

STAMP AND RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

ZGS Broadcasting of Orlando, Inc.
Licensee of Station WMVJ-CD
Melbourne, Florida

)
)
) Facility I.D. No. 71238
) NAL/Acct. No.: 201341420032
) FRN: 0011198512
)
)

ACCEPTED/FILED

AUG 16 2013

TO: The Commission, Office of the Secretary
ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau
Federal Communications Commission
Office of the Secretary

**RESPONSE TO NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

ZGS Broadcasting of Orlando, Inc. ("ZGS" or "Licensee"), licensee of Class A digital television station WMVJ-CD (the "Station"), Melbourne, Florida, by its undersigned attorneys and pursuant to Section 1.80 of the Commission's Rules,¹ hereby responds to the Commission's Notice of Apparent Liability for Forfeiture ("NAL") released on July 18, 2013.² By its NAL, the Commission proposes to assess a \$12,000 forfeiture against ZGS for 19 late Children's Programming Reports plus an additional \$3,000 forfeiture for failing to report the late filings on its renewal application for the Station. As explained below, the proposed forfeiture is both excessive and unwarranted, includes Children's Reports that were timely filed or filed by a prior licensee, and elevates form over substance. Additionally, ZGS has a history of compliance with FCC requirements, which also merits a downward adjustment in any proposed forfeiture.

¹ 47 C.F.R. § 1.80.

² *In the Matter of ZGS Broadcasting of Orlando, Inc., Licensee of Station WMVJ-CD, Melbourne, Florida, Notice of Apparent Liability for Forfeiture*, DA 13-1587, rel. July 18, 2013.

First, ZGS is at most liable for 11 late filings. All filings prior to the first quarter of 2007 were the responsibility of the prior licensee of the Station, Tiger Eye Finance, Inc. Attached as Exhibit 1 is a copy of the Commission authorization granting this assignment application on November 29, 2006. Exhibit 2 is the CDBS record reflecting both that grant date and the consummation date of January 23, 2007. Accordingly, any Children's Programming Reports due prior to that date (through the last quarter of 2006) were the responsibility of the prior licensee.

Our records show that, at most, nine Children's Programming Reports for the Station were late filed by ZGS. (One of the supposed late filings was the first quarter of 2008, filed on January 12, 2009, but January 10 was a Saturday and January 12 was the first business day following the due date. Similarly, another of the supposed late filings was made on April 12, 2010, but April 10 was a Saturday. Both of these filings were timely under FCC Rules §1.4.) Of the nine late filings, five were filed within one week of the due date as follows:

- Q1 2008: One day late (4/11/2008)
- Q3 2008: Five days late (10/15/2008)
- Q3 2009: Seven days late (10/19/2009, where 10/10 was a Saturday so 10/12 was the actual due date)
- Q4 2009: One day late (1/12/2010, where 1/10 was a Sunday)
- Q3 2011: One day late (10/12/2011 where 10/10 was Columbus Day holiday)

Those filings made within seven days of the due date are de minimus violations. Only **four** Children's Programming Reports were filed more than one week after the actual due date: The first three quarters of 2007, which were recently refiled (ZGS is unsure what happened to the original filings); and the first quarter of 2013 (filed two weeks late).

What should be more important than the late filings, however, is the fact that *ZGS complied in all respects with the actual airing of children's programming* during the quarters in question. The actual airing of children's programming is arguably more significant than the filing date of the Children's Programming Report especially since the vast majority of required

reports were filed on time or within days of the deadline. It would be one thing if there were questions about the airing of the required programming, or if someone had attempted to access one of these Reports to verify the airing of programming or for some other reason, only to find that the Report was missing. However, there is no allegation that any third party has ever attempted to access any of the late-filed reports. Furthermore, the Commission's willingness to set aside any forfeiture if the Station would agree to revert to LPTV status indicates that the Commission considers the timely filing of the forms more important than the actual provision of children's programming, since LPTV stations have no requirement for children's programming. This is in all respects an elevation of form over substance.

To add an additional forfeiture for omitting these violations from the Station's renewal application is unjustifiable. ZGS had no intention of providing false information to the Commission and was unaware of the need to identify the late Reports for the Commission. As the Commission notes in the NAL, a forfeiture is appropriate only for "willful" acts, defined as "the *conscious and deliberate* commission or omission of [any] act, irrespective of any intent to violate" the law. 47 USC §312(f)(1) (emphasis added). While the Commission often focuses on the second part of that phrase (*i.e.* "irrespective of any intent to violate"), it ignores the need for the act in question to be "conscious and deliberate." ZGS' failure to report late-filed Children's Programming Reports in its self-prepared renewal application was an unintentional oversight that was neither conscious nor deliberate. Thus, the statute does not justify any forfeiture for this omission. Moreover, ZGS has a long history of compliance and good standing as a community broadcaster, and that factor alone merits a downward adjustment in any proposed forfeiture. *Forfeiture Policy Statement*, 12 FCC Rcd 17087, App. A (1997).

Instituted Internal Controls

ZGS wants the Commission to know that it takes its licenses and public service obligations very seriously. ZGS has a passion to serve its communities of license, and to comply with all FCC requirements, whether substantive or procedural in nature. Based on an extensive internal audit that it conducted, ZGS has instituted the following internal controls to address the issue of late filings:

- Clear and stern communication to the leadership team about the expectations as it relates to station reporting obligations.
- Additional corporate oversight of individual station filings. Stations will be required to submit all filings for review well in advance of the filing deadline. Corporate staff will double-check that all filings have been correctly prepared and/or uploaded in accordance with FCC rules and policies.
- Frequent communications about the requirements and filing deadlines will include email reminders, the sharing of broadcast law blogs, updates from attorneys, and regular discussions on leadership conference calls.
- Complete and on-going training on the quarterly reporting obligations.
- The establishment of severe consequences and disciplinary action including dismissal for material infractions.

CONCLUSION

This Station epitomizes the Commission's goals of diversity, localism and competition. WTMO-CD (along with WMVJ-CD and WKME-CD) provides compelling, relevant and informative Spanish language programming, including two daily newscasts broadcast in high definition (HD). ZGS offers the *only* weekend Spanish-language public affairs show in central Florida, breaking news cut-ins, extensive information about hurricane preparedness as well as additional locally produced programming. ZGS stations are intimately involved in the communities they serve and are confident that they are meeting and exceeding Congress's

original intent in creating the Class A television service. ZGS is extremely proud of its reputation as engaged, community-focused broadcasters, and will continue to work diligently to demonstrate its commitment to both its audience and the Commission.

In view of the de minimus nature of the procedural violations cited by the Commission, the fact that ZGS aired all required children's programming during the quarters in question, that most of the supposed late-filed Reports were either the responsibility of the prior licensee or timely filed following a weekend due date, that only one Children's Programming Report since 2007 was filed as much as two weeks late, the valuable Spanish language local broadcast service provided by the Station, ZGS' history of compliance and its commitment to both serve the public interest and comply with all FCC requirements as evidenced by the controls described above, we urge the Commission to reconsider the proposed forfeiture.

Please contact the undersigned counsel should you have further questions or need additional information.

Respectfully submitted,

ZGS BROADCASTING OF ORLANDO, INC.

By:



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Suite 800

Washington, D.C. 20006-3401

(202) 973-4200

Its Attorneys

August 16, 2013

EXHIBIT 1



UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

(FOR CHIEF, VIDEO DIVISION, MEDIA BUREAU)

DATE: 11/29/2006

<input checked="checked" type="checkbox"/> CONSENT TO ASSIGNMENT:	FROM: TIGER EYE FINANCE INC.
<input type="checkbox"/> CONSENT TO TRANSFER:	TO: ZGS BROADCASTING OF ORLANDO, INC.
Licensee/Permittee: (for transfer only)	

CLASS	CALL SIGN	FACILITY ID	FILE#	STATION LOCATION	AUXILIARY STATIONS
DC	WTMO-CD	10073	BALTTA-20061013ADD	ORLANDO, FL	ALL CURRENTLY
DC	WMVJ-CD	71238	BALTTA-20061013ADE	MELBOURNE, FL	AUTHORIZED AUXILIARY STATIONS

Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above.

The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith.

The actual consummation of voluntary transactions shall be completed within 90 days from the date hereof, and notice in letter form thereof shall promptly be furnished to the Commission by the seller or buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).

FCC Form 323, Ownership Report, must be filed within 30 days after consummation, by the licensee/permittee or assignee.

ADDITIONAL REQUIREMENTS FOR ASSIGNMENTS ONLY:

Upon consummation the assignor must deliver the permit/license, including any modifications thereof to the assignee.

It is hereby directed that, upon consummation, a copy of this consent be posted with the station authorization(s) as required by the Commission's Rules and Regulations.

The assignee is not authorized to construct nor operate said station(s) unless and until notification of consummation in letter form has been forwarded to the Commission.

EXHIBIT 2

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Application Search Details

[FCC](#) > [Media Bureau](#) > [MB-CDBS](#) > [CDBS Public Access](#) > [Application Search](#)[Help](#) [site map](#)

Application Search Details

File Number: BALTTA-20061013ADD
Call Sign: WTMO-CD
Facility Id: 10073
FRN: 0006351738
Applicant Name: TIGER EYE FINANCE INC.
Frequency: 572
Channel: 31
Community of License: ORLANDO, FL
Application Type: ASSIGNMENT OF LICENSE
Status: GRANTED
Consummation Date: 01/23/2007
Status Date: 11/29/2006
Expiration Date:
Tolling Code:
Application Service: CA
Disposed Date: 11/29/2006
Accepted Date: 10/16/2006
Last Public Notice: 12/04/2006
Last Report Number: 46374
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Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

Federal Communications Commission
445 12th Street SW
Washington, DC 20554
[More FCC Contact Information...](#)

Phone: 1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
E-mail: fccinfo@fcc.gov

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- [Freedom of Information Act](#)

DECLARATION OF EDUARDO ZAVALA

I, Eduardo Zavala, hereby declare as follows:

1) I am the President, Digital, Broadcast & News Operations of ZGS Broadcasting of Orlando, Inc., the licensee of WMVJ-CD in Melbourne, Florida.

2) I have reviewed the foregoing Response to Notice of Apparent Liability for Forfeiture issued July 18, 2013 and all of the facts stated therein are true and correct to the best of my knowledge, information and belief.

I hereby declare under penalty of perjury that the foregoing is true and correct. Dated this 15th day of August, 2013.



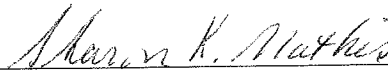
Eduardo Zavala

CERTIFICATE OF SERVICE

I, Sharon K. Mathis, a secretary with the law firm of Davis Wright Tremaine LLP, do hereby certify that copies of the foregoing "Response to Notice of Apparent Liability for Forfeiture" were sent via first class, postage prepaid, United States mail, this 16th day of August, 2013, to the following:

Barbara A. Kreisman, Chief
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Hossein Hashemzadeh, Deputy Chief
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Sharon K. Mathis