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

In the Matter of:	)	
	)	
KTGF License Corporation	)	FRN: 0021402961
Licensee of Station KTGF	)	NAL/Acct. No. 201441420021
Great Falls, Montana	)	Facility ID No. 13792
	)	
	)	

FORFEITURE ORDER

Adopted: July 17, 2015 **Released: July 17, 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 ("Rules"),[1] we find that KTGF License Corporation, licensee of Station KTGF, Great Falls, Montana, repeatedly violated: (1) Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file electronically with the Commission the Station's Children's Television Programming Reports in a timely manner; and (2) Section 73.3514(a) of the Rules by failing to report the violations in its license renewal application. Based upon 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 July 3, 2014.[2] The NAL notified the Licensee that the station's failure to timely file its Children's Television Programming Reports for at least six quarters during the license period constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules and that the Station's failure to report the violations in its license renewal application constituted an apparent willful and/or repeated violation of Section 73.3514(a) of the Rules.[3] The Division concluded that the Licensee was apparently liable for a monetary forfeiture in the amount of $9,000.

3. In a timely response dated July 30, 2014, the Licensee admitted that it failed to file its Children's Television Programming Reports in a timely manner and failed to disclose this in its license renewal application. However, the Licensee requested that the Commission take into consideration both the fact that these violations were not willful or deliberate, and the fact that once they were discovered, management took immediate action to correct the situation and took steps to ensure that similar violations would not occur in the future. The Licensee then requested that the Commission reduce the proposed

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

[2] *KTGF License Corporation*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 8079 (Vid. Div. 2014)

[3] *See* 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

forfeiture.[4]

III. DISCUSSION

4. 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.[5] 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.[6] 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.[7] As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's rules. We ultimately conclude that the proposed forfeiture amount should be reduced from $9,000 to $6,000.

5. Commission policy establishes a base forfeiture amount of $3,000 for failure to file a required form or information.[8] In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E) of the Communications Act of 1934, as amended (the "Act"), which include "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."

6. In its Response, the Licensee does not dispute that it failed to file its Children's Television Programming Reports with the Commission in a timely manner and that it failed to report this in its license renewal application as described in the NAL. These deficiencies, regardless of the cause, constitute a violation of Commission rules. The Licensee nonetheless requests a reduction in the forfeiture amount.

7. In support of its request for a forfeiture reduction, the Licensee states that its violations "were not willful or deliberate, but were errors made by the Licensee as it began to operate KTGF under unanticipated challenging circumstances." The Licensee also points out that the management of the station took immediate action to correct the issues once the situation was discovered, including filing the reports for previous quarters and creating a calendar of required FCC filings to ensure that a similar problem would not occur in the future. Since the time these violations were discovered, the Licensee has timely filed all of

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[4] Licensee Response to Notice of Apparent Liability ("Licensee Response") (July 30, 2014).

[5] 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).

[6] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

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

[8] *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) *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

its Children's Television Programming Reports and other required FCC filings.[9]

8. In determining the appropriate forfeiture amount, we have considered the factors set forth in Section 503(b)(2)(E) of the Act. First, we note that Licensee's argument that the violations were not willful or deliberate is not persuasive. 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.[10] As the Commission has held, violations resulting from inadvertent error or failure to become familiar with the Commission's rules are willful violations.[11] Licensees are expected to be aware of and comply with all Commission rules, and the Licensee's failure here to abide by the rules represented a conscious and deliberate omission. Nevertheless, we have decided to make a downward adjustment of the forfeiture based on the Licensee's showing of compliance with the Commission's rules since the violations at issue were discovered and the Licensee's effort from that point forward to ensure continued compliance with the rules such that a problem of this nature will not occur in the future. Having carefully reviewed the Licensee's response and the facts and circumstances before us, we reduce the forfeiture from $9,000 to $6,000.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Act, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Rules,[12] KTGF License Corporation SHALL FORFEIT to the United States the sum of six thousand dollars ($6,000) for violating 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

10. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Electronic notification of payments should also be sent to Alison Nemeth at Alison.Nemeth@fcc.gov on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.[13] 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).[14]

- 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

[9] Licensee Response at 1-2.

[10] 47 U.S.C. § 312(f)(1).

[11] *Communications Systems, Inc.*, Forfeiture Order, 25 FCC Rcd 12516, 12517 (MB 2010). *See also Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence…is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.").

[12] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

[13] An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

[14] Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

(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.

11. Any request for full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[15] If there are questions regarding payment procedures, the respective Company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Alison L. Nemeth, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. In addition, to the extent practicable, a copy of the response, if any, should be sent via e-mail to Alison.Nemeth@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent'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.[16]

14. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to KTGF License Corporation, c/o Roger Lonnquist, General Manager, PO Box 7393, Helena, Montana 59604-7393 and by e-mail to Roger Lonnquist at tvinvestor@gmail.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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[15] *See* 47 C.F.R. § 1.1914.

[16] *See San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that "[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").