

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

In the Matter of:)	
)	Facility I.D. No. 5237
KYUS-TV Broadcasting Corporation)	NAL/Acct. No. 201441420015
Licensee of Station KYUS-TV)	FRN: 0003749967
Miles City, Montana)	

FORFEITURE ORDER

Adopted: October 1, 2014

Released: October 1, 2014

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,¹ we find that KYUS-TV Broadcasting Corporation ("Licensee"), licensee of Station KYUS-TV, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file its Children's Television Programming Reports (FCC Form 398) in a timely manner. We further conclude that the Licensee repeatedly violated Section 73.3514 of the Commission's rules through its failure to report the violations on its 2005 license renewal application. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Fifteen Thousand Dollars (\$15,000.00).

II. BACKGROUND

2. 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.² 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 (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. Those reports must be prepared and placed in the public file by 10 days after the close of the reporting quarter. That subsection also contains a separate and independent requirement that licensees file the reports with the Commission by 10 days after the close of the reporting quarter.

3. Section 73.3514(a) provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . ." Section IV, Question 3 of the Form 303-S 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."

4. Licensee filed its 2005 renewal application on December 1, 2005.³ In an exhibit to that application, the Licensee certified that "KYUS-TV's local public inspection file is complete and all documentation was placed in the file at the appropriate time, but for the station's 2003 Biennial

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

² 47 C.F.R. § 73.3526.

³ File No. BRCT-20051201BRP.

Ownership Report.”⁴ The 2005 license renewal application remains pending.

5. On December 2, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for the Station (the “Application”).⁵ The Licensee reported that it failed to file its Children’s Television Programming Reports in a timely manner for eight quarters for the Station since the last renewal application was filed.⁶ A review of Commission records showed that an additional 14 reports were filed late since the Station’s last renewal, which occurred in 1998.

6. The Video Division issued a Notice of Apparent Liability (“NAL”) for Forfeiture on May 13, 2014.⁷ The NAL notified the Licensee that its failure to file timely its Children’s Television Programming Reports constituted an apparent willful or repeated violation of the provisions of Section 73.3526(e)(11)(iii) of the Commission’s rules.⁸ The Division concluded that the Licensee was apparently liable for a forfeiture of \$15,000. In a timely response dated June 22, 2014, the Licensee asserted that the proposed forfeiture amount should be cancelled or reduced.⁹

III. DISCUSSION

7. 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 As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Section 73.3526(e)(11)(iii) of the Commission’s rules. We ultimately conclude that no reduction in the forfeiture amount is justified.

8. The Commission rules establish that full power television stations must (i) offer informational and educational children’s programming; (ii) prepare and place in a public inspection file quarterly Children’s Television Programming Reports; and (iii) electronically file those reports with the

⁴ *Id.*, Exh. 17.

⁵ File No. BRC DT-20131202CJS.

⁶ *Id.*, Exhibit 20.

⁷ *KYUS-TV Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, DA 14-635 (Vid. Div. May 13, 2014).

⁸ 47 C.F.R. § 73.3526(e)(11)(iii).

⁹ Licensee Response to Notice of Apparent Liability (“Licensee Response”) (Jun. 22, 2014).

¹⁰ 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).

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

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

Commission.¹³ The Licensee does not dispute its earlier admission it failed to file in a timely manner its Children's Television Programming Reports for 7 quarters since the last renewal application was filed. Those late filings constitute repeated and/or willful violations of Section 73.3526 of the Rules.

9. The Commission's Forfeiture Policy Statement establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹⁴ 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), 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." In the NAL, the Video Division proposed a forfeiture amount of \$15,000. Licensee argues that the forfeiture amount should be reduced or cancelled.

10. The Licensee first argues that the staff incorrectly calculated the number of quarters in which reports were filed late.¹⁵ The Licensee contends that the timeliness of any filing should be measured by the "Report Dated" line completed on the report by the Licensee, rather than the "Filed On" reporting date, which is an automated record of the date of the report's receipt by the Commission.

11. The Licensee has provided no verifiable evidence of the Commission's receipt of the reports in a timely manner.¹⁶ When a report is submitted through the Children's Television Programming Reports database, the reporting party receives a submission confirmation with a confirmation number and the date of the filing included. Licensees seeking to demonstrate that a report was properly filed have frequently submitted this confirmation page or other evidence such as a hard copy of the originally filed report to confirm such filing.¹⁷ The Licensee provided no such evidence here, and we conclude that the staff's calculation was correct.¹⁸ We thus deny the Licensee's request that the forfeiture amount be reduced on this basis.

12. The Licensee next argues that enforcement of the NAL is statutorily barred under Section 2462 of Title 28 of the U.S. Code, which imposes five-year statute of limitations on government enforcement of forfeitures.¹⁹ Section 2462 governs only the initiation of collection actions by the United States Department of Justice, not the Commission's issuance of forfeitures.²⁰ Moreover, the Licensee

¹³ *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000); 47 C.F.R. § 73.3526 (a)(2) & (e)(11)(iii).

¹⁴ *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).

¹⁵ Licensee Response at 3-5.

¹⁶ *Carolina Rays, LLC*, Forfeiture Order, 28 FCC Rcd 10068, 10070 (Vid. Div. 2013)

¹⁷ *See, e.g., KPLC License Subsidiary, LLC*, Order, 28 FCC Rcd 15635 (Vid. Div. 2013); *Price Media Corp.*, Order, 28 FCC Rcd 11817 (Vid. Div. 2013).

¹⁸ *Carolina Rays, LLC*, 28 FCC Rcd at 10070. There are additional problems with the Licensee's filings. For example, the Licensee claims that the report for the first quarter of 2004 was filed on March 19, 2004, twelve days before the close of that reporting period, but does not explain how it could certify the airing of programming from March 19 through March 31 that had not yet aired.

¹⁹ Licensee Response at 6 (citing 47 U.S.C. § 503(b)(6)(B) & 28 U.S.C. § 2462).

²⁰ *Radio License Holdings, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10346, 10347-48 (Aud. Div. 2011) (citing *Evergreen Media Corp. of Chicago AM*, Memorandum Opinion and Order, 6 FCC Rcd 5950, 5950 n. 9 (MB 1991)). We also conclude that the 2012 and 2013 violations would be sufficient on their own to sustain the proposed \$15,000 forfeiture, given our authority under the statute and Forfeiture Policy Statement to consider the degree of culpability, history of prior offenses, and other matters as justice may require in determining the appropriate forfeiture amount. 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)(4) and note to paragraph (b)(4), Section II.

filed a late report as recently as the first quarter of 2012, which is well within the five year period and would be sufficient, given our discretion to weigh the Licensee's history of egregious public file violations, to sustain the entire forfeiture amount.

13. Nonetheless, we further conclude that an alternative basis for the forfeiture amount proposed is the Licensee's continuing violation of Section 73.3514(a) of the Rules. The Licensee's failure to report its late filing of 14 Children's Television Programming Reports on its 2005 renewal application represents a continuing violation that continued through the filing of the Licensee's response to this NAL.²¹ "[A] failure to report certain conditions will generally constitute a continuing violation for so long as the failure to report persists."²² This continuing violation means that a new claim accrued each day that the Licensee failed to report the violation, and therefore the collection statute of limitations does not apply.²³

14. Finally, Licensee's original response requested a reduction or cancellation based on ability to pay.²⁴ The staff requested additional information regarding this claim in a September 5, 2014, and the Licensee refused to provide that information and withdrew that aspect of the response.²⁵

15. We thus conclude that the forfeiture amount proposed in the NAL should not be cancelled or reduced.

IV. ORDERING CLAUSES

16. 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)&(2) of the Commission's rules,²⁶ KYUS-TV Broadcasting Corporation SHALL FORFEIT to the United States the sum of Fifteen Thousand Dollars (\$15,000) for repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's rules.

17. 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. 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. The Licensee shall send electronic notification of the payment to Evan Morris at evan.morris@fcc.gov on the date payment is made.

18. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). 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

²¹ See *SBC Communications Inc. v. F.C.C.*, 373 F.3d 140, 142.

²² *Interamericas Investments, Ltd. v. Board of Governors of the Federal Reserve System*, 111 F.3d 376, 382 (5th Cir. 1997); see also *First Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 3 FCC Rcd 2758, 2758 (1988) (finding a continuing violation based on failure to report).

²³ *Interamericas Investments, Ltd.*, 11 F.3d at 382.

²⁴ Licensee Response at 5-6.

²⁵ Letter from David D. Oxenford to Barbara A. Kreisman (Sept. 22, 2014).

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

via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

19. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to KYUS-TV Broadcasting Corp., 210 S. Douglas, Glendive, Montana, 59300, and to its counsel, David Oxenford, Wilkinson Barker Knauer LLP, 2300 N Street NW, Suite 700, Washington, D.C. 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau