

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

In the Matter of)	
)	
SONSHINE FAMILY TELEVISION, INC.)	File No. EB-06-IH-3489
)	NAL/Acct. No. 200832080001
Licensee of Station WBPH-TV)	Facility ID No. 60850
Bethlehem, Pennsylvania)	FRN: 0006620066

FORFEITURE ORDER

Adopted: December 4, 2009

Released: December 7, 2009

By the Commission:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”),¹ we find that Sonshine Family Television, Inc. (“Sonshine”), licensee of Station WBPH-TV, Bethlehem, Pennsylvania, willfully and repeatedly violated Section 317(a)(1) of the Act² and Section 73.1212(a) of the Commission’s rules³ by failing to air required sponsorship identification announcements. Based on a review of the facts and circumstances, we find Sonshine liable for a forfeiture in the amount of \$32,000.

II. BACKGROUND

2. This case arises from several thousand complaints filed with the Commission in January 2005, alleging payola violations involving Armstrong Williams (“Williams”).⁴ The complaints, citing national news reports, contended that Williams was paid by the Department of Education (“DoEd”) to promote the No Child Left Behind Act (“NCLB”) in broadcast programming that he produced or in which he appeared without disclosing that fact to viewers or to the stations involved.⁵ Many of the complaints identified numerous broadcast stations reported to have aired such NCLB-related programming, which included the show “The Right Side with Armstrong Williams” (“RSAW”).⁶

3. On February 14, 2005, the Enforcement Bureau (“Bureau”) issued letters of inquiry to Armstrong Williams’ media company, Graham Williams Group (“GWG”), and to public-relations firm

¹ See 47 U.S.C. § 503(b).

² 47 U.S.C. § 317(a)(1).

³ 47 C.F.R. § 73.1212(a).

⁴ See *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686, 18689 (2007) (“NAL”).

⁵ See *id.* at 18689-90.

⁶ See *id.* at 18690.

Ketchum, Inc. (“Ketchum”).⁷ Ketchum was the prime contractor with DoEd in connection with that department’s campaign to promote NCLB and GWG was a subcontractor of Ketchum’s in that endeavor.⁸ GWG and Ketchum responded to the LOIs.⁹

4. The Bureau reviewed this evidence and identified those episodes in which discussions of NCLB topics took place during the programs, but no sponsorship disclosures appeared to have been made.¹⁰ The Bureau thereafter issued further letters of inquiry to Sonshine, which the Bureau identified as potentially having aired the programs.¹¹

5. In its response, Sonshine acknowledged that Station WBPH-TV aired five different episodes of RSAW entitled “What is Faith,” “Year End Review,” “Young Americans in Government,”¹² “National Security,” and “On Point with Rod Paige,” on a total of ten occasions during the period January 4, 2004, through July 5, 2004.¹³ During these episodes Williams discussed the NCLB program. Although Sonshine’s agreement with Williams “call[ed] for payment of a nominal fee of \$100 to [it] for each broadcast,” Sonshine acknowledged that “in all likelihood” its station aired them without including any sponsorship identification, because it believed no identification was necessary.¹⁴ Sonshine asserted that any lack of sponsorship identifications was harmless and did not violate Commission rules because the consideration exchanged was nominal, it had no basis to conclude that sponsorship identifications were required, and the sponsor of each broadcast was clear despite lack of such identifications.¹⁵

6. On October 18, 2007, the Commission released a *Notice of Apparent Liability for Forfeiture* (“NAL”).¹⁶ In the *NAL*, we found that Sonshine had failed to air required sponsorship identification announcements, in apparent violation of the sponsorship identification laws and rules, 47 U.S.C. § 317(a)(1) and 47 C.F.R. § 73.1212.¹⁷ Specifically, we found that Sonshine aired five episodes of

⁷ See Letters from William Freedman, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to Williams and Ketchum, dated February 14, 2005.

⁸ See *NAL* at 18690.

⁹ See Letter from GWG to Kenneth M. Scheibel, Jr., Attorney, Investigations & Hearings Division, Enforcement Bureau, dated April 6, 2005, and Letter from Ketchum to William D. Freedman, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, dated April 13, 2005.

¹⁰ See *NAL* at 18690.

¹¹ See Letters from Benigno E. Bartolome, Jr., Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to Sonshine, dated November 7, 2006, and January 31, 2007.

¹² As noted in the *NAL*, this episode was referred to in our LOI to Sonshine as entitled “Young Americans in Government,” but that title actually describes only the second segment of the episode. The first segment was denominated “Profile of a Candidate.” The title appearing at the beginning of the whole episode - “Profile of Candidate/Americans” - appears to be a composite of both segments’ titles. See *NAL* at 18690 n.19.

¹³ See *id.* at 18690 n.20. Specifically, Sonshine acknowledges that it aired the following episodes of RSAW over Station WBPH-TV: “What is Faith” aired on January 6, March 4, March 8, and April 30, 2004; “Year End Review” aired on January 4, 2004; “Young Americans in Government” aired on January 5, 2004; “National Security” aired on April 23, 2004; and “On Point with Rod Paige” aired on March 19, April 12 and July 5, 2004. See Letters from Sonshine to Benigno E. Bartolome, Jr., Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, dated December 22, 2006, March 2, 2007 and March 23, 2007. (The last response will hereinafter be the “*March 23rd Response*.”).

¹⁴ See *March 23rd Response* at 2.

¹⁵ See *id.* at 2-5.

¹⁶ See *NAL* at 18686.

¹⁷ See *id.*

the program “The Right Side with Armstrong Williams” ten times between January 4, 2004 and July 5, 2004, in consideration for \$100 per broadcast, without airing required sponsorship identification announcements.¹⁸ Accordingly, we proposed a forfeiture of \$40,000 against Sonshine.¹⁹

7. On November 19, 2007, Sonshine responded to the *NAL*, requesting the forfeiture be cancelled or reduced.²⁰ Sonshine maintains that its violation was minor, and that it had made a good faith effort to comply with the Commission’s rules.²¹ It also asserts that it is unable to pay the proposed forfeiture.²² In support of its claimed inability to pay, Sonshine submitted audited financial statements for the three most recent tax years and additional information concerning its expenses.²³ Finally, Sonshine argues that it has a history of complying with the Commission’s rules.²⁴

III. DISCUSSION

8. 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.²⁵ 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.²⁶ 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 Act²⁷ and the Commission has so interpreted the term in the Section 503(b) context.²⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁹ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.³⁰ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³¹ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.³²

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See Response to Notice of Apparent Liability*, filed November 19, 2007 (“*NAL Response*”).

²¹ *See id.* at 2-3.

²² *See id.* at 3-5.

²³ *See id.* at 6-37. Sonshine requested confidential treatment for these materials.

²⁴ *See id.* at 3.

²⁵ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D).

²⁶ 47 U.S.C. § 312(f)(1).

²⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁸ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

²⁹ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

³⁰ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

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

³² *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

9. In its response to the *NAL*, Sonshine does not deny that it violated the Commission's rules, and we find by a preponderance of the evidence that Sonshine willfully and repeatedly engaged in the violations described in the *NAL*. More specifically, we find that Sonshine willfully and repeatedly violated Section 317(a)(1) of the Act and Section 73.1212(a) of the Commission's rules by failing to air required sponsorship identification announcements.

10. We now turn to the proposed forfeiture amount, which in this case was assessed in accordance with Section 503(b) of the Communications Act,³³ Section 1.80 of the Commission's rules,³⁴ and the Commission's forfeiture guidelines set forth in its *Forfeiture Policy Statement*.³⁵ In assessing forfeitures, Section 503(b) of the Act requires that we take into account 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 other matters as justice may require.³⁶ As discussed further below, we have examined Sonshine's response to the *NAL* pursuant to the aforementioned statutory factors, our rules, and the *Forfeiture Policy Statement*, and find no basis for cancellation of the forfeiture but reduce the forfeiture amount from \$40,000 to \$32,000.

11. First, Sonshine asserts that its violation was minor because Williams hosted and produced the program, and these facts would have informed the public about who sought to persuade them of messages contained in the program, *implying* that such information, in and of itself, constituted an adequate identification under the circumstances of this case.³⁷ We rejected this argument in the *NAL*, however, and Sonshine advances no new reason for us to revisit that conclusion here.³⁸

12. Sonshine further asserts that the *NAL* "did not...address how an additional announcement would have accomplished the purpose of the sponsorship identification rules, *i.e.*, to inform the public concerning by whom they are being persuaded. . . ." ³⁹ Sonshine claims that the *NAL* also did not address "the apparent inconsistent standard toward sponsorship identification requirements for public affairs programs on the major television networks and the Enforcement Bureau's standard for public affairs programs acquired by independent television stations."⁴⁰ Sonshine appears to suggest that the Commission is unfairly imposing sponsorship identification requirements on it that would not apply to television networks. These arguments lack merit. First, the *NAL* explained at length why the Commission's rules insist on proper sponsorship identification to prevent public confusion or misunderstanding.⁴¹ Second, the instant case is distinguishable from situations where a station may have, in fact, purchased programming under a barter-type arrangement. In barter-type arrangements, which can include network affiliation agreements,⁴² the program supplier provides the station its program, which

³³ See 47 U.S.C. § 503(b).

³⁴ See 47 C.F.R. § 1.80.

³⁵ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

³⁶ See 47 U.S.C. § 503(b)(2)(E).

³⁷ See *NAL Response* at 2.

³⁸ See *NAL* at 18694.

³⁹ See *NAL Response* at 2 n.2 (internal quotation marks omitted) (emphasis in original omitted).

⁴⁰ See *id.*

⁴¹ *NAL*, 22 FCC Rcd at 18694 ¶ 16.

⁴² See *Review of the Commission's Regulations Governing Television Broadcasting*, Further Notice of Proposed Rule Making, 10 FCC Rcd 3524, 3583 n.159 (1995) (citing *Revision of Radio Rules and Policies*, Report and Order, (continued....))

the station purchases by allowing the program provider to use some or all of the station's advertising airtime during the program. Thus, in barter arrangements the broadcaster effectively purchases programming in exchange for valuable consideration in the form of advertising time, thereby immunizing the exchange from the sponsorship identification requirement.⁴³ Here, Sonshine accepted money in exchange for agreeing to air the programs, rather than purchasing them under a barter-type arrangement, and thereafter failed to make the sponsorship identifications that were required.⁴⁴ Finally, to the extent that Sonshine is describing network affiliates as somehow immune from sponsorship identification disclosure requirements, it has failed to cite any precedent demonstrating that the Commission has granted such immunity. Accordingly, Sonshine has failed to demonstrate that the Commission has treated it unfairly by imposing a sponsorship identification requirement.

13. Sonshine also asserts that its good faith efforts to comply with the Commission's rules merit a cancellation or reduction of the forfeiture amount.⁴⁵ It points to its practices and policies concerning compliance with sponsorship identification rules, and contends that the Commission should regard its lack of compliance here as a "poorly informed, but good faith, misunderstanding of the specific requirements of the sponsorship identification rules."⁴⁶ We have previously reduced a forfeiture when the licensee has voluntarily disclosed its conduct or taken corrective measures to remedy its conduct before an investigation.⁴⁷ The record evidence does not suggest, however, that Sonshine took either of these steps. Accordingly, we decline to cancel or reduce the forfeiture amount on this basis.

14. Sonshine also claims that it is unable to pay the assessed forfeiture, and in support submits its audited financial statements for each of the last three years.⁴⁸ The Commission generally considers gross revenue as the best indication of a licensee's inability to pay as demonstrated by audited financial statements.⁴⁹ If gross revenues are substantial, then the mere fact that the business is operating

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7 FCC Rcd 2755, 2784 n.113 (1992)) (describing network affiliation agreements as a variant of time brokerage whereby the local affiliate sells time to the network in exchange for desirable programming, station compensation, and the opportunity to place local commercials within popular national programs).

⁴³ See *Complaint of National Association for Better Broadcasting*, Memorandum Opinion and Order, 4 FCC Rcd 4988 (1989), *affirmed sub nom.*, *National Association for Better Broadcasting v. Federal Communications Commission*, 902 F.2d 1009 (D.C. Cir. 1990) (unpublished) (holding that sponsorship identification was not required when station purchased syndicated program with advertising time of more than nominal value, and that sponsorship identification would be required had station received programming for free or for nominal payment).

⁴⁴ 47 U.S.C. § 317(a)(1) (requiring sponsorship identification when a station accepts money for broadcasting a program); 47 C.F.R. § 73.1212(a).

⁴⁵ See *NAL Response* at 2-3.

⁴⁶ See *id.* at 3.

⁴⁷ See Note to Section 1.80(b)(4) of the rules, 47 C.F.R. § 1.80(b)(4) (listing "Good faith or voluntary disclosure" as a basis for adjusting forfeitures downward); *Radio One Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15964, 15965 (2003), *recons. denied*, Memorandum Opinion and Order, 18 FCC Rcd 25481 (2003) (reducing \$5,200 forfeiture assessed for Emergency Alert System rule violations to \$4,000 due to the licensee's corrective measures prior to an investigation).

⁴⁸ In its *NAL Response*, Sonshine requested confidential treatment of certain business information contained in exhibits to its submission. See *NAL Response* at 3. This *Forfeiture Order* discusses information that does not pertain to that request, and it does not list specific revenues or expenses. Accordingly, we need not rule on Sonshine's request. Until we do so rule, we will honor Sonshine's request for confidential treatment of these materials.

⁴⁹ See *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17107 (1999) (internal citations omitted).

at a loss does not necessarily preclude forfeiture liability based on inability to pay.⁵⁰ Based on our review of Sonshine's financial statements and the other materials submitted by the licensee, we find no reason to reduce the forfeiture based on Sonshine's assertion that it is unable to pay. The forfeiture is an appropriate percentage of Sonshine's total operating revenues in recent years and is consistent with Commission precedent.⁵¹

15. Finally, Sonshine asks that we consider cancelling or reducing the forfeiture amount based on its history of overall compliance with the Commission's rules.⁵² We have reviewed our records and note no other violations by Sonshine. Under similar circumstances, we have reduced proposed forfeitures, and we find that doing so in this case is appropriate.⁵³ Consequently, we reduce Sonshine's forfeiture amount from \$40,000 to \$32,000.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁵⁴ and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission's rules,⁵⁵ Sonshine Family Television, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$32,000 for its willful and repeated violation of Section 317(a)(1) of the Act⁵⁶ and Section 73.1212(a) of the Commission's rules.⁵⁷

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the rules within 30 days of the release of this *Forfeiture Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁵⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail

⁵⁰ See *id.* at 17107.

⁵¹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 6741, 6742 (CCB 1992) (subsequent history omitted) (forfeiture not deemed excessive where it represented approximately 3.9% of the violator's operating revenues). In this case, the forfeiture represents a smaller percentage than those that issued in *Hoosier Broadcasting Corp.*, and only a nominally higher percentage compared to the forfeitures issued in *PJB Communications of Virginia, Inc.*, and *Afton Communications Corporation*. We note, in particular, that although we used an average revenue including Sonshine's 2004 revenues to calculate the percentage, the forfeiture is particularly reasonable in light of Sonshine's greater revenues in 2005 and 2006, of which it forms an even lower percentage.

⁵² See *NAL Response* at 3.

⁵³ See, e.g., *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2430-2431 (2008) (affirming forfeiture reduction from \$7,000 to \$5,600 due to licensee's history of compliance); *Radio X Broadcasting Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 12209 (2006) (affirming forfeiture reduction from \$20,000 to \$16,000 due to licensee's history of compliance.).

⁵⁴ See 47 U.S.C. § 503(b).

⁵⁵ See 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁵⁶ See 47 U.S.C. § 317(a)(1).

⁵⁷ See 47 C.F.R. § 73.1212(a).

⁵⁸ See 47 U.S.C. § 504(a).

may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Sonshine Family Television, Inc. will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, and Anjali.Singh@fcc.gov.

18. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Sonshine Family Television, Inc., 813 N. Fenwick Street, Allentown, Pennsylvania 18109, and to its counsel, J. Geoffrey Bentley, Esq., 2700 Copper Creek Road, Oak Hill, Virginia 20171.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary