

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

In the Matter of)	
)	
Pacific Telestations, LLC)	Facility I.D. No. 51233
Licensee of Station KUAM-TV)	NAL/Acct. No.: 201541420036
Hagatna, Guam)	FRN: 0022452825

FORFEITURE ORDER

Adopted: May 18, 2016

Released: May 18, 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), (2) of the Commission’s rules (Rules),¹ we find that Pacific Telestations, LLC (Licensee), licensee of Station KUAM-TV, Hagatna, Guam (Station or KUAM) willfully and/or repeatedly violated section 73.3526(e)(11)(i) of the Rules² by failing to place in its local public inspection file (public file) quarterly TV issues/programs lists for fifteen (15) quarters. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is liable for a monetary forfeiture in the amount of Ten Thousand Dollars (\$10,000).

II. BACKGROUND

2. The Video Division (Division) issued a Notice of Apparent Liability for Forfeiture (*NAL*) on December 23, 2015.³ The *NAL* notified the Licensee that its failure to timely file the Station’s Children’s Television Programming Reports (FCC Form 398) for five quarters⁴ constituted an apparent willful and/or repeated violation of section 73.3526(e)(11)(iii) of the Rules and that its failure to report these violations in its renewal application⁵ constituted an apparent willful and/or repeated violation of section 73.4514(a) of the Rules.⁶ Furthermore, its failure to place in the Station’s public file quarterly TV issues/programs lists for fifteen (15) quarters⁷ constituted an apparently willful and/or repeated violation

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

² 47 C.F.R. § 73.3526(e)(11)(i).

³ *Pacific Telestations, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 14684 (Vid. Div. 2015) (*Pacific Telestations*).

⁴ *Pacific Telestations*, 30 FCC Rcd at 14686, n.11 (finding that the Children’s Television Programming Report for the third and fourth quarter of 2012, fourth quarter of 2013, and first and second quarter of 2014 were not filed in a timely manner). We note that the *NAL* mistakenly makes reference to third quarter of 2014 instead of fourth quarter 2013.

⁵ File No. BRCDDT-20140929AFC (granted Dec. 23, 2015) (KUAM Renewal Application).

⁶ *Pacific Telestations*, 30 FCC Rcd at 14685-86, paras. 6-7.

⁷ The Licensee disclosed in the license renewal application that in the course of preparing the missing quarterly TV issues/programs lists to upload to its e-pif, it discovered that hard copies of 15 quarters were missing from the public file. KUAM Renewal Application at Attachment 20, “Statement re Local Public File”.

of section 73.3526(e)(11)(i) of Rules.⁸ The Division concluded that the Licensee was apparently liable for a forfeiture in the amount of \$16,000. The *NAL* also admonished the Licensee for apparently willfully and/or repeatedly violating section 73.3526(b)(2) of the Rules by failing to upload (i.e. file) in a timely manner copies of the Station's quarterly TV issues/programs lists to its electronic public file (e-pif).⁹

3. In its Response, the Licensee denies the violations set forth in the *NAL*.¹⁰ First, the Licensee provides evidence in the form of Children's Television Programming Report submission confirmation pages and email correspondence with Division staff to demonstrate that the five Children's Television Programming Reports at issue were in fact timely filed or were excused due to technical on-line filing difficulties.¹¹ As a result, the Licensee requests that the proposed forfeiture of \$3,000 for failing to file in a timely manner copies of its Children's Television Programming Reports, as well as the proposed \$3,000 forfeiture for failing to report its late filings, should be eliminated.¹²

4. Second, the Licensee contends that it should not be held liable for the fifteen quarterly TV issues/programs lists that were not placed in the Station's physical public file prior to February 12, 2013, the consummation date of a pro forma license assignment (FCC Form 316).¹³ The Licensee contends that ownership of KUAM changed in February of 2013 when the Commission approved a long form transfer of control (FCC Form 315)¹⁴ of the Station followed by a pro forma license assignment (FCC Form 316).¹⁵ When taken together the Licensee argues that these transactions comprise an effective long form assignment of license thereby severing liability.¹⁶ Accordingly, Licensee states that it cannot be held liable for acts or omission of another entity.¹⁷

III. DISCUSSION

5. As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture in the amount of \$10,000 for its willful and/or repeated violations of section 73.3526(e)(11)(i) of Rules. Based on the evidence provided in the Response we also cancel the proposed forfeitures for the

⁸ 47 C.F.R. § 73.3526(e)(11)(i).

⁹ The Licensee failed to upload to the Station's e-pif copies of the Station's TV issue/programs lists that were in the Station's physical public file prior to August 2, 2012. Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012)(announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding stations to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013)(providing a final remainder to broadcasters to upload copies of existing public file documents to their electronic public file); see also *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd, 4525, 4580, para. 97 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

¹⁰ Response of Pacific Telestations, LLC at 1 (filed Jan. 19, 2016) (Response).

¹¹ *Id.* at 2-3 and Exhibits 1-6.

¹² *Id.* at 7.

¹³ File No. BALCDT-20130131AAX (granted Feb. 3, 2013).

¹⁴ File No. BTCCDT-20121121AAL (granted Dec. 27, 2012).

¹⁵ File No. BALCDT-20130131AAX; Response at 6; see Renewal Application at Attachment 20, "Statement re Local Public File".

¹⁶ Response at 5-6.

¹⁷ Response at 5 ("The failures of which the *NAL* takes notice were neither willful nor repeated failures of the current licensee...Pacific Telestations, LLC, cannot be charged with the conscious and deliberate commission or omission of an act by another corporate entity.").

untimely Children's Television Report filings and failure to report the untimely filed Children's Television Report in the Renewal Application. We conclude that the forfeiture amount should be reduced to \$10,000.

6. 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.¹⁸ 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.¹⁹ 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.²⁰

7. As an initial matter we find that Licensee's showing demonstrates that the five Children's Television Programming Reports in question²¹ were filed in a timely manner. Moreover, because those reports were timely filed, there were no related violations for the Licensee to report on its Renewal Application. Accordingly, the \$6,000 combined proposed forfeiture for its apparent violations of sections 73.3526(e)(11)(iii) and 73.3514(a) is cancelled.

8. With regard to the Licensee's failure to timely place hard copies of its quarterly TV issues/programs lists in the Station's physical public for fifteen quarters,²² we find that the Licensee is liable in the amount of \$10,000 for its violation of section 73.3526(e)(11)(i). We reject the Licensee's argument that a long form transfer of control and a pro forma license assignment together comprise an effective long form assignment of license thereby severing liability.²³ As stated in the *NAL*, 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."²⁴ Without citing any legal support, the Licensee argues that, because it originally failed to file its consummation notice in connection the long form transfer of control and only filed a consummation notice for its subsequent pro forma assignment of license, the two transactions were effectively a long form assignment of license and "the new ownership acquired the license into a new entity."²⁵ By definition, a pro forma assignment of license involves no substantial change in a station's ownership or control and, furthermore, does not create a break in the chain of liability.²⁶ Likewise, a pro forma assignment (FCC Form 316), following a long form transfer of control (FCC Form 315) does not relieve the Licensee of liability for violations during

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

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

²⁰ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

²¹ Quarters three and four of 2012, quarter four of 2013, and quarters one and two of 2014. *NAL* at 14684, n.11.

²² 47 C.F.R. § 73.3526(e)(11)(i).

²³ Response at 5-6.

²⁴ *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).

²⁵ Response at 6.

²⁶ *New DMIC, Inc.*, 13 FCC Rcd 23611, 23614 (MB 1998).

the license term.²⁷ In addition, following conversations with Video Division Staff, the Licensee has filed a consummation notice for the long form transfer of control, making this issue moot.²⁸ Therefore, there is no basis by which the transfer of control of the Licensee or the subsequent pro forma assignment²⁹ would excuse the identified public file violations.³⁰

9. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations.³¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(D) of the Act, including "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."³² The Licensee does not demonstrate any of the enumerated factors warranting a reduction of forfeiture for its failure to timely place in the Station's public file quarterly TV issues/programs lists for fifteen quarters. Accordingly, we find that the Licensee is liable in the amount of \$10,000 for its willful and/or repeated violations of section 73.3526(e)(11)(i) of the Rules.³³

IV. ORDERING CLAUSES

10. 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,³⁴ Pacific Telestations, LLC SHALL FORFEIT to the United States the sum of Ten Thousand Dollars (\$10,000) for its willful and/or repeated violation sections 73.3526(e)(11)(i) of Rules.³⁵

11. 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*.³⁶ 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.³⁷

12. Payments of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.³⁸

²⁷ See *P.D. Communications, LLC*, 20 FCC Rcd 16557 (MB 2005).

²⁸ File No. BTCCDT-20121121AAL.

²⁹ *Id.* (The application indicates that the transfer of control was an intra-family transaction.)

³⁰ Response at 5-6. Response at 6, n.8. The consummation of the pro forma assignment application merely changed the Licensee from a corporation to an LLC while maintaining the same ownership structure. File No. BALCDT-20130131AAX.

³¹ 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) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

³² 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

³³ 47 C.F.R. § 73.3526(e)(11)(i).

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

³⁵ 47 C.F.R. § 73.3526(e)(11)(i).

³⁶ 47 C.F.R. § 1.80(h).

³⁷ 47 U.S.C. § 504(a).

³⁸ 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

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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:³⁹

- 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.

13. 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. 20554.⁴⁰

14. IT IS FURTHER ORDERED THAT that copies of this *Forfeiture Order* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Pacific Telestations, LLC, 600 North Harmon Loop Road, Suite 102, Dededo, GU 96912, and to its counsel, John Wells King, Esq., Law Offices of John Wells King, 4051 Shoal Creek Lane East, Jacksonville, FL 32225-4793.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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<http://www.fcc.gov/Forms/Form159/159.pdf>

³⁹ 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.

⁴⁰ See 47 C.F.R. § 1.1914.