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25 F.C.C.R. 1167, 25 FCC Rcd. 1167, 2010 WL 360692 (F.C.C.)

Federal Communications Commission (F.C.C.)

Forfeiture Order

****1** IN THE MATTER OF DELMARVA BROADCAST SERVICE GENERAL PARTNERSHIP
Licensee of Station WMDT(TV) Salisbury, Maryland

Facility ID No. 16455
NAL/Acct. No. 0641420033
FRN: 0001-8066-29
File No. BRCT-20040528AJA
DA 10-201

Adopted: February 1, 2010

Released: February 2, 2010

***1167** By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000), to Delmarva Broadcast Service General Partnership (“Delmarva”), licensee of Station **WMDT(TV)**, Salisbury, Maryland (“Station”), for its willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission’s Rules (“Rules”)^[FN1] by failing to publicize for the public the existence and location of the Station’s **Children’s Television Programming Reports**.

II. BACKGROUND

2. On May 28, 2004, Delmarva filed the above-referenced application to renew the license of the Station (the “Application”). In response to Section IV, Question 10 of the Application, Delmarva certified that station **WMDT(TV)** failed to publicize the existence and location of the Station’s **Children’s Television Programming Reports**, as required by Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24 to the Application, Delmarva indicated that this viola-

tion was due to a misunderstanding of the Commission’s Rules. Delmarva also described corrective measures taken in May 2004 and additional procedures scheduled to begin in June 2004.

3. On February 17, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Delmarva for its violations.^[FN2] On March 20, 2006, in response to the NAL, Delmarva filed a Petition for Reconsideration or Cancellation of Forfeiture (“Petition”), and a Supplement on March 7, 2008. In support of its Petition, Delmarva argued that: (1) the forfeiture amount is different from, and greater than, the forfeiture amounts imposed on other licensees for similar violations; (2) the rule imposing the requirements to publicize is vague and provides no guidance on what is required for compliance; and (3) that it has a record of compliance with the Commission’s Rules.

*1168 III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,^[FN3] Section 1.80 of the Rules,^[FN4] and the Commission’s *Forfeiture Policy Statement*.^[FN5] In assessing forfeitures, Section 503(b)(2)(E) 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 such other matters as justice may require.^[FN6]

5. Delmarva does not dispute that it failed to publicize for the public the existence and location of the Station’s Children’s Television Programming Reports, but argues that its forfeiture should be cancelled. Delmarva argues that the imposition of forfeiture in this case is inconsistent with Commission precedent. Delmarva cites to [Teleciventro of Puerto Rico, LLC/WIRS](#),^[FN7] *S&E Network, Inc./WJPX(TV)*,^[FN8] *S&E Network, Inc./WKPV(TV)*,^[FN9] [Bell Broadcasting, LLC](#),^[FN10] [Ketchikan TV, LLC/KDMD\(TV\)](#),^[FN11] and [Ketchikan TV, LLC/KUBD\(TV\)](#)^[FN12] as cases where the Commission found that violations of the same Rule did not justify imposition of a forfeiture. We find these cases to be inapposite. As Delmarva acknowledges, these cases involve violations occurring

over shorter periods of time. In this case, Delmarva failed to publicize the existence and location of the Station's Children's Television Programming Reports for almost its entire license term. Delmarva only complied with the requirements of the Rule for the last few months of the Station's license term, and only after having discovered the violation. The Commission has stressed the importance of broadcasters publicizing in an appropriate manner the existence and location of their Children's Television Programming Reports as a means to "further the goal to minimize the Commission's involvement in enforcing the [Children's Television Act of 1990] by facilitating public monitoring of broadcasters' educational programming."^[FN13] In this case, Delmarva failed to publicize its Reports for almost its entire license term. Moreover, although Delmarva may have belatedly implemented policies and procedures to prevent subsequent violations, that does not relieve it of liability for the violation which has occurred.^[FN14]

****2 6.** Delmarva also argues that the Rule in question is vague and provides no guidance. We disagree. The Commission has suggested that stations may comply with the requirement to publicize by announcing the existence and location of its Children's Television Programming Reports "periodically" over the air.^[FN15] In its 2001 Report examining station compliance with this and other Children's ***1169** Programming rules, the Commission found that "virtually all of the stations in the sample complied with the requirement to publicize the existence and location of the stations' Children's Television Programming Reports."^[FN16] Moreover, Delmarva was not faulted for the adequacy of its efforts to publicize, but rather its complete failure to do so.

7. We have considered Delmarva's Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Delmarva willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules. However, given Delmarva's otherwise history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.^[FN17]

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,^[FN18] that Delmarva Broadcast Ser-

vice General Partnership, SHALL FORFEIT to the United States the sum of \$8,000 for willfully and repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's 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.^[FN19] Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail 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, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If 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).^[FN20]

***1170 10.** IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to Delmarva Broadcast Service General Partnership, WMDT(TV), P.O. Box 4009, Salisbury, MD 21803, and to its counsel, Joseph M. DiScipio, Esq., Fletcher, Heald and Hildreth, P.L.C., 1300 N. 17th Street, Eleventh Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

****3** Barbara A. Kreisman
Chief
Video Division
Media Bureau

FN1. [47 C.F.R. § 73.3526\(e\)\(11\)\(iii\)](#).

FN2. *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 0641420033, DA 06-370 (MB, rel.

Feb. 17, 2006). (“NAL”).

FN3. [47 U.S.C. § 503\(b\)](#).

FN4. [47 C.F.R. § 1.80](#).

FN5. [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 \(1997\), recon. denied, 15 FCC Rcd 303 \(1999\)](#). (“Forfeiture Policy Statement”).

FN6. [47 U.S.C. § 503\(b\)\(2\)\(E\)](#).

FN7. [20 FCC Rcd 20110 \(MB 2005\)](#).

FN8. [20 FCC Rcd 20282 \(MB 2005\)](#).

FN9. [20 FCC Rcd 20287 \(MB 2005\)](#).

FN10. [21 FCC Rcd 1452 \(MB 2006\)](#).

FN11. [22 FCC Rcd 14038 \(MB 2007\)](#).

FN12. [22 FCC Rcd 9950 \(MB 2007\)](#).

FN13. [See Policies and Rules Concerning Children's Television Programming, Report and Order, 11 FCC Rcd 10660, ¶67 \(1996\)\(Children's Television Report and Order\)](#).

FN14. [See International Broadcasting Corp., 19 FCC 2d 793 \(1969\)](#).

FN15. [See Children's Television Report and Order, supra](#), at ¶67.

FN16. [See](#) “Three Year Review of the Implementation of the Children's Television Rules and Guidelines 1997-1999,” Commission Report, January 2001 at ¶46.

FN17. [See, e.g. Metropolitan School District of Washington Township, Forfeiture Order, 23 FCC Rcd 9995 \(MB 2008\)](#) (reducing forfeiture amount based on licensee's history of compliance); [Claro Communications, Ltd., Forfeiture Order, 23 FCC Rcd 359, 362 \(EB 2008\)](#) (same); [Traffic Control Products of](#)

[Florida, Inc., Forfeiture Order, 23 FCC Rcd 5452, 5454 \(EB 2008\)](#) (same). [See also 47 C.F.R. § 1.80](#), Note to Paragraph (b)(4), Downward Adjustment Criteria.

FN18. [47 U.S.C. § 503\(b\)](#); [47 C.F.R. §§ 0.283, 1.80](#).

FN19. [47 U.S.C. § 504\(a\)](#).

FN20. [See 47 C.F.R. § 1.1914](#).

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