

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

In the Matter of)	
)	
Harpole Telecom Inc.)	Facility I.D. No. 32216
Licensee of Station WUWT-CD)	NAL/Acct. No.: 201341420051
Union City, Tennessee)	FRN: 0021840418

To: Chief, Video Division, Media Bureau

RESPONSE TO NOTICE OF APPARENT LIABILITY FOR FORFEITURE

1. Harpole Telecom Inc. (“HTI”) hereby responds to the above-captioned Notice of Apparent Liability (“NAL”), DA 13-1995, released September 27, 2013, with respect to Station WUWT-CD (the “Station”). HTI requests that the amount of the forfeiture be cancelled or reduced for the reasons stated herein. Factual statements in this pleading are supported by the attached Declaration of Joseph H. Harpole, Sr., made under penalty of perjury.

2. ***Request for Confidential Treatment.*** Pursuant to Section 0.459 of the Commission’s Rules, HTI requests that the financial information submitted herein, comprised of copies of the licensee’s income tax returns, be withheld from public disclosure should disclosure ever be requested by an outside party. This information, which is not made available to the public or third parties by HTI, is entitled to protection pursuant to 47 C.F.R. § 0.459(b)(3-7) of the Commission’s Rules, as it relates to the financial performance of HTI’s business operation and would cause the licensee economic harm if it were available to competitors of the Station.

3. ***Response to Alleged Rule Violation: Failure to Report in License Renewal Application.*** HTI challenges the forfeiture for failure to report the alleged Children’s Television Programming Report violations in its license renewal application, File No. BRDTA-20130318AKV. The Station’s online public file shows that the missing reports were not all filed

at once but were rather filed frequently during the past license term; and all reports have been timely filed for the past two years, long prior to the date when the renewal application was on file. The form asks:

For the period of time covered by this application, the applicant certifies that it has filed with the Commission, and incorporates by reference, the Children's Television Programming Reports (FCC Form 398) as described in 47 C.F.R. Section 73.3526.

Thus Section IV, Question 6 of the renewal form was correctly answered, as the licensee had “filed with the Commission” all the required reports at the time the application was filed.

With respect to Section II, Question 4, requiring a report of prior violations, the instructions to Form 303-S require a report only of *findings* of violations *by the Commission or a court*:

For purposes of this license renewal form only, an applicant is required to disclose only violations of the Communications Act of 1934, as amended, or the Rules of the Commission that occurred at the subject station during the license term, as preliminarily or finally determined by the Commission, staff, or a court of competent jurisdiction. This includes Notices of Violation, Notices of Apparent Liability, Forfeiture Orders, and other specific findings of Act or Rule violations. It does not include “violations” identified by the station itself or in conjunction with the station’s participation in an Alternative Broadcast Inspection Program. In responding to this item, licensees should not submit any information concerning self-discovered or other “violations” that have not been identified by the Commission, staff, or court.

There were no such reportable findings until the NAL was released. Thus, there is no basis for the assessment of forfeiture for failure to report the alleged violations on the renewal application. Therefore, at a minimum, the proposed forfeiture for this alleged violation must be cancelled.

4. *Response to Alleged Rule Violation: Children’s Television Programming Reports.*

HTI does not herein challenge the fact that the Station failed to timely file certain Children’s Television Programming Reports. Nevertheless, it should be noted that, although reports were filed late, all late reports were filed long before the license renewal preparation process began.

Moreover, WUWT-CD did regularly broadcast Children's Programming; thus the intent of the Community Broadcasters Protection Act of 1999 was fulfilled, and the public indeed received the required programming services.

5. ***Support for Reduction of Remaining Proposed Forfeiture.*** HTI requests reduction of the proposed \$17,000 forfeiture for Children's Television Programming Report violations based on inability to pay, a history of compliance, and relief for small business.

a. **Inability to Pay.** HTI seeks relief based on inability to pay. Attached hereto are copies of the first section of HTI's tax returns for 2010, 2011, and 2012 (confidentiality requested in Par. 2 above). As currently assessed, the proposed forfeiture amount would equal a significantly larger portion of the Station's average gross revenues than the Commission has ever demanded in the past. It is evident that HTI qualifies for an adjustment consistent with past Commission precedent of reduction of a forfeiture amount to not more than 7.6% of gross revenues – and even that percentage would be a near-fatal blow to a business as small as HTI, which has only a single paid employee and whose owner is a retiree who works for no pay as a service to his community. A forfeiture equal to 7.6% of HTI's gross revenues would place significant constraints on Station operations, which certainly is not in the public interest. A further reduction is therefore warranted under the circumstances.

b. **History of Overall Compliance.** HTI has not previously received any Notices of Violation or Notices of Apparent Liability. In keeping with established Commission precedent, the forfeiture should be reduced by 20% for a good prior record. *See, e.g., Indiana Wesleyan University*, 28 FCC Rcd. 6208 (MB, 2013).

6. Relief for Small Business. It should be noted that the licensee is a corporation 100% owned by a single individual, Joseph H. Harpole, Sr., who manages his own station and has no interest in any other broadcast station. HTI has only three full-time employees, only one of whom is paid a salary.¹ Mr. Harpole himself is a retiree who draws no salary from the Station and operates it as a public service.² Keeping up with paper work on a timely basis, although required by applicable regulations, is unquestionably a challenge for a very small business enterprise. The full Commission recently explicitly recognized that it must take into account the “relatively small size and limited operations” of a business enterprise in establishing a forfeiture amount.³ While the Video Division has generally not varied forfeiture amounts based on enterprise size (apart from a showing of inability to pay), it is obligated to follow the policies of the full Commission and should do so here.

7. **Conclusion.** In light of the foregoing, and in accordance with the statutory instruction that the Commission must take into consideration “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses..., and such other matters as justice may require,” 47 U.S.C. § 503(b)(2)(D), the

¹ The salaried employee is a full-time producer; the other two employees are compensated by way of free airtime and reimbursed for expenses relating to the development and production of their public interest programming, which airs on the Station.

² In addition to providing family-friendly network programming, the Station produces a daily news program at 6 p.m., and weekly public interest programs concerning local events and spotlights on local citizens doing extraordinary things. The Station also telecasts local church services, as well as local government meetings. There is no other television station licensed to or providing true *local* service to Union City and other communities in rural Upper West Tennessee.

³ See *TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, et al.*, FCC 13-86, at ¶ 18 (rel. June 25, 2013). Section 257(a) of the Communications Act also requires the Commission not to allow its regulations to burden small businesses to the point of creating entry barriers.

Commission must cancel the proposed forfeiture for failure to report on the renewal application, and it must substantially reduce the remaining proposed forfeiture amount. Taking into account the small size of the enterprise and the public service it provides, the fact that this is a first violation, and in keeping with past precedent relating ability to pay a forfeiture to a station's gross revenue (with forfeitures reduced to as little as 2% of gross revenue), HTI requests that the forfeiture be reduced to \$1,200.

Respectfully submitted,

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October 22, 2013

DECLARATION OF JOSEPH H. HARPOLE, SR.

Joseph H. Harpole, Sr., hereby declares as follows:

1. I am the President and sole shareholder of Harpole Telecom Inc., licensee of Station WUWT-CD, Union City, Tennessee.

2. I am the Station general manager and I work at the Station on a daily basis with the aim of providing a public service to the people of Union City and rural Upper West Tennessee. I have been retired for eighteen years and draw no salary from the Station's operations. I am proud to have a staff which is as dedicated to community service as I am that they accept nominal compensation for their time and efforts.

3. To the best of my recollection, WUWT-CD has never received a Notice of Violation or Notice of Apparent Liability from the FCC until receipt of the Notice of Apparent Liability released September 27, 2013.

4. I have no interest in any radio or television station other than WUWT-CD.

5. Attached hereto are true and correct copies of Section 1 of IRS Form 1120, corporate tax returns, for Harpole Telecom Inc. for calendar years 2010, 2011 and 2012.

The foregoing statements are true and correct to the best of my knowledge and belief and are made under penalty of perjury.

Executed on October 22, 2013.

Joseph H. Harpole, Sr.