

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

In the Matter of)	
)	Facility ID Nos. 5906, 5909, 5914
Blue Mountain Broadcasting Association)	NAL/Acct. Nos. 0941420005, 0941420006
)	and 0941420007
Licensee of Stations)	FRN: 0001571546
K21JQ-D, Walla Walla, Washington ¹)	
K31KL-D, Walla Walla, Washington ²)	
K36EW, College Place, Washington)	

FORFEITURE ORDER

Adopted: March 26, 2010

Released: March 31, 2010

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to Blue Mountain Broadcasting Association (“Blue Mountain”), licensee of Stations K21JQ-D, Walla Walla, Washington; K31KL-D, Walla Walla, Washington; and K36EW, College Place, Washington; (“Stations”), for its willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission’s Rules (“Rules”)³ by failing to publicize for the public the existence and location of the Station’s Children’s Television Programming Reports and Section 73.673 of the Rules⁴ by failing to identify for publishers of program guides the age group for which its children’s programming is targeted.

II. BACKGROUND

2. On September 29, 2006, Blue Mountain filed applications to renew the licenses of the Stations (the “Applications”).⁵ In Exhibit 24 of each of the Applications and in a November 16, 2007 amendment, Blue Mountain indicated that, due to a misunderstanding, it did not publicize the existence and location of the Stations’ Children’s Television Programming Reports during its license term. At that time, Blue Mountain indicated that it was now in compliance with the requirement.

3. In Exhibit 23 to each of the Applications, Blue Mountain stated that, although the Stations provided information identifying each core program aired on the Stations, it mistakenly did not include an indication of the target child audience in its submissions to program guide suppliers.

4. On December 19, 2008, the Bureau issued separate Notices of Apparent Liability for

¹ Previous call sign K22BI.

² Previous call sign K28ET.

³ 47 C.F.R. § 73.3526(e)(11)(iii).

⁴ 47 C.F.R. § 73.673.

⁵ See File Nos. BRTTA-20060929BJK, BJL and BJN.

Forfeiture (“NALs”) in the amount of four thousand dollars (\$4,000) to Blue Mountain for the three Stations’ violations.⁶ On January 13, 2009, in response to the NALs, Blue Mountain filed a separate Response to Notice of Apparent Liability for Forfeiture (“Response”) for each station, and a supplement on February 17, 2010. In support of its Responses, Blue Mountain argued that: (1) the violations were not willful; (2) the forfeiture would result in financial hardship; and (3) it has “gone to great lengths to follow practices that fully comply with all laws, rules and regulations....”⁷

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission’s *Forfeiture Policy Statement*.¹⁰ In assessing forfeitures, Section 503(b)(2)(D) 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.¹¹

6. Blue Mountain does not dispute that it failed to publicize for the public the existence and location of the Station’s Children’s Television Programming Reports, or that it failed to identify for publishers of program guides the age group for which its children’s programming is targeted. However, Blue Mountain requests that the forfeitures be cancelled. Blue Mountain argues that the violations were not willful and that they occurred because Blue Mountain “did not understand that requirements for commercial TV stations equally applied to Class A stations....”¹² In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. Rather, the term “willful” means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹³ Further, the Commission has held that violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements are willful violations.¹⁴

7. Regarding Blue Mountain’s claim of financial hardship, the Commission will not consider reducing or canceling a forfeiture in response to inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to

⁶ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 0941420007, 23 FCC Rcd 17883 (MB 2008); *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 0941420006, 23 FCC Rcd 17887 (MB 2008); *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 0941420005, 23 FCC Rcd 17891 (MB 2008). (“NALs”).

⁷ Response at 2.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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*”).

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² Response at 2.

¹³ *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁴ *See Southern California*, 7 FCC Rcd at 4387 (stating 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, 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁵ In general, a licensee’s gross revenues are the best indicator of its ability to pay a forfeiture.¹⁶ We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁷ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁸

8. While Blue Mountain claims that the Stations are 501(c)(3) entities that are “entirely viewer supported with extremely limited available funds” and that “a fine of any size . . . would result in further financial hardship. . . ,”¹⁹ its recently supplemented financial documentation also indicates that its 2008 total gross revenues totaled \$215,032.88.²⁰ Combined forfeitures totaling \$12,000 are less than six percent of Blue Mountain’s total gross revenues. We therefore believe that the gross revenues are sufficiently great when compared to the forfeiture amount, such that the mere fact that Blue Mountain may be an entity with “limited available funds” does not demonstrate that it cannot afford to pay the forfeiture amount.²¹

9. We also reject Blue Mountain’s argument that its forfeiture should be cancelled because it has “fully complied with all known FCC requirements regarding. . . .” children’s programming.²² Blue Mountain, by its own admission, failed to comply with the rule sections in question for three Class A television stations. Based on these combined offenses, we cannot find that Blue Mountain’s history of compliance warrants reduction of the forfeiture amount.²³ Furthermore, while we recognize Blue Mountain’s claim that it began complying with the rule sections in question as soon as it discovered the violations, corrective action taken to come into compliance with the Rules is expected, and does not

¹⁵ See *Discussion Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7433, 7441(2004).

¹⁶ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (*PJB Communications*).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Response at 1.

²⁰ See February 2010 supplement.

²¹ See, e.g., *PJB Communications*, 7 FCC Rcd at 2089 (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 (EB 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 (CCB 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

²² Response 1.

²³ See *MFR, Inc.*, Forfeiture Order, 24 FCC Rcd 5688, 5690 (MB 2009) (denial of “history of compliance” reduction when licensee filed several untimely license renewal applications). See also *Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532 (EB 2006) (In determining whether a licensee has a history of overall compliance, offenses need not be “prior” to be considered, and for stations having the same owner at the time of the violations, it is appropriate to consider such violations. Commission can consider violations occurring in cases where there has been no final determination); *Petracom of Texarkana, L.L.C.*, Forfeiture Order, 19 FCC Rcd 8096 (EB 2004) (citing *CCN, Inc., et al.*, Order, 13 FCC Rcd 13599, 13599-600 ¶ 1(1998); *Hill Country Real Estate Development Corp.*, Forfeiture Order, 18 FCC Rcd 21079, 21080 ¶ 5 (EB 2003); *Rio Grande Transmission, Inc.*, Forfeiture Order, 16 FCC Rcd 17040, 17042-43 ¶ 10 (EB 2001); *Mega Communications of St. Petersburg, Licensee, L.L.C.*, Forfeiture Order, 16 FCC Rcd 15948, 15949 ¶ 6 (EB 2001)).

nullify or mitigate any prior forfeitures or violations.²⁴

10. We have considered Blue Mountain's Response in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Blue Mountain willfully and repeatedly violated Sections 73.3526(e)(11)(iii) and 73.673 of the Rules.

IV. ORDERING CLAUSES

11. 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,²⁵ that Blue Mountain Broadcasting Association, SHALL FORFEIT to the United States the sum of \$12,000 for willfully and repeatedly violating Sections 73.3526(e)(11)(iii) and 73.673 of the Commission's Rules.

12. 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.²⁶ 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).

13. Licensee requests for full payment of the forfeiture under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12 Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁷

14. 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 Blue Mountain Broadcasting Association, P.O. Box 205, College Place, Washington 99324.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁴ *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008). See also *Padre Serra Communications, Inc.*, Letter, 14 FCC Rcd 9709, 9714 (MMB 1999) (stating that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation) (citing *Gaffney Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, Notice of Apparent Liability, 33 FCC 706 (1962)).

²⁵ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

²⁶ 47 U.S.C. § 504(a).

²⁷ See 47 C.F.R. § 1.1914.