⁹ As we stated in the *NAL*, such conduct is "simply unacceptable" and "exhibited a blatant disregard of and contempt for the Commission's authority."⁶⁰ Moreover, "[t]he licensee and its sole principal are experienced broadcasters and own numerous broadcast stations, including multiple Class A Television facilities across the country. Consequently, D.T.V. and its sole principal are well aware of the Commission's rules requiring licensees to make their broadcast stations available for 'on-the-spot' inspections at the request of FCC agents."⁶¹ Their repeated failure to meet that obligation here, even after being reminded of it by the agents, was, in fact, egregious.

15. D.T.V.'s reference to prior Enforcement Bureau inspection cases where the statutory maximum forfeiture was not applied does not change our determination that this case "involved repeated, direct, in-person refusals of access by the highest levels of a broadcast station's management," warranting a significant upward forfeiture adjustment.⁶² We stated that "a broadcast licensee's continued refusal to allow FCC agents to inspect its station . . . is an egregious violation."⁶³ We see no reason to depart from this finding and affirm the application of the statutory maximum forfeiture to each of D.T.V.'s egregious failures to make the Station available for inspection.

C. D.T.V.'s Reliance on the Tower Site's Owner and Post-Investigation Corrective Efforts Regarding its Unauthorized Operations Do Not Warrant a Forfeiture Reduction

16. D.T.V. states that it was "surprised" to learn from the Philadelphia Office that D.T.V. had operated the Station's transmitter from an unauthorized location for approximately eight years.⁶⁴ D.T.V. contends that it relied upon representatives of the tower site's owner to ensure its transmitter operated in accordance with its authorization and maintains that it should "not be penalized for relying on that direction."⁶⁵ D.T.V. further states that it never received any interference complaints resulting from its unauthorized operations.⁶⁶ In addition, D.T.V. notes that it immediately applied for modification of its license to bring the transmitter into compliance after learning of the violation from the Philadelphia Office.⁶⁷

17. We are unpersuaded by D.T.V.'s arguments. As noted above, D.T.V. and its sole principal are experienced broadcasters, and its principal, through D.T.V. and other companies, owns

⁵⁹ See *supra* paras. 4–5.

⁶⁰ *NAL*, 29 FCC Rcd at 5488, para. 18. See *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074, 7081, para. 15 (Enf. Bur. 2010) ("Misconduct of this type exhibits contempt for the Commission's authority and threatens to compromise the Commission's ability to adequately investigate violations of its rules.").

⁶¹ *NAL*, 29 FCC Rcd at 5488, para. 18. Similarly, the mere fact that D.T.V. previously had passed previous FCC inspections does not affect whether its actions in this case represented egregious misconduct. In fact, these inspections further demonstrate that D.T.V. was well aware of its obligations as a licensee.

⁶² *Id.* See *NAL* Response at 5–7.

⁶³ *NAL*, 29 FCC Rcd at 5488–89, para. 18.

⁶⁴ *NAL* Response at 9.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

multiple broadcast stations.⁶⁸ Licensees are charged with full knowledge of the Rules, including the obligation to operate transmission facilities in accordance with licensed parameters.⁶⁹ Licensees are also responsible for violations committed by third parties and agents acting on their behalf to comply with the Rules.⁷⁰ D.T.V. therefore cannot pass on its responsibility as a broadcast licensee to operate within licensed parameters to the tower site's owner. D.T.V. also cannot escape liability for its violations simply because it never received any complaints, as Section 73.1350(a) of the Rules does not require a showing that its unauthorized operations caused harmful interference; the Rule unconditionally requires that licensees operate in accordance with their station authorizations.⁷¹

18. In addition, D.T.V.'s post-investigation corrective efforts to modify its facilities do not warrant a forfeiture reduction. While the Commission will generally reduce a proposed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.⁷² As the Commission has repeatedly stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."⁷³ D.T.V. acknowledges that it did not undertake corrective efforts to resolve its unauthorized operations until after the Philadelphia Office had informed it of its violations, including its unauthorized operation.⁷⁴ We therefore decline to reduce the proposed forfeiture on this basis.

D. No Forfeiture Reduction Is Appropriate

19. D.T.V. asserts that it lacks sufficient income to pay the forfeiture proposed in the *NAL*.⁷⁵ In support of this claim, D.T.V. submits documents reflecting its financial status as well as information regarding two other companies owned by its sole principal.⁷⁶

20. With regard to an entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.⁷⁷ Although the

⁶⁸ See *supra* para. 14.

⁶⁹ See, e.g., *Indus. Broad. Co.*, Memorandum Opinion and Order, 34 FCC 2d 950, 954 (1971) (stating that licensees are charged with knowledge of the rules governing the stations for which they are licensed); *Willapa Broad. Co., Inc.*, Memorandum Opinion and Order, 17 FCC 2d 110, 111 (1969) (stating that licensees are expected to be aware of and comply with the requirements of the Commission's rules).

⁷⁰ See, e.g., *Eure Family Ltd. P'ship*, Memorandum Opinion and Order, 17 FCC Rcd 21861 (2002) (reliance on a third-party contractor to monitor tower lights did not relieve a licensee of its responsibility for compliance with the Commission's rules).

⁷¹ 47 C.F.R. § 73.1350(a).

⁷² See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

⁷³ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) ("The fact that prompt corrective action was taken . . . does not excuse the prior violations.").

⁷⁴ NAL Response at 9.

⁷⁵ *Id.*

⁷⁶ NAL Response at 9–10, Attachment.

⁷⁷ 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).

financial information provided by D.T.V. indicates that the company lacks sufficient gross income to pay the proposed forfeiture, the Commission's inability to pay analysis is not a strict mathematical exercise. The *Forfeiture Policy Statement* provides that "we must look to the totality of the circumstances surrounding the individual case"⁷⁸ when an entity asserts it cannot pay a forfeiture and "review[] all responses to NALs that claim inability to pay a forfeiture on a case-by-case basis."⁷⁹

21. In this regard, the Commission looks to all potential sources of income available to the entity, such as a parent company or owner-operator.⁸⁰ Despite repeated requests, D.T.V. refused to provide tax returns or other financial information regarding its sole principal, who has exclusive ownership of D.T.V.'s multiple stations as well as other Class A and TV translator stations. Thus, we do not have sufficient financial information to conclude that DTV and its sole principal lack the ability to pay the forfeiture. D.T.V. also failed to mention its pending sale of the Station, which will yield it \$6,400,000 in a transaction that has already been approved by the Media Bureau.⁸¹ Under these circumstances, D.T.V.'s claim of its inability to pay the subject forfeiture is disingenuous.

22. Moreover, an entity's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.⁸² We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.⁸³ Here, we find that the gravity of D.T.V.'s egregious failures to repeatedly make the Station available for inspection, coupled with its eight years of unauthorized

⁷⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17158, para. 113.

⁷⁹ *Id.* at 17107, para. 43.

⁸⁰ *Id.* at 17158, para. 113. See e.g., *A-O Broad. Corp.*, Memorandum Opinion and Order, 20 FCC Rcd 756 (2005) (violator's whole financial picture is needed to fully assess its inability to pay claim); *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429 (2008) (licensee must provide financial data concerning all potential sources of income available to it); *KASA Radio Hogar*, Memorandum Opinion and Order, 17 FCC Rcd 6256, 6258, para. 4 (2002) ("[I]t is the Commission's general policy to consider the financial condition of a licensee's consolidated operations, not just the financial condition of an individual station or a limited portion of its operations."); *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859-60, para. 13 (1998) ("[I]ncome from other affiliated operations, as well as the financial status of the station(s) in question, can be taken into account" in evaluating an inability to pay claim), *recon. denied*, 15 FCC Rcd 7181 (1999).

⁸¹ By Asset Purchase Agreement dated October 26, 2012, D.T.V. agreed to sell the Station to LocusPoint WPHA Licensee, LLC, in an assignment approved by the Media Bureau (File No. BALDTA-2012102AEU). The Agreement indicated that D.T.V. was to receive \$6,400,000 for the Station. By letter dated April 30, 2014, from Ravi Potharlanka, President and CFO, LocusPoint Networks, LLC to William Lake, Chief, Media Bureau, FCC, LocusPoint noted that the Media Bureau had delayed action on the then-pending assignment application and an application to renew the Station license pending resolution of this enforcement matter, and claimed that D.T.V. delayed resolving the matter "all in the hope that it could attempt to terminate the Agreement in favor of pursuing another transaction." On August 11, 2015, D.T.V. amended the assignment application to state that it "has given notice to [LocusPoint] of termination of the Purchase Agreement. While the assignee has filed a civil lawsuit seeking specific performance, the assignor adheres to its position that the termination notice is valid." By an August 15, 2015 Order Re: Motions for Summary Judgment in that proceeding (Case No. 14-cv-01278-JSC) before the United States District Court, Northern District of California, the court granted LocusPoint summary judgment and ordered specific performance, directing D.T.V. to proceed with the sale of the Station to LocusPoint pursuant to that Agreement. On September 3, 2015, D.T.V. appealed and sought a stay of the court's ruling. The United States Court of Appeals for the Ninth Circuit subsequently granted LocusPoint's motion to dismiss D.T.V.'s appeal.

⁸² 47 U.S.C. § 503(b)(2)(E).

⁸³ See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (Enf. Bur. 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (Enf. Bur. 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (Enf. Bur. 2013).

operation, would militate against any reduction of the forfeiture even if the licensee had a substantiated inability to pay.⁸⁴ Nothing in the record in this case, including the incomplete financial information provided by D.T.V., warrants any leniency or mitigation of the penalty amount and we therefore decline to reduce the forfeiture based on D.T.V.'s purported inability to pay.⁸⁵

IV. CONCLUSION

23. Based on the record before us and in light of the applicable statutory factors, we conclude that D.T.V. willfully and repeatedly violated Sections 73.1225(a) and 73.1350(a) of the Rules by failing to make the Station available for inspection by FCC agents on multiple occasions and operate the Station's transmitter from an authorized location, and willfully violated Section 73.1125(a) by failing to maintain a fully staffed main studio for the Station.⁸⁶ After weighing the entire record, including D.T.V.'s NAL Response, we decline to cancel or reduce the \$89,200 forfeiture proposed in the NAL.

V. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁸⁷ and Section 1.80 of the Rules,⁸⁸ D.T.V., LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighty-nine thousand two hundred dollars (\$89,200) for willfully or repeatedly violating Sections 73.1125(a), 73.1225(a), and 73.1350(a) of the Rules.⁸⁹

25. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.⁹⁰ 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 Act.⁹¹

26. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. D.T.V., LLC shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁹² When completing the 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). Below are additional instructions that should be followed based on the form of payment selected:

⁸⁴ See *supra* paras. 13–15; NAL, 29 FCC Rcd at 5488–89, paras. 18–19; *Michael Guernsey*, Forfeiture Order, 30 FCC Rcd 7354 (Enf. Bur. 2015) (egregiousness of licensee's repeated willful acts warranted assessment of the full forfeiture amount despite violator's financial condition); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087 (Enf. Bur. 2013) (rejecting inability to pay claim because violator's demonstrated inability to pay was outweighed by the gravity of repeated operation of an unlicensed radio station); *Hodson Broad.*, Forfeiture Order, 24 FCC Rcd 13699 (Enf. Bur. 2009) (holding that permittee's continued unauthorized operation outweighed its inability to pay claim).

⁸⁵ If D.T.V. cannot make full payment of the forfeiture imposed within 30 days, it can request an installment plan as described in paragraph 27 of this Forfeiture Order

⁸⁶ 47 C.F.R. §§ 73.1125(a), 73.1225(a), 73.1350(a).

⁸⁷ 47 U.S.C. § 503(b).

⁸⁸ 47 C.F.R. § 1.80.

⁸⁹ 47 C.F.R. §§ 73.1125(a), 73.1225(a), 73.1350(a).

⁹⁰ 47 C.F.R. § 1.80.

⁹¹ 47 U.S.C. § 504(a).

⁹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

27. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁹³ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

28. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to D.T.V., LLC, 1903 South Greeley Highway #127, Cheyenne, Wyoming 82007, and to Peter Tannenwald, counsel for D.T.V., LLC, Fletcher, Heald, & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹³ See 47 C.F.R. § 1.1914.