

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

In the Matter of:)	
)	Facility ID No. 10907
Christian Broadcasting of Yakima)	NAL/Acct. No. 200641420003
Licensee of Station KDHW-CD)	FRN: 0008397077
Yakima, Washington)	

FORFEITURE ORDER

Adopted: April 25, 2016

Released: April 25, 2016

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 Christian Broadcasting of Yakima (the Licensee), licensee of Station KDHW-CD, Yakima, Washington (the Station) willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules² by failing to electronically file with the Commission in a timely manner its Children's Television Programming Reports (FCC Form 398) for fifteen (15) quarters and Section 73.3514(a) of the Rules for failing to report these violations in its license renewal application.³ Based upon our review of the facts and circumstances before us, we conclude the Licensee is 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 in the amount of Twelve Thousand Dollars (\$12,000) on February 4, 2016.⁴ The NAL notified the Licensee that its failure to timely file its Children's Television Programming Reports electronically and its failure to report those violations in its license renewal application constituted an apparent willful and/or repeated violation of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's rules.

3. The Video Division received the Licensee's response on February 25, 2016. In that response, the Licensee admits the violations identified in the NAL but nonetheless seeks a reduction of the forfeiture based on the financial burden of the forfeiture on the Licensee.⁵ The Licensee explains that it is a small non-profit organization that operates on a budget based on donations and that there has been a substantial decrease in donations over the past years.⁶ The

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

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3514(a).

⁴ *Christian Broadcasting of Yakima*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 929 (Vid. Div. 2016)

⁵ Licensee Response to Notice of Apparent Liability at 1 (Licensee Response).

⁶ *Id.*

Licensee confidentially provides its tax returns from the most current recent three year period to support its claim of inability to pay.⁷ Finally, the Licensee states that the violations were not intentional and that in the future it will strive to be in complete compliance with FCC rules and guidelines.⁸

III. DISCUSSION

4. As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for willful and/or repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's rules. We ultimately conclude, however, that the forfeiture amount should be reduced to \$3,000.

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 Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹³

6. 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.¹⁴ 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.¹⁵

7. The Community Broadcasters Protection Act requires that Class A television stations

⁷ *Id.*

⁸ *Id.*

⁹ 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991).

¹³ 47 U.S.C. § 312(f)(2); *Southern California Broadcasting Co.* at 4388. 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 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).

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

¹⁵ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.¹⁶ 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.¹⁷

8. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form or information.¹⁸ 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."

9. The Licensee admits it failed to file electronically its Children's Television Programming Reports with the Commission in a timely manner for 15 quarters during the license period and to report these violations in its license renewal application. These deficiencies constitute repeated violations of the relevant Commission rules. Nonetheless, the Licensee argues the forfeiture amount should be reduced.

10. The Licensee states that it is a small non-profit organization that operates on a budget based on donations.¹⁹ We note that parties have routinely made, and the Commission has routinely rejected, arguments for reduction of a forfeiture based on non-profit status, either when standing alone or when used to show an inability to pay a forfeiture.²⁰ The Licensee also states that the violations were not intentional and that in the future it will strive to be in complete compliance with FCC rules and guidelines. The Commission has held that an inadvertent error, oversight, or failure to become familiar with Commission requirements are willful violations.²¹

¹⁶ 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).

¹⁷ *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).

¹⁸ *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).

¹⁹ Licensee Response at 1.

²⁰ *See, e.g., Lebanon Educ. Broad. Found.*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446, para. 12 (Enf. Bur. 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station."); *Donald Donovan Jackson*, Forfeiture Order, 19 FCC Rcd 15327, 15329, para. 9 (Enf. Bur. 2004) ("[O]peration for purposes other than financial gain will not, on its own, warrant the cancellation or reduction of a forfeiture."); *Concilio Mision Cristiana Fuente De Agua Viva*, Forfeiture Order, 17 FCC Rcd 19132, 19134, para. 7 (Enf. Bur. 2002) (rejecting a radio licensee's argument that its non-profit status, in and of itself, warranted reduction of the forfeiture), *recon. denied*, Memorandum Opinion and Order, 18 FCC Rcd 6210 (Enf. Bur. 2003); *Valley Pub. Television, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 22795, 22796, paras. 5-6 (1998) (rejecting a non-profit public television licensee's claim that payment of a \$9,000 forfeiture would threaten its continued provision of service to the public where the financial data submitted by the licensee showed that it had the ability to pay the forfeiture).

²¹ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that "[t]he fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional"); *see also Southern California*, 6 FCC Rcd

Although the Station has pledged to strive for compliance in the future, this does not relieve the Licensee of liability for the violations that have already occurred.²²

11. Licensee states that it does not have sufficient funds to pay the forfeiture as it operates on a budget based on donations, and it has received a substantial decrease in donations over the past years.²³ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 reflects the respondent’s current financial status.²⁴

12. In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.²⁵ The Commission has found that the staff’s use of gross revenues is a reasonable and useful yardstick to analyze a company’s financial condition for forfeiture purposes.²⁶ Licensee submitted tax returns for the years 2012, 2013, and 2014.

13. In the NAL, the Video Division proposed a forfeiture amount of \$12,000. The Commission exercises its discretion here to reduce the proposed forfeiture amount from \$12,000 to \$3,000. We reduce the forfeiture because the Licensee has demonstrated through the submission of financial documentation that the proposed forfeiture amount would cause financial hardship to the station.²⁷ The tax documentation submitted by Licensee, as required under our Rules when seeking a reduction, demonstrates an inability to pay. We therefore conclude that a reduction in the forfeiture amount is appropriate.²⁸

IV. ORDERING CLAUSES

14. 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) and (2) of the Commission’s rules,²⁹ Christian Broadcasting of Yakima SHALL FORFEIT to the United States

at 4387 (finding that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

²² See *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969) (Permitting mitigation as an excuse based upon corrective action following a violation would “tend to encourage remedial rather than preventive action.”).

²³ Licensee Response at 1.

²⁴ *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd. 7433, 7411 (2004).

²⁵ *Agape Church, Inc.*, Forfeiture Order, 25 FCC Rcd 3732, 3734 (Vid. Div. 2010); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

²⁶ *Id.*

²⁷ Licensee Response at 1.

²⁸ *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (EB 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of violator’s gross revenues); *Bruno Goodworth Network, Inc.*, Forfeiture Order, 28 FCC Rcd 10230 (Vid. Div. 2013) (forfeiture amount reduced to approximately 7 percent of the violator's gross revenues); *Harpole Telecom, Inc.*, 29 FCC Rcd 2221 (Vid. Div. 2014).

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

the sum of Three Thousand Dollars (\$3,000) for its willful and/or repeated violation Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.³⁰

15. 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*.³¹ 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.³²

16. Payments of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Electronic notification of payments must also be sent to Adrienne Denysyk at Adrienne.Denysyk@fcc.gov on the date payments are made. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.³³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:³⁴

- 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.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then 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.

17. Requests for full payment of the forfeiture in this *Forfeiture Order* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁵

³⁰ 47 C.F.R. §§ 73.3526(e)(11)(iii), 74.3514(a).

³¹ 47 C.F.R. § 1.80(h).

³² 47 U.S.C. § 504(a).

³³ Payment may be made at the Commission's online Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁴ For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at ARINQUIRIES@fcc.gov.

³⁵ See 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED THAT a copy of this *Forfeiture Order* shall be sent by Certified Mail Return Receipt Requested to Christian Broadcasting of Yakima, P.O. Box 10745, Yakima, WA 98909-1745 and to its contact representative Rafael Fernandez, 4401 Snowmountain Road, Yakima, WA 98908.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau