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

In the Matter of	)	
	)	
Studio 51 Multi Media Productions, Ltd.	)	Facility ID No. 1104
Licensee of Station WMNO-CD (f/k/a WMNO-CA), Bucyrus, Ohio	)	NAL/Acct. No.: 20141420010
	)	FRN: 0018086967

FORFEITURE ORDER

Adopted: March 19, 2015 **Released: March 19, 2015**

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 Studio 51 Multi Media Productions Ltd., (the "Licensee"), licensee of Station WMNO-CA, Bucyrus, Ohio ("WMNO-CA"),[2] willfully and repeatedly violated: (1) Section 73.3539(a) the Commission's Rules by failing to timely file with the Commission its license renewal application (Form 303-S); (2) Section 301 of the Act by engaging in unauthorized operation of WMNO-CA after its authorization had expired; (3) Section 73.3526(e)(11)(iii) of the Rules[3] by failing to file with the Commission in a timely manner Children's Television Programming Reports (FCC Form 398) for eight quarters; (4) Section 73.3514(a) of the Rules for failing to report the late filings of its Children's Television Programming Reports in its license renewal application; and (5) Section 73.3615(a) of the Rules for failing to file in a timely manner its 2011 biennial ownership report. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture in the amount of Six Thousand Dollars ($6,000).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on October 7, 2014.[4] The *NAL* notified the Licensee of its failure to file a timely application for renewal of its broadcast license in violation of Section 73.3539(a) of the Rules.[5] The Licensee also did not file an STA requesting permission to continue authorized operation of WMNO-CA for one month and 21 days following license expiration. The Licensee's continued unauthorized operation of WMNO-CA during

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

[2] On January 7, 2015, the Commission granted the station's digital license to cover and issued it a digital license. *See* File No. BLDTA-20131206AJD. In this item we will still refer to the Station as WMNO-CA to maintain continuity within the proceeding, but we note that as of January 7, 2015 the station's call sign became WMNO-CD.

[3] 47 C.F.R. § 73.3526.

[4] *Studio 51 Multi Media Productions, Ltd.,* Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11798 (Vid. Div. 2014).

[5] A license renewal application was not filed with the Commission until December 4, 2013—six months and three days after the filing deadline and two months and three days after the license to operate WMNO-CA expired.

this period represents an apparent willful and repeated violation of Section 301 of the Act.[6] The Licensee was also notified of its willful and repeated violation of Section 73.3526(e)(11)(iii) of the Rules by failing to file eight Children's Television Programming Reports in a timely manner. The Licensee's failure to report these violations on its license renewal application constitutes an apparent willful and repeated violation of Section 73.3514(a) of the Rules. Lastly, the Licensee was notified of its willful and repeated violation of Section 73.3615(a) of the Rules by failing to file its 2011 Biennial Ownership Report in a timely manner. The Division concluded that the Licensee was apparently liable for a forfeiture of $16,000. In a timely response dated November 6, 2014, the Licensee does not dispute that it committed the violations, but requests a reduction or cancellation of the forfeiture due to its inability to pay.[7]

III. DISCUSSION

3. 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.[8] 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.[9] 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.[10] As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for its willful and repeated violations of Sections 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615 of the Commission's Rules, and Section 301 of the Act. We ultimately conclude that the forfeiture amount should be reduced from $16,000 to $6,000.

4. The Licensee does not dispute whether it committed the alleged violations in its Response. It solely requests that the forfeiture be cancelled or at least reduced. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form or information.[11] The guidelines also specify a base forfeiture amount of $10,000 for station construction and/or operation without an instrument of authorization for the service.[12] 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,

[6] We note that if a licensee files a timely application for renewal of its broadcast license and its current license expires during staff review, the lice does not need to file an STA requesting continued operation while awaiting action on its pending renewal. 47 U.S.C. § 307(c)(3).

[7] Response to Notice of Apparent Liability ("Response") (July 31, 2013) at 1-4.

[8] 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). 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 Monetary 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). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[9] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[10] *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

[11] *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), note to paragraph (b)(8), Section I.

[12] A broadcast station requires an authorization from the Commission to operate. *See* 47 U.S.C. § 301.

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."[13]

5. The Commission will not consider reducing or canceling a forfeiture in response to a claimed inability to pay unless the licensee 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 licensee's current financial status. The Licensee provided financial documentation in an effort to support its arguments that the forfeiture should be cancelled or in the alternative reduced.[14] In its Response, the Licensee argues that its circumstances warrant cancellation of the proposed forfeiture in consideration of the fact that over the past three years it has consistently operated with losses that significantly exceed its gross revenue.[15] In the alternative, the Licensee contends that reduction is appropriate because the forfeiture is excessive in light of its gross revenue over the past three years.[16]

6. While other financial indicators may be considered, typically the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay.[17] Operating losses alone do not mean a licensee cannot afford to pay.[18] In the past, we have cancelled forfeitures based on losses only in extreme cases of severe financial distress.[19] In support of its request for cancelation of the proposed forfeiture the Licensee cites *Valley Air*, in which the Audio Division canceled a $4,000 proposed forfeiture because the licensee's cumulative net losses exceeded revenue by nearly fifty percent.[20] Based on the evidence provided we do not find the situation before us is entirely on point with *Valley Air*.

7. First, in *Valley Air* the forfeiture resulted from the licensee's failure to timely prepare and place in its public file issues/programs lists for seven quarters. Here the forfeiture is comprised of multiple violations of four separate rules and Section 301 of the Act. In addition, the forfeiture in *Valley Air* was for only $4,000, whereas the forfeiture here is for $16,000. In fact, our action today actually reduces the total forfeiture by $10,000, which is 2.5 times greater than the canceled forfeiture in *Valley Air*.

8. Second, the evidence submitted by the Licensee does not provide enough specificity for us to determine that it is in severe financial distress and cannot afford to pay. A majority of the

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[13] 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)(8); 47 C.F.R. § 1.80(b), note to paragraph (b)(8), Section II.

[14] In its Response the Licensee submitted tax returns for 2011-2013. The Licensee further requested that the returns be treated as confidential pursuant to Section 0.457(d)(2) of the Commission's Rules.

[15] Response at 2.

[16] Response at 1.

[17] *See e.g., San Jose State University*, Memorandum Opinion and Order, 26 FCC Rcd 5908 (2011).

[18] *See e.g., PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992)

[19] *See e.g., First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399, 7403, para. 13 (1996)("First Greenville)(considered that the station's losses exceeded its income and that the sole shareholder funded those losses and received no income from the station when reducing proposed forfeiture); *Pinnacle Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15498, para. 7 (1996)(considered that the licensee was in default of a loan personally guaranteed by licensee's owner, that the loan was entered into to avoid foreclosure, and that the licensee and its owner would receive no cash from sale of the license when cancelling forfeiture).

[20] Response at 2 (citing *Valley Air, LLC*, Letter Decision, 24 FCC Rcd 5505 (Aud. Div. 2009)("*Valley Air*")).

Licensee's purported operating losses are made up of undisclosed "deductions" and "depreciation" listed in its submitted tax returns, some of which may actually benefit the Licensee for purposes of tax liability. Without greater specificity as to their significance and relevance we decline to consider these "losses" in determining whether cancellation of the forfeiture is warranted. If these categories of purported "losses" are eliminated from the Licensee's tax returns, its cumulative losses and the difference between net losses and cumulative gross revenue over the past three years are well below the threshold used as a basis for canceling the forfeiture in *Valley Air*.[21] Furthermore, the Licensee has not indicated it is facing foreclosure, is unable to secure funding to cover its losses, that its owners have personally guaranteed loans on its behalf,[22] or that the station is of an inherently low value.[23]

9. In the *NAL*, the Video Division proposed a forfeiture amount of $16,000. Having carefully reviewed the Licensee's submitted documentation, we reduce the forfeiture to $6,000 based on its gross revenue. Given the specific facts and circumstances, we find that cancellation of the forfeiture is not appropriate and that the revised forfeiture amount is proper and not excessive relative to the Licensee's ability to pay.[24]

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),(2) of the Commission's rules,[25] Studio 51 Multi Media Productions, Ltd., SHALL FORFEIT to the United States the sum of Six Thousand Dollars ($6,000) for willfully and repeatedly violating Sections 73.3539(a), 73.3526(e)(11)(iii), 73.3514(a), and 73.3615 of the Commission's Rules, and Section 301 of the Act.

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. 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. The Licensee shall send electronic notification of the payment to evan.morris@fcc.gov on the date payment is made.

12. 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

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[21] *Valley Air*, 24 FCC Rcd at 5507 (cancelling a forfeiture based on losses that exceeded gross revenue by nearly fifty percent).

[22] *See First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996)(considering that the station's losses exceeded its income and that the sole shareholder funded those losses and received no income from the station when reducing proposed forfeiture); *Pinnacle Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15496 (1996)(considering that the licensee was in default of a loan personally guaranteed by licensee's owner, that the loan was entered into to avoid foreclosure, and that the licensee and its owner would receive no cash from sale of the license when cancelling forfeiture).

[23] *See Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995)(considering the fact that the station was a directional daytime-only radio station licensed to a community of 425 when reducing proposed forfeiture).

[24] This forfeiture represents approximately 7 percent of the Licensee's gross revenue and is not excessive in light of precedent. *See e.g., 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); *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).

[25] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

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. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Studio 51 Multi Media Productions, Ltd., 1995 Marion-Bucyrus Road, Marion, OH 43302, and to its counsel, Scott Woodworth, Edinger Associates PLLC, 1875 I Street, N.W., Suite 500, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau