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

In the Matter of:	)	
	)	
	)	
Korean American TV Broadcasting Corporation	)	FRN: 0003759560
Licensee of Station WKTB-CD	)	NAL/Acct. No. 201341420036
Norcross, Georgia	)	Facility ID No. 35418
	)	

FORFEITURE ORDER

Adopted: October 17, 2013 **Released: October 18, 2013**

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 Korean American TV Broadcasting Corporation, licensee of Station WKTB-CD, Norcross, Georgia, repeatedly violated (i) Section 73.3526(b)(2) & (e)(11)(i) of the Commission's Rules by failing to file the Station's quarterly issues/programs lists and (ii) Section 73.3526(e)(11)(iii) by failing to file timely with the Commission the Station's Children's Television Programming Reports. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Nine Thousand Dollars ($9,000.00).

II. BACKGROUND

2. In 2012, the Commission adopted a proposal to replace the requirement that Class A television stations maintain a public file at their main studios with a requirement that such stations post most of the documents in that file, including the quarterly issues-programs lists, to an online public file to be hosted by the Commission.[2] Stations were required to upload all required documents to the online public file by February 4, 2013.[3] A staff review of the online public file for WKTB-CD revealed that the Licensee had failed to fulfill this requirement because it had not filed issues/programs lists for 15 quarters of the license period. Moreover, the Licensee failed to file timely its Children's Television Programming Reports for 20 quarters during the license period.[4]

3. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on

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

[2] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4536, n.2 (2012).

[3] *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, MM Docket No. 00-168; MM Docket No. 00-44, 2013 WL 364406 (January, 30, 2013).

[4] *Korean American TV Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, DA 13-1642 (Jul. 26, 2013), at 1-2.

July 26, 2013.[5] The NAL notified the Licensee that the station's failure to file issues/programs lists during the license period constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(i) of the Commission's Rules[6] and that the Station's failure to file timely its Children's Television Programming Reports constituted an apparent willful or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.[7] The Division concluded that the Licensee was apparently liable for a forfeiture of $20,000.

4. In a timely response dated August 21, 2013, the Licensee requested that the proposed forfeitures be cancelled or reduced.[8]

III. DISCUSSION

5. 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.[9] 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.[10] 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.[11] As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's rules. We ultimately conclude that the forfeiture amount should be reduced from $20,000 to $9,000.

6. 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.[12] 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.[13] Moreover, each Class A television station must prepare

[5] *Id*.

[6] 47 C.F.R. § 73.3526(e)(11)(i).

[7] 47 C.F.R. § 73.3526(e)(11)(iii).

[8] Licensee Response to Notice of Apparent Liability ("Licensee Response") (Aug 21, 2013).

[9] 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).

[10] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

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

[12] 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).

[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).

and place in its public inspection file on a quarterly basis an issues/programs list demonstrating that the station aired programming that meets the needs and interests of its community of license[14] and must upload the issues/programs lists to the Commission's website.[15]

7. Commission policy establishes a base forfeiture amount of $3,000 for failure to file a required form and $10,000 for public file violations.[16] 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 $20,000.

8. The Licensee does not dispute that it failed to file electronically the issues/programs lists and Children's Television Programming Reports with the Commission in a timely manner as described in the NAL. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

9. The Licensee, however, argues that it should not be required to pay a forfeiture for any violations that occurred prior to January 5, 2010, the consummation date of a transfer of control of the stock of the corporation from James C. Sim and Brenda S. Sim to their children, Susan Sim and Coline K. Sim.[17] The Licensee contends that it relied on an Audio Division case and Media Bureau renewal application instructions to conclude that a licensee's responsibility for public file compliance runs only forward from the consummation of long-form transfers of control.[18]

10. The Video Division has consistently followed Commission precedent holding that "[t]ransfer of control of the licensee's stock subsequent to a violation does *not* excuse the licensee for the violation."[19] Thus, there is no basis by which the intra-family transfer of control of the stock

[14] 47 C.F.R. § 73.3526(e)(11)(i).

[15] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 27 FCC Rcd at 4568-69; 47 C.F.R. § 73.3526(b)(2); and § 73.3526(e)(17).

[16] *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).

[17] Licensee Response at 1, 3. The application for transfer of control specifically stated the following: "This [is] not an arms-length business transaction but rather an intra-family arrangement. Thus there is no customary commercial contract. The family financial documents are not being submitted, as they are personal and are not appropriate for public disclosure. Also, because this is an intra-family transaction, no fixed value has been assigned to the stock, so no 'purchase price' can be stated." File No. BTCTTA-20090519ACY.

[18] Licensee Response at 1-2 & n.1 and n.2 (citing *Citadel Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 15060 (Aud. Div. 2010); *Instructions for FCC 303-S Application for Renewal of Broadcast Station License* (March 2011*); Media Bureau Announces Certain Revisions to Instructions to Form 303-S*, Public notice, 18 FCC Rcd 8996 (MB 2003)).

[19] *EZ Sacramento, Inc.*, Forfeiture Order, 14 FCC Rcd 13539, 13540 (MMB 1999) (emphasis added) (citing *Winslow Communications, Inc.*, Memorandum Opinion and Order, 45 FCC 2d. 662, 663 (1972) ("The transfer of control of stock of the corporation subsequent to the violations does not excuse the licensee of the violations.")); *Mapleton Licensee of San Luis Obispo*, Forfeiture Order, 27 FCC Rcd 4099, 4101 n. 19 (EB 2012); *Hensley Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 115, 116 n. 9 (EB 2009).

of the Licensee corporation should excuse the violations identified.[20]

11. Our interpretation of this issue has been consistent, and thus the Licensee's reliance on cases preventing an agency from departing from a policy without providing a reasoned justification[21] is misplaced. "Although divergence from agency precedent demands an explanation, where a reviewing court can ascertain that the agency has not in fact diverged from past decisions, the need for a comprehensive and explicit statement of its current rationale is less pressing."[22]

12. Licensee further argues that because it has now complied with the requirement to file the issues/programs lists in the online public file and the reports were timely prepared and placed in the physical public file, the forfeiture should be cancelled.[23] The Licensee was required to place the issues/programs lists in the online public file by February 4, 2013.[24] Nonetheless, the Licensee has demonstrated that the reports were prepared in a timely manner, and the failure to upload the reports to the online public file was due to an incorrect interpretation of our Rules. Although we consider any violation of our public file rules to be significant, we will cancel the forfeiture with respect to the late-filed issues/programs lists and hereby admonish the Licensee for its failure to upload the lists in a timely manner.

13. The Licensee also argues that, despite the late filings, the Licensee met the intent of the Children's Television Act because the Station broadcast the children's programming in question.[25] We disagree. The preparation and filing of Children's Television Programming Reports with the Commission ensures that the public and the Commission are able to review on a real-time basis the adequacy of the station's efforts with respect to children's programming, and such public access is crucial to the success of the statute's goals.

14. The Licensee argues that its history of compliance with Commission rules favors a

[20] *Citadel Broadcasting* and the certification instructions on the Media Bureau broadcast renewal form do not require a different result. As the Enforcement Bureau has previously held, "issues of where liability lies for violations that occurred prior to a transfer of control and whether a new owner can certify to actions that took place prior to the transfer of control are entirely different issues." *Hensley Broadcasting, Inc.*, 24 FCC Rcd at 116 n. 9 (EB 2009). Because the Licensee remains the same after a transfer of control, as a legal matter, liability remains with the licensee. In contrast, in the context of a license renewal application, a transferee cannot as a legal or practical matter "certify that the licensee complied with the Commission's rules during a period of time prior to the transferee obtaining ownership." *Id.* The Licensee has not been assessed a forfeiture based on its failure to identify the violations in the renewal application because it complied with the requirements of the certification instructions.

[21] Licensee Response at 2 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965); *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (internal citations omitted).

[22] *New South Broadcasting Corporation v FCC*, 879 F.2d 867, 870 (D.C. Cir. 1989) (internal quotations and citations omitted).

[23] Licensee Response at 3.

[24] Indeed, if the reports were available in the physical public file, as the Licensee reports, it would have required only a minimal effort to upload those reports at the same time as the reports from the first quarter of 2010 through the present were uploaded to the online public file.

[25] Licensee Response at 4.

reduction in the forfeiture amount.[26] Given the Licensee's history of compliance and having carefully considered the Commission's *Forfeiture Guidelines*,[27] we reduce the remaining forfeiture amount to $9,000.

IV. ORDERING CLAUSES

15. 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,[28] Korean American TV Broadcasting Corporation SHALL FORFEIT to the United States the sum of nine thousand dollars ($9,000) for repeatedly violating 47 C.F.R. §§ 73.3526(e)(2), 73.3526(e)(11)(i) and 47 C.F.R. 73.3526(e)(11)(iii).

16. 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 Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

17. 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.

18. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Korean American TV Broadcasting Corporation, 4675 River Green Parkway, Duluth, Georgia, 30096, and to its counsel, Peter Tannenwald and Davina Sashkin, Fletcher, Heald & Hildreth, PLC, 1300 17th Street North, 11th Floor, Arlington, Virginia, 22209-3801.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[26] *Id.* The Licensee's argument regarding its history of compliance is an implicit admission that compliance record of a licensee preceding a transfer of control is relevant.

[27] 12 FCC Rcd 17087.

[28] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).