

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

In the Matter of
Woods Communications Corporation
Licensee of Station KWBZ-TV 1
Wolfforth, Texas
Facility I.D. No. 77719
NAL/Acct. No. 0741420017
FRN: 0001756659

FORFEITURE ORDER

Adopted: May 19, 2010

Released: May 21, 2010

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of eleven thousand, two hundred dollars (\$11,200), to Woods Communications Corporation ("Woods"), licensee of Station KWBZ-TV, Wolfforth, Texas (the "Station"), for its willful and repeated violations of Sections 73.3526(e)(11)(ii)-(iii) of the Rules, by failing to place in the Station's public inspection file all required records concerning its compliance with the children's programming commercial limits and by failing to publicize the existence and location of its Children's Television Programming Reports.2

II. BACKGROUND

2. On March 30, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KWBZ-TV (the "Application") (File No. BRCT-20060330AHU). In response to Section IV, Question 10 of the Application, the Licensee stated that it had failed to publicize the existence and location of the Station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. It appears that the Licensee failed to comply with Section 73.3526(e)(11)(iii) for eight years. In Exhibit 24, the Licensee indicated that although it was aware of the requirement to publicize the existence and location of the Children's Television Programming Reports, a new traffic system was installed and the Station "failed to transfer the order from the old traffic system to the new traffic system." The Licensee asserted that when it discovered that it had not publicized the existence and location of the Children's Television Programming Reports, it implemented procedures to ensure future compliance.

3. In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee indicated that its records concerning compliance with the children's programming commercial limits for 2002 and the first three quarters of 2003 were not placed in the public inspection file. The Licensee claimed that although these records were prepared, they were subsequently misplaced.

1 The station has since changed its call letters to KLCW-TV. However, for ease of reference, we will refer to the station by the former call letters in use during the subject license term.

2 See 47 C.F.R. § 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii).

4. On March 9, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of fourteen thousand dollars (\$14,000) for its violations.³ On May 4, 2007, in response to the NAL, Woods filed a Response to the NAL (“Response”). Therein, Woods states that the proposed forfeiture exceeds the admonitions found appropriate in past cases. In addition, Woods argues the forfeiture should be reduced further due its good faith efforts to comply with the rule, and its self-reporting and immediate correction when it discovered the rule infractions. Woods maintains that the Commission should consider the small market status of the Station, and contends that the imposition of a \$14,500 fine represents a significant portion of the Station’s gross revenues, while that Station itself is struggling and losing money. Finally, Wood asserts that the proposed forfeiture should be cancelled or reduced substantially because of the licensee’s otherwise good record and overall compliance and having not been cited in the past for any infraction of the Commission’s rules and regulations. Woods concludes that the forfeiture should be reduced, or to be consistent with prior rulings, cancelled.

DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and the Commission’s *Forfeiture Policy Statement*.⁶ In assessing forfeitures, Section 503(b)(2)(D) 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.⁷

6. Woods does not dispute that the Station violated the Section 73.3526(e)(11)(ii)-(iii) of the Rules, but argues that its forfeiture should be rescinded, in part, in light of past Commission decisions in similar cases where admonishment rather than a monetary forfeiture was found appropriate. However, we do not agree that our disposition of the earlier matters compels an identical sanction in this case. Since those decisions, broadcasters have had significantly more time to hone their plans and practices to ensure compliance with our children’s programming rules and policies.

7. As to Wood’s request that the proposed forfeiture be further reduced to the station’s status as a small market station, the Commission will not consider reducing or canceling a forfeiture based on financial hardship 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 reflect the licensee’s current financial status. Any such claim must also specifically identify the basis for the claim by reference to the financial documentation submitted.⁸ In general, a licensee’s gross revenues are the best

³ *Notice of Apparent Liability for Forfeiture*, DA 07-743 (rel. March 9, 2007). Therein, we noted that the Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526(e)(11)(iii) and a base forfeiture amount of \$4,000 for violation of Section 73.3526(e)(11)(ii).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ *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), *recon. denied*, 15 FCC Rcd 303 (1999). (“*Forfeiture Policy Statement*”).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ *See Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441 (Apr. 16, 2004).

indicator of its ability to pay a forfeiture.⁹ However, inasmuch as Woods has not submitted any of this necessary information, we are unable to extend the requested relief to reduce the proposed forfeiture based on this station's economic position.

8. We also reject Wood's arguments that its forfeiture should be cancelled because of its self-disclosure, corrective actions and good faith efforts to comply with FCC rules and requirements. Although Woods admitted to the subject rule violations, it did so only in the context of the question contained in its license renewal application that compelled such disclosure. Further, while we recognize that Woods began complying with the appropriate rule sections in question as soon as it discovered the violations, corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.¹⁰ However, given Woods' history of compliance with the Rules, we reduce the forfeiture amount to \$11,200.¹¹

ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,¹² that Woods Communications Corporation., SHALL FORFEIT to the United States the sum of \$11,200 for willfully and repeatedly violating Sections 73.3526(e)(11)(ii)-(iii) of the Commission's Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture 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.¹³ Payment of the proposed 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).

11. The Licensee's request for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

⁹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁰ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

¹¹ See, e.g. *Metropolitan School District of Washington Township*, Forfeiture Order, 23 FCC Rcd 9995 (MB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (same); *Traffic Control Products of Florida, Inc.*, Forfeiture Order, 23 FCC Rcd 5452, 5454 (EB 2008) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

¹² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

12. IT IS FURTHER ORDERED that copies of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Woods Communications Corporation, #1 WCOV Avenue, Montgomery, Alabama, 36111, and to its counsel, Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau