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

In the Matter of	)	
	)	
HTV/HTN/Hawaiian TV Network, Ltd.	)	File Number: EB-06-HL-056
	)	
Licensee of Class A Television Station KHLU-LP	)	NAL/Acct. No.: 200632860003
Honolulu, Hawaii	)	FRN: 0003787835
Facility ID # 27969	)	

FORFEITURE ORDER

Adopted: May 22, 2007 **Released: May 24, 2007**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of five thousand, six hundred dollars ($5,600) to HTV/HTN/Hawaiian TV Network, Ltd. ("HTV"), licensee of station KHLU-LP, in Honolulu, Hawaii, for willfully and repeatedly violating Section 73.1125(a) of the Commission's Rules ("Rules").[1] On September 28, 2006, the Enforcement Bureau's Honolulu Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*") in the amount of $7,000 to HTV for failing to maintain a local main studio in its community of license.[2] In this *Order*, we consider HTV's arguments that the proposed forfeiture amount is not consistent with the magnitude of the violation, given that HTV maintained a main studio for KHLU-LP; that HTV will have financial difficulty paying the forfeiture amount; and that the forfeiture amount should be reduced based on HTV's history of compliance and its good faith effort to maintain a main studio for KHLU-LP.

II. BACKGROUND

2. On Wednesday, May 17, 2006, an agent from the Enforcement Bureau's Honolulu Resident Agent Office attempted to contact KHLU-LP to conduct a routine inspection of the main studio. The Honolulu agent discovered that there was neither a studio address nor telephone listing for KHLU-LP. The agent called the phone number listed in the Oahu Telephone Directory for "HTV/Hawaiian Television," and was connected to an answering machine. The agent left a message requesting information regarding the location of the KHLU-LP main studio. On May 18, 2006, the Honolulu agent received a telephone call from the President of HTV, who advised the agent that the KHLU-LP main studio is co-located with the KHLU-LP transmitter at the multi-transmitter broadcast site managed by Salem Communications on Palehua Ridge, Oahu ("Salem site"). The KHLU-LP transmitter building and main studio are located at the KAIM-FM transmitter site on Palehua Ridge.[3]

3. On Monday, July 10, 2006, the Honolulu agent visited the Salem site with the KAIM-FM site manager and KAIM-FM contract engineer. The agent observed that there were two locked gates on the one-lane mountain road leading to the transmitter site. The site manager stated that these two gates

[1] 47 C.F.R. § 73.1125(a).

[2] *Notice of Apparent Liability for Forfeiture,* NAL/Acct. No. 200632860003 (Enf. Bur., Western Region, Honolulu Resident Agent Office, released September 28, 2006).

[3] Salem Communications of Hawaii, Inc., is the licensee of KAIM-FM.

are locked to prevent public access. The KHLU-LP transmitter site was enclosed by a locked six-foot high chain-link fence, and there were signs posted on the fence to warn the public not to approach because of the danger of exposure to high electromagnetic fields.[4] The Honolulu agent found no apparent means by which the public could access the site. The door to the KHLU-LP transmitter was locked, and as there was no response to repeated knocks on the door, the site manager opened the door with a master key.[5] Inside the unoccupied windowless transmitter building, the agent observed that it contained, besides four racks of electronic equipment and transmitters, a file cabinet and a single chair. There were no restroom facilities, running water, landline telephone equipment, or staff present at the site.

4. On Monday, July 17, 2006, a Honolulu agent called the listed telephone number for HTV at 10:00 a.m., 11:30 a.m., and 3:00 p.m., to arrange an inspection of the KHLU-LP main studio. Each call was picked up by an answering machine, and the agent left a message requesting an FCC inspection of the KHLU-LP main studio. On Friday, July 21, 2006, a field agent from the Honolulu Resident Agent Office received a telephone call from the HTV President, stating that he could arrange inspection on Tuesday, July 25, 2006, at 3:00 p.m.

5. On Tuesday, July 25, 2006, Honolulu agents met with the KHLU-LP Director of Marketing, and the KHLU-LP contract engineer at 3:00 p.m. to inspect the KHLU-LP main studio located at the Salem site. Once again, the agents observed that there were two locked gates en-route to the transmitter site. The KHLU-LP transmitter site was enclosed by a locked chain-link fence, and there were signs posted on the fence to warn the public not to approach because of the danger of exposure to high electromagnetic fields. The door to the KHLU-LP transmitter was locked, and the building was unoccupied upon arrival. The KHLU-LP Director of Marketing stated that he and the HTV President are present at the main studio from 9:00 a.m. to 5:00 p.m., Monday through Friday, with a one hour lunch break from 1:00 to 2:00 p.m. He further stated that in the event one of them is absent, they stagger their schedules to insure a continual studio presence. No restroom facilities or running water were present at the studio. The KHLU-LP Director of Marketing departed the studio with the Honolulu agents at approximately 4:00 p.m. that day, leaving the facility once again unoccupied.

6. On Thursday, July 27, 2006, a Honolulu agent once again accessed the Salem site, this time with the KAIM-FM contract engineer. Both gates on the mountain road leading to the transmitter site were locked. The chain-link fence enclosing the site was locked. The agent knocked on the door of the KHLU-LP studio, but did not receive any response. The agent waited outside the KHLU-LP studio from 10:10 a.m. until 11:30 a.m., but did not observe anyone else at the site. The Salem contract engineer advised that he works at the site at least three times a month, but very rarely sees anyone from KHLU-LP at the site.

7. Later, on July 27, 2006, a Honolulu agent spoke to the KAIM-FM site manager, with whom he had visited the Salem site on July 10, 2006. The site manager stated that he had received a call from the KHLU-LP Director of Marketing, several days prior. The KHLU-LP Director of Marketing had requested a set of keys to open the locked gates at the Salem site, stating that he had lost his set.

8. On September 28, 2006, the Honolulu Office issued a *NAL* in the amount of $7,000 to HTV, finding that HTV apparently willfully and repeatedly failed to maintain a local main studio in its community of license. HTV filed a response ("*Response*") on November 28, 2006, arguing that that the proposed forfeiture amount is not consistent with the magnitude of the violation, given that HTV maintained

[4] As he passed through the gate of the fence to the main studio, the Honolulu agent noted that his personal radiofrequency radiation ("RFR") monitor LED lit at various places within this area, indicating the RFR in the area likely exceeded the public RFR maximum permitted exposure limit. See Section 1.1310 of the Rules, 47 C.F.R. § 1.1310.

[5] The agent did find a hand-written sign posted next to the door stating "Be back in one hour." The sign was not dated and gave a cellphone number to contact.

a main studio for KHLU-LP; that HTV will have financial difficulty paying the forfeiture amount; and that the forfeiture amount should be reduced based on HTV's history of compliance and its good faith effort to maintain a main studio for KHLU-LP.[6]

III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,[7] Section 1.80 of the Rules,[8] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement"*).[9] In examining HTV's response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.[10]

10. Section 73.1125(a) of the Rules requires the licensee of a broadcast station to maintain a main studio in its community of license. The station's main studio must serve the needs and interests of the residents of the station's community of license. In particular, the main studio must be accessible to the public during normal business hours "[t]o assure meaningful public participation in [the Commission's] licensing process."[11] To fulfill these functions, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.[12] The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.[13] In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful."[14] Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."[15] The site held out by HTV as the main studio location for KHLU-LP had no public access, and contrary to HTV assertions, no staff presence.

11. HTV first argues that the amount of the forfeiture, seven thousand dollars, is usually assessed when there is no main studio,[16] not where there is a main studio, which may not be accessible or

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[6] HTV requested and received a 30 day extension to respond to the *NAL*.

[7] 47 U.S.C. § 503(b).

[8] 47 C.F.R. § 1.80.

[9] 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

[10] 47 U.S.C. § 503(b)(2)(E).

[11] *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

[12] 2 FCC Rcd at 3217-18.

[13] *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

[14] *Id.*

[15] 7 FCC Rcd at 6802.

[16] HTV cites to *Letter to LocalOne Texas, Ltd.,* ref 1800E3-JLB, Video Division , Media Bureau, released June 23, 2004*; Arecelis Ortiz, Executrix*, 19 FCC Rcd 2632 (EB 2004), *recon denied* 20 FCC Rcd 534 (EB 2005); and *Blue Skies Broadcasting Corporation*, 18 FCC Rcd 15184 (EB 2003); all cases concerning the lack of a main studio.

consistently staffed. We disagree. We have consistently assessed forfeitures of $7,000 to licensees who fail to maintain a meaningful staff presence in, or access to, their main studios.[17] HTV also states that while it is true that the main studio lacks running water and windows, as well as a landline phone, it was not aware that these items were required. HTV misconstrues the point of the Honolulu Office's detailed description of the KHLU-LP main studio. These items provide evidentiary support of the Honolulu Office's conclusion that the purported main studio was not maintained for public access. HTV acknowledges, however, that since the release of the *NAL,* it has consulted with its legal counsel and realizes that improvements are needed in terms of access to the KHLU-LP main studio and the hours of staff presence at the main studio. We find that while the description of the main studio may detail items not specifically required by the Rules, the Honolulu Office's ultimate finding that the KHLU-LP main studio lack public access and staff presence was, as HTV acknowledges, accurate.[18]

12. HTV also states that it will have financial difficulty paying the proposed forfeiture amount. HTV, however, has submitted no financial data to support this claim.[19] In analyzing a financial hardship claim, the Commission generally has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.[20] Because HTV has submitted no data to support its claim, we are unable to consider it.

13. HTV also asks that we reduce the proposed forfeiture amount based on its good faith efforts to comply with main studio requirement. Reductions based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations,[21] or that they had established compliance programs in place,[22] prior to the Commission's involvement. As we indicated above, the *NAL* was not issued because HTV did not have a building it held out as the main studio for KHLU-LP. The *NAL* was issued because KHLU-LP main studio lacked public access and staff presence. As HTV acknowledges, it was only after the issuance of the *NAL* that it worked to remedy these failures. Therefore, we find no basis for a reduction based on HTV's good faith efforts to comply.

14. HTV also states that it has a history of compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce HTV's forfeiture amount from $7,000 to $5,600.

15. Based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement,* we find that reduction of the proposed forfeiture to $5,600 is warranted.

IV. ORDERING CLAUSES

16. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, HTV/HTN/Hawaiian TV Network, Ltd., **IS LIABLE FOR A MONETARY**

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[17] *See, e.g., Farmworker Educational Radio Network*, 20 FCC Rcd 14294 (EB 2005); *Alpine Broadcasting Limited Partnership*, 21 FCC Rcd 3077 (EB 2006).

[18] HTV also asserts that no deficiencies were found in its public file. While that may be accurate, it does not diminish HTV's failure to maintain access to, and staff presence in, the KHLU-LP main studio.

[19] In its *Response*, HTV stated that it would supplement its filing with financial data. No supplemental filing was ever received.

[20] *See PLB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992).

[21] *See Radio One Licenses, Inc.,*17 FCC Rcd 20408 (EB 2002), *recon. denied,* 18 FCC Rcd 15964 (2003).

[22] *See Tidewater Communications, Inc.,* 18 FCC Rcd 5524, 5525 (EB 2003).

FORFEITURE in the amount of $5,600 for willfully and repeatedly violating Section 73.1125(a) of the Rules.[23]

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[24] 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 above. 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. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.[25]

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to HTV/HTN/Hawaiian TV Network, Ltd., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

[23] 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1125(a).

[24] 47 U.S.C. § 504(a).

[25] *See* 47 C.F.R. § 1.1914.