

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

In the Matter of:)	
)	Facility I.D. No. 54983
Ernesto Bustos)	NAL/Acct. No. 201341420009
Licensee of Station WTBL-CD)	FRN: 0021349188
Lenoir, North Carolina)	

FORFEITURE ORDER

Adopted: February 24, 2014

Released: February 24, 2014

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 Ernesto Bustos, licensee of Station WTBL-CD, repeatedly violated Section 73.3526(e)(11)(iii) of the Commission's Rules by (i) failing to prepare and place in the Station's public file in a timely manner its Children's Television Programming Reports (FCC Form 398) and (ii) failing to file the reports with the Commission in a timely manner. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Thirteen Thousand Dollars (\$13,000.00).

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.² As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. Those reports must be prepared and placed in the public file by 10 days after the close of the reporting quarter. That subsection also contains a separate and independent requirement that licensees file the reports with the Commission by 10 days after the close of the reporting quarter.

3. On July 14, 2008, the Commission approved the assignment of the license for WTBL-CD from Sound Media, Inc. to Catawba Broadcasting, LLC.³ On February 23, 2010, the Commission approved a transfer of control of Catawba Broadcasting to Ernesto Bustos.⁴ Following the approval of the transfer of control, Mr. Bustos was the sole shareholder of Catawba Broadcasting.

4. On March 31, 2011, the Video Division sent Catawba a letter of inquiry informing the Licensee that Commission records showed that the Licensee failed to file Children's Television Programming Reports for the third and fourth quarters of 2009 and all four quarters of 2010.

5. On December 9, 2011, the Commission approved a pro forma assignment of the license from

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

² 47 C.F.R. § 73.3526.

³ File No. BALTTA-20071211AAT.

⁴ File No. BTCTTA-20091216ADL.

Catawba Broadcasting to Ernesto Bustos.⁵ In Exhibit 2, Bustos, who signed the application as both the assignor and assignee, certified that “[t]his is an assignment of license from a limited liability company (corporate entity) to its sole equity and voting owner.”⁶ Bustos further certified in Exhibit 5 of the application that “[n]o cash consideration is involved in the proposed pro forma transaction.”⁷

6. On April 6, 2012, Licensee Ernesto Bustos filed a timely response to the Video Division’s letter. The response stated that the Children’s Television Programming Reports for the third and fourth quarters of 2009 and all four quarters of 2010 were prepared during the week of June 13-17, 2011, were electronically filed with the Commission on June 17, 2011, and were placed in the public file on June 20, 2011.⁸ Thus, the Licensee admitted that the six reports were: (i) prepared and placed in the public file late, in violation of one of the provisions of Section 73.3526(e)(11)(iii), and (ii) filed late, in violation of a separate provision of Section 73.3526(e)(11)(iii).

7. The Video Division issued a Notice of Apparent Liability (“NAL”) for Forfeiture on April 18, 2013.⁹ The NAL notified the Licensee that its failure to prepare, place in its public file, and file timely its Children’s Television Programming Reports constituted an apparent willful or repeated violation of the provisions of Section 73.3526(e)(11)(iii) of the Commission’s rules.¹⁰ The Division concluded that the Licensee was apparently liable for a forfeiture of \$13,000.

8. In a timely response dated May 17, 2013, the Licensee did not attempt to rebut the admitted violations but nonetheless asserted that the proposed forfeiture amount should be cancelled or reduced.¹¹

III. DISCUSSION

9. 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.¹² 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

⁵ File No. BALTTA-20111109AVC.

⁶ *Id.* Exh. 2.

⁷ *Id.* Exh. 5.

⁸ Licensee Response to Letter of Inquiry at 3 (Apr. 6, 2012). Certain of the late-prepared and late-filed reports occurred before Bustos assumed control of Catawba. However, “liability for violations of [the] Commission’s rules inures to the licensee regardless of an intervening transfer of control.” *Mapleton Licensee of San Luis Obispo, LLC*, Forfeiture Order, 27 FCC Rcd 4099, 4101 (EB 2012). Even absent that policy, we would find no basis to reduce the forfeiture here as several of late-prepared and late-filed reports occurred subsequent to the transfer of control to Bustos.

⁹ *Ernesto Bustos*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5187 (Vid. Div. 2013).

¹⁰ 47 C.F.R. § 73.3526(e)(11)(iii).

¹¹ Licensee Response to Notice of Apparent Liability (“Licensee Response”) (May 17, 2013).

¹² 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).

an opportunity to show, in writing, why no such penalty should be imposed.¹³ 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.¹⁴ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Section 73.3526(e)(11)(iii) of the Commission's rules. We ultimately conclude that no reduction in the forfeiture amount is justified.

10. 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.¹⁵ 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.¹⁶

11. The Licensee does not dispute its earlier admission it failed to prepare and place in the public file in a timely manner its Children's Television Programming Reports for six quarters. Nor does the Licensee dispute that it failed to file with the Commission in a timely manner the reports for seven quarters. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

12. The Commission's Forfeiture Policy Statement establishes a base forfeiture amount of \$3,000 for failure to file a required form and \$10,000 for public file violations.¹⁷ 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 \$13,000. Licensee argues that the forfeiture amount should be reduced or cancelled.

13. The Licensee first argues that the admitted violations occurred when Catawba Broadcasting was the licensee and therefore Ernesto Bustos should not be found liable for the violations.¹⁸ The Licensee claims that forfeiture is barred by Section 503(b)(6)(B) of the Act, which states that "[no] forfeiture penalty shall be determined or imposed against any person . . . if . . . such person does not hold a broadcast station license . . . and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."¹⁹

14. The Licensee is incorrect because Catawba Broadcasting and Ernesto Bustos are the same "person" for purposes of analysis under Section 503(b)(6)(B). The Communications Act mandates that the Commission regulate in the public interest, giving the Commission broad discretion to regulate the

¹³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

¹⁵ 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).

¹⁶ *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).

¹⁷ 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).

¹⁸ Licensee Response at 2-3.

¹⁹ Licensee Response at 2-3 (quoting 47 U.S.C. § 503(b)(6)(B)).

allocation of spectrum.²⁰ Courts have recognized that these powers allow the Commission to look past corporate forms without having to meet the traditional requirements of piercing the corporate veil²¹ when necessary to accomplish the Commission's broad mandate.²² Indeed, "[t]he broad equitable standards of the statute, enacted to further public convenience, clearly support the Commission's [ability] to look beyond the corporate entity to serve the interests of fairness, justice, and equity."²³ A corporation will be looked upon as a legal entity "until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."²⁴

15. The pro forma assignment of the Station from Catawba Broadcasting to Ernesto Bustos did not implicate the statute of limitations or otherwise break the chain of liability for violations committed by the Station because there was no change in control from Catawba, a limited liability corporation of which Bustos was the "sole equity and voting owner," to Bustos as an individual. Applying our authority to pierce the corporate veil in this case, we conclude that Bustos is responsible for both the violations of both Catawba and Bustos as an individual because he is the same "person" despite the pro forma name change of the licensee for purposes of analysis under Section 503(b)(6)(B).²⁵

16. The Licensee next argues that because it has now filed the reports in question, it should not be found liable for its admitted failure to file the reports by the filing deadline stated in Section 73.3526(e)(11)(iii) of the Rules. Licensee bases this argument in part on Commission's Forfeiture Policy Statement, which states a guideline forfeiture of \$3,000 for the failure to file required forms or information but does not specifically refer to a forfeiture if the forms or information are filed late. Licensee thus contends that it was not put on notice that a forfeiture would be assessed for a late-filed report.²⁶

17. Section 73.3526(e)(11)(iii) of our Rules is very clear.²⁷ Each licensee must electronically file

²⁰ *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 25 FCC Rcd 13874, 13889 n.5 (2010).

²¹ Therefore, we need not demonstrate that corporate veil can be pierced in this case, although it seems clear from the facts that such a showing could be made, given that Mr. Bustos is the sole shareholder of Catawba Broadcasting, violations of the Commission's rules were committed, and Mr. Bustos is responsible for the violations at issue.

²² *Id.* (citing *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 738 (D.C. Cir. 1974); *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950); *see also Telseven, LLC, Calling 10, LLC, Patrick Hines a/k/a Brian Hines*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558, 15571 (2012) (finding liability against an individual where he appears to have complete control over business liable for violation and appears to have organized and dismantled businesses as necessary in an attempt to shield himself from liability).

²³ *Capital. Tel. Co., Inc.*, 498 F.2d at 738.

²⁴ *Id.*

²⁵ The Licensee's reliance on *High I-Q Radio, Inc.*, 19 FCC 7225, 7240 (2004) (Response at 3) is entirely misplaced. In that matter, the current licensee was excused from liability for violations that occurred prior to the assignment of the station from an independent, wholly unrelated previous licensee. The Commission has long held that assignments from one independent entity to another break the chain of liability for violations that occurred under the previous licensee. As described above, that is not the factual scenario here, as Catawba and Bustos are the same "person" for liability purposes.

²⁶ Licensee Response at 3-5 (citing *United States v. Rust Communications Group, Inc.*, 425 F. Supp. 1029, 1033, (E.D. Va. 1976)).

²⁷ *Rust Communications Group, Inc.* is therefore inapposite. In that case, the court found the antenna input power rule at issue did not provide the licensee with requisite notice of the specific conduct that the Commission considered to be a violation warranting a sanction. Here, by contrast, the fact that the failure to meet the filing

its Children's Television Programming Reports for each calendar quarter "by the tenth day of the succeeding calendar quarter."²⁸ Thus, the failure to file a report by that deadline in any particular quarter is a clear violation of the Rule for which the Licensee had adequate notice.²⁹ Section 503(b) of the Act states that "[a]ny person who is determined by the Commission . . . to have . . . willfully or repeatedly failed to comply with . . . any rule, regulation, or order issued by the Commission . . . shall be liable to the United States for a forfeiture penalty. Therefore, the statute and the rule in question provide adequate notice to the Licensee that it would be subject to a forfeiture penalty independent of the *Forfeiture Policy Statement*. Nonetheless, the Commission has previously rejected Licensee's argument that forfeitures under the *Forfeiture Policy Statement* should only apply to Licensees that never file the required forms, rather than Licensees that fail to file the forms by the established deadline.³⁰

18. The Licensee next asserts that assessing forfeitures for violations of independent provisions of Section 73.3526(e)(11)(iii) creates a "sort of double jeopardy" for which the licensee did not receive adequate notice.³¹ Section 73.3526(e)(11)(iii) of the Commission's rules states that each licensee must complete a Children's Television Programming Report for each quarter reflecting the efforts it made during the quarter to serve the educational and informational needs of children.³² This section of the rule then imposes two discrete, time-sensitive requirements upon broadcasters with respect to those reports. First, "[t]he report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter."³³ Second, by the same date, "a copy of the Report for each quarter is also to be filed electronically with the FCC."³⁴ The Video Division has consistently interpreted these as separate requirements subject to separate forfeiture penalties, and the Licensee received adequate notice through the Division's consistent interpretation of the abundantly clear rule in question.

19. Finally, Licensee argues that the forfeiture amount was a departure from past practice and therefore unfair, citing to *Melody Music*.³⁵ Licensee's argument is entirely without merit as the cases cited in fact demonstrate the full consistency with which the Commission has interpreted the rule in this context.³⁶ We thus conclude that Licensee's arguments in favor of a reduction or cancellation of the

deadline with respect to Children's Television Programming Reports would represent a violation of Section 73.3526(e)(11)(iii) could not be more clear.

²⁸ 47 C.F.R. § 73.3526(e)(11)(iii).

²⁹ The Licensee also received notice through the Notice of Apparent Liability, as required under the statute and our rules.

³⁰ See *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 428, 429 (MB 2010) (rejecting argument that Section 1.80 of the Rules constrains the Commission to impose forfeiture orders to instances in which applications are not filed at all, as opposed to untimely-filed applications, and noting that it is well-settled that the Commission may impose a forfeiture for a late-filed renewal application).

³¹ Licensee Response at 5.

³² 47 C.F.R. § 73.3526(e)(11)(iii).

³³ *Id.*

³⁴ *Id.*

³⁵ Licensee Response at 6 (citing *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965)).

³⁶ *Id.* (citing *Beech Street Communications Corp.*, Notice of Apparent Liability for Forfeiture, DA 13-809 (Vid. Div. Apr. 25, 2013); *Carolina Rays, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 3350 (Vid. Div. 2013); *Vernon Watson*, 27 FCC Rcd 3350 (Vid. Div. 2012); *Triplett & Associates*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13466 (Vid. Div. 2012); *Centex Television L.P.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2463 (Vid. Div. 2012); *Omni Broadcasting Company*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2467 (Vid. Div. 2012)). In each proceeding cited, the licensee in question was assessed a \$3,000 forfeiture for failure to file Children's Television Programming Reports electronically with the Commission in a timely manner. The licensees in the proceedings cited were not found to have failed to prepare and place the reports in the public file in a timely manner. Indeed, licensees who were found to have to both (i) failed to prepare and

forfeiture amount proposed in the NAL are wholly unavailing.

IV. ORDERING CLAUSES

20. 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,³⁷ Ernesto Bustos SHALL FORFEIT to the United States the sum of Thirteen Thousand Dollars (\$13,000) for repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's rules.

21. In the event that the Licensee wishes to revert WTBL-CD to low power television status, the Licensee need only notify us of this election and request a change in status for the station.³⁸ Should the Licensee elect to revert the station to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

22. 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.

23. 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.

place the reports in the public file in a timely manner and (ii) failed to file the reports electronically with the Commission in a timely manner were consistently assessed the same \$13,000 forfeiture assessed here. *Elliott B. Block*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 7437 (Vid. Div. 2013) (proposing \$13,000 forfeiture for (i) failure to prepare and place reports in the public file in a timely manner and (ii) failure to file the reports with the Commission in a timely manner); *Indiana Wesleyan University*, Notice of Apparent Liability for Forfeiture, DA 12-485 (Vid Div. Mar. 29, 2012) (same); *Glen Iris Baptist School*, Notice of Apparent Liability for Forfeiture, DA 12-349 (Mar. 7, 2012) (same); *Highland Park Broadcasting, LP*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 14500 (Vid. Div. 2012) (same).

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

³⁸ See 47 C.F.R. § 73.6001(d).

24. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Ernesto Bustos, 5110 SE Stark Street, Portland, Oregon 97215, and Licensee's counsel, Dennis J. Kelly, Esq., P.O. Box 41177, Washington, D.C. 20018.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau