

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

In the Matter of:	)	
	)	
Carolina Rays, LLC	)	Facility ID No. 60888
Licensee of Station WLNN-LP	)	NAL/Acct No. 201241420007
Boone, North Carolina	)	FRN: 0013222245

**FORFEITURE ORDER**

**Adopted: July 10, 2013**

**Released: July 11, 2013**

By the Deputy 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,<sup>1</sup> we find that Carolina Rays, LLC, licensee of Station WLNN-LP, Boone, North Carolina, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file electronically with the Commission the Station's Children's Television Programming Reports (FCC Form 398). Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Three Thousand Dollars (\$3,000).

**II. BACKGROUND**

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on March 28, 2013.<sup>2</sup> The NAL notified the Licensee that its failure to file Children's Television Programming Reports for the third quarter in 2008, the second quarter of 2009, and all four quarters in 2010 constituted apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Commission's rules.<sup>3</sup> The Division concluded that the Licensee was apparently liable for a forfeiture of \$3,000. In a response received May 1, 2013, the Licensee requested that the forfeiture be cancelled.<sup>4</sup>

**III. DISCUSSION**

3. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Communications Act of 1934 (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.<sup>5</sup> In order to impose a forfeiture penalty, the

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

<sup>2</sup> *Carolina Rays, LLC*, Notice of Apparent Liability for Forfeiture, DA 13-567 (Mar. 28, 2013).

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>4</sup> Licensee Response to Notice of Apparent Liability ("Licensee Response") (May 1, 2013).

<sup>5</sup> 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture

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.<sup>6</sup> 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.<sup>7</sup> As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture of \$3,000 for repeated violations of Section 73.3526(e)(11)(iii) of the Commission's rules.

4. The Community Broadcasters Protection Act requires that Class A television stations comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.<sup>8</sup> The Commission rules establish that Class A licensees 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 Commission.<sup>9</sup> A Commission inquiry revealed that the Licensee failed to file timely Children's Television Programming Reports on repeated occasions.

5. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.<sup>10</sup> 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 Commission proposed a forfeiture amount of \$3,000. Licensee argues that the forfeiture amount should be cancelled.

6. First, the Licensee argues that it did not assume ownership of the Station until November 30, 2012 upon the final consummation of the assignment of the Station from Rondinaro Broadcasting, Inc. to Carolina Rays, LLC, and therefore the violations predated its ownership of the Station.<sup>11</sup> Licensee's representation is incorrect. Commission records show that the transaction between Rondinaro Broadcasting, Inc. and Carolina Rays LLC was consummated on November 30, 2008.<sup>12</sup> The late filings for the second quarter of 2009 and all four quarters of 2010 occurred during

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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).

<sup>6</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>7</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>8</sup> Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

<sup>9</sup> *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).

<sup>10</sup> *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).

<sup>11</sup> Licensee Response at 1.

<sup>12</sup> File No. BALTTA-20080710AGQ, available at [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app\\_det.pl?Application\\_id=1250415](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app_det.pl?Application_id=1250415); *see also* April 27, 2011 Email From Terry Smith of Carolina Rays, LLC to Joyce Bernstein, Attorney Adviser, Video Division ("I took over the operation of the station in 2008. . .") ("Smith Email to Bernstein").

the time when Carolina Rays LLC served as the licensee.<sup>13</sup>

7. Second, the Licensee argues that it is now compliant with all Commission Rules.<sup>14</sup> However, corrective actions taken to prevent subsequent violations of the children's television rules and policies do not relieve the Licensee of liability for violations which have already occurred.<sup>15</sup>

8. Third, the Licensee argues that the FCC's electronic filing system is inadequate and at fault because it did not provide stations with an opportunity to know if their filings were received properly.<sup>16</sup> This is also incorrect. The Commission's "KidVid Public Access" database<sup>17</sup> has been available to licensees and the general public to check on the status of individual filings since long before the violations at issue here occurred. Thus, the Licensee did in fact have the opportunity to review this database to ensure that the reports were properly filed, and we reject Licensee's assertion that the failure to file the reports timely was caused by the FCC's electronic filing system.<sup>18</sup> Regardless, it is the Licensee's responsibility to ensure that the reports are properly filed.

9. Fourth, the Licensee claims that certain reports were filed in a timely manner but were not available in the database.<sup>19</sup> The Licensee has provided no verifiable evidence of the Commission's receipt of the reports in a timely manner. In response to our initial inquiry, the Licensee provided copies of reports that were dated as having been prepared in a timely manner but no evidence that the reports were electronically filed at that time. When a report is submitted properly 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 to confirm the filing. Here, Licensee provided no such evidence, despite stating in its response that it printed the confirmation page when it submitted its report for the first quarter of 2013.<sup>20</sup>

10. Fifth, the Licensee argues that the station cannot afford to pay the forfeiture.<sup>21</sup> The Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2)

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<sup>13</sup> The Licensee is correct that the first late filing cited in the NAL predated its ownership of the Station. However, the remaining five late filings were during the period in which Carolina Rays, LLC was the Licensee. We conclude there is no basis to reduce the violation given that repeated violations of Section 73.3526 occurred during the Licensee's ownership period.

<sup>14</sup> Licensee Response at 1-2.

<sup>15</sup> See, e.g., *WSOC Television, Inc. (WSOC-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6124 (2010); *WCVB Hearst Television (WCVB-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6128, 6129-30 (2010)

<sup>16</sup> Licensee Response at 1.

<sup>17</sup> <http://licensing.fcc.gov/KidVid/public/report/10/query.faces>

<sup>18</sup> See Smith Email to Bernstein ("The one report in 2008 and the one in 2009 were both sent in like the other reports each quarter, but apparently something caused them not to end up in the proper place. I am not highly experienced electronically, and therefore I do not understand why they did not because they were sent like the others.").

<sup>19</sup> Licensee Response at 1.

<sup>20</sup> *Id.* at 1.

<sup>21</sup> Licensee Response at 2.

financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the licensee’s current financial status. Typically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee’s ability to pay.<sup>22</sup> Here, the Licensee has provided no financial documentation. Absent such financial information, the Commission will not consider its request to reduce or cancel the forfeiture on this basis.<sup>23</sup>

11. Sixth, and finally, the licensee argues that the forfeiture should be reduced or cancelled based on its service to the community and the significant local programming it produces.<sup>24</sup> Although the station does produce local issues responsive programming, a claim of service to the community is not normally accepted as a basis to mitigate a forfeiture and in this case we do not find that the licensee’s showing excuses it from its basic obligations regarding the filing of Children’s Television Programming Reports.<sup>25</sup>

#### IV. ORDERING CLAUSES

12. 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,<sup>26</sup> Carolina Rays, LLC SHALL FORFEIT to the United States the sum of Three Thousand Dollars (\$3,000) for repeatedly violating 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. § 73.3526(e)(11)(iii).

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission’s rules within fifteen (15) 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 Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

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

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<sup>22</sup> *San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

<sup>23</sup> *Lawmate Tech. Co., Ltd.*, Forfeiture Order, 2012 WL 6086200, File No. EB-07-SE-206 (2012).

<sup>24</sup> Licensee Response at 2.

<sup>25</sup> *KLDT-TV*, Forfeiture Order, 10 FCC Rcd 3198, 3199 (1995).

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

15. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Carolina Rays, LLC, P.O. Box 67, Linville, North Carolina, 28646.

FEDERAL COMMUNICATIONS COMMISSION

Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau