

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

In the Matter of	)	
	)	
<b>E-DA-HOE, Inc.</b>	)	File No. EB-04-IH-0137
	)	NAL Account No. 200732080003
Licensee of Class A Television Station	)	FRN No. 0001635317
KSVX-LP, Hailey, Idaho	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 27, 2006**

**Released: October 30, 2006**

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that E-DA-HOE, Inc., ("E-DA-HOE" or the "Company"), licensee of Class A Television Station KSVX-LP, Hailey, Idaho, (the "Station"), willfully and repeatedly committed 22 apparent violations of Section 73.1201 of the Federal Communication Commission's ("FCC" or "Commission") rules,<sup>1</sup> relating to station identification. For the following reasons, we conclude that E-DA-HOE is apparently liable for a forfeiture in the amount of \$5,000.

**II. BACKGROUND**

2. The Commission received a complaint alleging that the Station failed to provide appropriate station identification during its television programming (the "Complaint").<sup>2</sup> The Complaint included four video tapes purportedly depicting Station KSVX-LP programming on various dates between January 25 and April 1, 2004. Enforcement Bureau staff reviewed the video tapes and determined that they contained 24 hours of television programming, yet contained only two station identification announcements. The Enforcement Bureau issued a letter of inquiry to E-DA-HOE, directing it to explain, *inter alia*, its station identification policies.<sup>3</sup> E-DA-HOE, by counsel, responded by letter that the Station identifies itself twice an hour, as close to the half hour and hour mark as possible.<sup>4</sup> E-DA-HOE further explains that the Station uses identification equipment to insert automatically a station identification by superimposing the identification onto the top center of the screen for ten seconds.<sup>5</sup> E-DA-HOE adds,

<sup>1</sup> See 47 C.F.R. § 73.1201. Generally, the rule requires identification at the beginning and end of operation and hourly during operation. See also *Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355, 6366, ¶ 24 (2000) (stating that Class A television stations are required to comply with station identification requirements of Section 73.1201).

<sup>2</sup> See Complaint received April 13, 2004 ("There are no station I.D.'s except during morning 'local' programming.").

<sup>3</sup> See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to E-DA-HOE, Inc., dated June 30, 2005 ("LOI").

<sup>4</sup> See Letter from Brendan Holland, Esq., Pillsbury Winthrop Shaw Pittman LLP, counsel for E-DA-HOE, Inc. to David Brown, Esq., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated December 6, 2005 ("LOI Response").

<sup>5</sup> See *id.* at 1-2.

however, that “on occasion, due to unforeseen technical difficulties, most often as a result of a thunderstorm or power surge, the automated equipment that inserts the station identification announcements has failed to insert the announcement. Such power fluctuations occur infrequently and are remedied by station personnel as soon as they are detected, virtually always within hours of the triggering event.”<sup>6</sup> E-DA-HOE states that it does not keep records of these outages and noted that in November 2005, shortly before the LOI Response was filed, the Station installed a battery back-up system to prevent future interruptions.<sup>7</sup>

3. Subsequently, the Enforcement Bureau issued a supplemental letter of inquiry to E-DA-HOE, which included the four six-hour videotapes received with the Complaint.<sup>8</sup> The Supplemental LOI directed E-DA-HOE to state whether each tape represented an accurate recording of Station programming on the date indicated, and requested that E-DA-HOE respond to the allegation that, on those occasions, the Station failed to identify itself in accordance with the Commission’s requirements.<sup>9</sup> E-DA-HOE, by counsel, responded to the Supplemental LOI, admitting that the tapes represented Station programming,<sup>10</sup> but contending that they contain discrepancies both as to the number of hours recorded and the dates on which the programming aired.<sup>11</sup> There is no dispute, however, that the tapes represent at least 24 hours of programming aired by the Station and that during that time the Station was identified only twice.

### III. DISCUSSION

4. Based on our review of the record, we find that E-DA-HOE apparently violated Section 73.1201 of the Commission’s rules at least 22 times. This rule provides in pertinent part:

(a) *When regularly required.* Broadcast station identification announcements shall be made:

(1) At the beginning and ending of each time of operation, and

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<sup>6</sup> *See id.* at 2.

<sup>7</sup> *See id.*

<sup>8</sup> *See* Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Brendan Holland, Esq., Pillsbury Winthrop Shaw Pittman LLP, counsel for E-DA-HOE, Inc. dated June 16, 2005 (“Supplemental LOI”).

<sup>9</sup> *See id.* at 1-2.

<sup>10</sup> *See* Letter from Brendan Holland, Esq., Davis Wright Tremaine LLP, counsel for E-DA-HOE, Inc. to Elizabeth Valinoti, Esq., Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated August 16, 2006 at 1-3 (“Supplemental LOI Response”).

<sup>11</sup> For example, E-DA-HOE responded that each tape consists of six hours of programming, rather than eight hours, as stated on the tape labels. *See id.* at 2. In addition, the complainant apparently confused the labels for Tapes 1 and 4. According to E-DA-HOE, based on its review of Station program logs, Tape 1, which is labeled “January 26, 2004, 4 AM to 12 PM,” actually consists of programming aired on April 1, 2004 from 4 a.m. to 10:07 p.m. *See id.* Similarly, E-DA-HOE states that Tape 4, which is labeled “April 1, 2004, 4 AM to 12 PM,” actually consists of programming aired sometime between January 19-26, 2004, between 4 a.m. and 10:07 a.m. *See id.* Given that this material is contemporaneous with the material intended for Tape 1, we conclude that this programming aired on January 26, 2004, as stated on the complainant’s label. Both tapes each include only one station identification announcement, five hours into the recorded programming. Tapes 2 and 3 contain six hours of programming aired on January 25, 2004 between 4 p.m. and 12 a.m. and February 26, 2004 between 12 p.m. and 8 p.m., respectively. E-DA-HOE states that because both of these tapes consist of network programming or infomercials, the licensee cannot ascertain the specific hours the material aired. *See id.* Neither tape contains any station identification announcement. E-DA-HOE asserts that the omissions of automated station identification on the tapes occurred because the tapes were made during interruptions due to power outages. *See id.*

(2) Hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.<sup>12</sup>

5. Our review of the video tapes confirms that E-DA-HOE failed to identify its station hourly, as required by our rules, over periods lasting at least five hours on January 26 and April 1, 2004 and at least six hours on January 25 and February 26, 2004, for a total of 22 missed announcements. E-DA-HOE asserts that the Station's station identification omissions were the result of power outages, although it can only confirm that this was the case on one of the dates in question.<sup>13</sup> We will accept E-DA-HOE's sworn representations in this regard; however, we find that the licensee's explanation does not eliminate E-DA-HOE's responsibility for its malfunctioning equipment.<sup>14</sup> E-DA-HOE admits that its equipment had failed in the past and that it knew the reason for those failures, yet the licensee took no remedial action until shortly before it responded to our LOI.<sup>15</sup>

6. Section 503(b)(1) of the Communications Act of 1934, as amended,<sup>16</sup> provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b)(1) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>17</sup> The term "repeated" means that the action was committed or omitted more than once, or lasts more than one day.<sup>18</sup> Based on the evidence before us, we find that E-DA-HOE failed to properly broadcast station identification information, in apparent willful and repeated violation of Section 73.1201 of the Commission's rules.

7. The statutory maximum forfeiture amount for each apparent violation in this case is \$27,500.<sup>19</sup> Pursuant to Section 1.80 of the Commission's rules,<sup>20</sup> the base forfeiture amount for a violation of

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<sup>12</sup> 47 C.F.R. § 73.1201.

<sup>13</sup> Supplemental LOI Response at 4.

<sup>14</sup> We do not find sufficient support for the Complaint's assertion that the Station generally failed to identify itself during non-local originated programming. E-DA-HOE asserts that its equipment, when working, inserts station identification during non-local programming. Supplemental LOI Response at 3. The President and majority owner of E-DA-HOE has supported this statement with a sworn declaration. *Id.* (Declaration of W. Clinton Stennett). Having no evidence to the contrary beyond the Complaint's sweeping assertion, we will accept this sworn statement at face value.

<sup>15</sup> See LOI Response at 2 (describing causes of equipment malfunctions and station practice of remedying the problems "as soon as they are detected, virtually always within hours of the triggering event").

<sup>16</sup> See 47 U.S.C. § 503(b)(1).

<sup>17</sup> Section 312(f)(1) of the Communications Act, or 1934, as amended, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

<sup>18</sup> *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability, 16 FCC Rcd 1359, 1362 ¶ 9 (2001).

<sup>19</sup> Because these violations occurred in early 2004, the statutory maximum applicable here is \$27,500. Prior to the broadcasts at issue, the Commission amended its rules to increase the maximum penalties to account for inflation. See *Amendment of Section 1.80 of the Commission's Rules*, Order, 15 FCC Rcd 18221 (2000) (effective November 13, 2000). Under the revised rules, for violations occurring on or after November 13, 2000, the Commission may propose forfeitures against broadcast licensees of up to \$27,500 per violation. These apparent violations occurred after that effective date, and prior to a similar adjustment effective September 9, 2004. See *Amendment of Section 1.80 of the Commission's Rules*, Order, 19 FCC Rcd 10945 (2004) (the current statutory maximum is \$32,500 for violations of this type).

the station identification rule is \$1,000. Section 1.80(b)(4) of the Commission's rules also specifies that, in determining the amount of a forfeiture penalty, the Commission or its designee will take into account "the nature, circumstances, extent, and gravity of the violations 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."<sup>21</sup>

8. As noted above, E-DA-HOE apparently violated the Commission's station identification rule for periods lasting at least five to six hours each on four occasions, for a total of 22 violations of Section 73.1201. If we proposed a forfeiture assessing the base amount of \$1,000 for each apparent violation in this case, E-DA-HOE would face a \$22,000 forfeiture. We find that such an amount would be excessive here. In similar cases, we have proposed forfeitures based on the totality of the circumstances, rather than on a per-violation basis.<sup>22</sup> Based on our review of the circumstances in this case, we find that a \$5,000 proposed forfeiture is appropriate. E-DA-HOE knew its station identification equipment would break down after electrical storms and power surges, yet it installed a back-up power system only after it learned of our investigation. We find that E-DA-HOE's disregard for its station identification responsibilities was egregious and merits a forfeiture sufficient to deter it and other licensees from similar misconduct. Although the nature of E-DA-HOE's apparent violations might justify a higher proposed forfeiture, however, we decline to do so in light of the licensee's overall history of compliance with FCC rules.<sup>23</sup>

#### IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's Rules, E-DA-HOE, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$5,000 for willfully violating Section 73.1201 of the Commission's rules.

10. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's rules, within 30 days of the release date of this *Notice of Apparent Liability for Forfeiture*, E-DA-HOE, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL Acct. No. and FRN No. referenced in the caption. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. IT IS FURTHER ORDERED that the response, if any, shall be mailed to William H. Davenport, Chief, Investigation and Hearings Division, Enforcement Bureau, Federal Communications

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<sup>20</sup> See 47 C.F.R. § 1.80.

<sup>21</sup> 47 C.F.R. § 1.80(b)(4).

<sup>22</sup> See *Leighton Enterprises, Inc.*, Notice of Apparent Liability, 20 FCC Rcd 5991 (Enf. Bur. 2005) (proposing \$5,000 forfeiture for 10-week period of station identification violations); *Bay Broadcasting Corp.*, Notice of Apparent Liability, 15 FCC Rcd 9387 (Enf. Bur. 2000) (proposing \$1,500 forfeiture against station that failed to run station identification announcements for two days).

<sup>23</sup> See *Max Media of Montana, L.L.C.*, Forfeiture Order, 18 FCC Rcd 21375, 21379 ¶ 14 (Enf. Bur. 2003) (forfeiture reduced for unblemished record); *South Central Communications Corp.*, Forfeiture Order, 18 FCC Rcd 700, 703 ¶ 9 (Enf. Bur. 2003).

Commission, 445 12<sup>th</sup> Street, S.W., Suite 4-C330, Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

13. IT IS FURTHER ORDERED that the Commission shall 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.

14. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>24</sup>

15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail - Return Receipt Requested, and regular mail, to Brendan Holland, Esquire, Davis Wright Tremaine LLP, 1500 K Street, N.W. Suite 450, Washington, D.C. 20005-1272, and to the licensee.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport  
Chief, Investigations and Hearings Division  
Enforcement Bureau

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<sup>24</sup> See 47 C.F.R. § 1.1914.