

STAMP & RETURN

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
SATV10, LLC	)	Facility Id. No. 55762
Licensee of Station KYVV-TV	)	NAL/Acct. No.: 201441420029
Del Rio, Texas	)	FRN: 0014568239

To: Federal Communications Commission  
Attn: Media Bureau, Video Services Division

ACCEPTED/FILED

AUG 20 2014

Federal Communications Commission  
Office of the Secretary

**REQUEST FOR CANCELLATION  
OF FORFEITURE AMOUNT**

SATV10, LLC ("SATV10"), by its attorneys, hereby requests the Commission cancel the proposed forfeiture amount of \$16,000 in the above-referenced matter.<sup>1</sup> The Commission should cancel the proposed forfeiture because of SATV10's financial inability to pay the forfeiture and exemplary record as a broadcast licensee. In support thereof, the following is respectfully submitted.

**Introduction**

SATV10 has been the licensee of KYVV since acquiring the station out of bankruptcy on April 30, 2007.<sup>2</sup> The financial condition of the station has been and remains precarious. The station is licensed to the community of Del Rio, Texas with a population of approximately 36,000 people, located on the far western fringe of the San Antonio DMA. SATV10 operated KYVV as debtor-in-possession from January 2009 until February 2011, when the license was

<sup>1</sup> The Notice of Apparent Liability for Forfeiture authorizes the filing of a written statement seeking reduction or cancellation of the proposed forfeiture by September 6, 2014. Thus this request is timely filed.

<sup>2</sup> File No. BAPLCT-20060120ABR.

reassigned to SATV10 following court approval of the company's reorganization plan.<sup>3</sup> For as long as SATV10 has owned the station it has struggled financially, operating with reduced staff and limited resources.

During that seven year period, SATV10 has been a model broadcaster, with an unblemished record before the Commission.

On August 7, 2014, the FCC released a Notice of Apparent Liability for Forfeiture ("NALF"),<sup>4</sup> issuing KYVV a monetary forfeiture in the amount of \$16,000 for: (1) failing to file certain of KYVV's quarterly issues/programs lists; and (2) failing to file timely with the Commission certain of KYVV's Children's Television Programming Reports. The Commission determined the forfeiture amount based on admissions contained in the license renewal application for KYVV.<sup>5</sup>

### **Request for Cancellation of Forfeiture**

SATV10 requests the Commission cancel the forfeiture amount in the NALF because of SATV10's financial inability to pay the forfeiture. The Commission will consider reducing or canceling a forfeiture amount in response to inability to pay if 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 reflect the licensee's current financial status. *See* NALF at 3. The Commission considers a licensee's gross revenues generally as the best indicator of its ability to pay a forfeiture. *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992). The FCC has cancelled forfeitures when the gross revenues were less than or slightly more than

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<sup>3</sup> See File Nos. BALCT-20090306ACC and BALCDT-20101115FKN.

<sup>4</sup> DA 14-1148 (Chief, Vid. Div.) (rel. Aug. 7, 2014). A copy of the NALF is attached as Exhibit 1.

<sup>5</sup> File No. BRCDT-20140401AHD.

the proposed forfeiture. *See, e.g., D.A. Sanders*, 15 FCC Rcd 14890 (EB 2000) (cancelling \$6,000 forfeiture when licensee's gross venues for previous three years was \$10,691, \$2,400 and \$10,660).

SATV10 attaches as Exhibits 2 through 4 to this request the federal tax returns for the company for the last three calendar years, 2013, 2012 and 2011.<sup>6</sup> The federal tax returns take into account the total revenues and expenditures for the company in each calendar year. For calendar years 2011, 2012 and 2013, SATV10 had gross revenues of \$0, \$13,345 and \$37,023, respectively. The proposed forfeiture of \$16,000 is greater than the total gross revenues for SATV10 in 2011 and 2012 and almost 50% of the gross revenues for the company in 2013.<sup>7</sup>

Further evidence of SATV10's financial inability to pay the forfeiture can be found by comparing the company's net losses with its average gross revenues. The Commission will take into consideration net losses in extraordinary circumstances, when the losses constitute a much larger percentage of the average gross revenue.<sup>8</sup> The net losses reported on the income tax returns for the company in 2011, 2012 and 2013 exceeded the company's gross revenues each year by *several thousand percent*.<sup>9</sup> SATV10 satisfies the Commission's criteria for cancelling the forfeiture.

The Commission may take into consideration SATV10's record of compliance with the Commission's Rules and Regulations in determining whether to cancel the forfeiture. SATV10

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<sup>6</sup> The tax returns are attached as Exhibits 1 through 3 to this pleading. SATV10 hereby requests that this information be kept confidential and not disclosed to the public. *See* 47 CFR §§ 0.457 and 0.459.

<sup>7</sup> SATV10's average gross revenues for the three calendar years is \$16,789, slightly larger than the \$16,000 forfeiture.

<sup>8</sup> *See KYKV(FM) (formerly KQBE(FM)), Selah, Washington, Letter*, 25 FCC Rcd 16188 (MB 2010) (cancelling forfeiture because Licensee's losses exceeded its revenue by nearly seventy percent from 2005 through 2007); *KCSY(FM) (formerly KVLR(FM)), Twisp, Washington Valley Air, LLC (former licensee), Letter*, 24 FCC Rcd 5505 (MB 2009) (cancelling forfeiture because Licensee's losses exceeded its revenue by nearly 50 percent from 2003 to 2005).

<sup>9</sup> Specifically, the losses exceeds the gross revenues for each year as a percentage as follows: (1) over three thousand percent for 2013; (2) over ten thousand percent for 2012; and (3) nine hundred and eighty-three thousand percent for 2011.

has had up to now an exemplary record of compliance, warranting cancellation or in the alternative reduction of the forfeiture amount.

**Request for Confidentiality**

SATV requests that the Commission treat as confidential the tax returns submitted in support of this request and not make the returns available to the public, in accordance with Section 0.459 of the Commission's Rules. This confidentiality request satisfies the conditions specified in Section 0.459(b):<sup>10</sup>

(1) The specific material for which confidentiality is sought consists of the tax returns for SATV for 2011, 2012 and 2013, attached to this pleading as Exhibits 2-4.

(2) The Commission proceeding is 201441420029, as set forth in the caption of this confidentiality request.

(3) Please see response to item number five below.

(4) SATV10 is a broadcast licensee and competes with other radio broadcasters in its market for advertising dollars and business. The disclosure of this information to the public would provide competitors in the market with a competitive advantage with regard to the present operational status of SATV10. The result could be a loss of business and/or the inability of SATV10 to provide the necessary services to remain competitive.

(5) The tax returns contain financial information regarding the financial liquidity of SATV10. The disclosure of this information could impact negatively the ability of SATV10 to operate its business, including but not limited to, negotiating

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<sup>10</sup> The responses are numbered to correlate to the specific subsections of Section 0.459(b), 1 through 8.

contracts with third party vendors, selling advertising, hiring employees or independent contractors.

(6) The tax returns have been disclosed only to the Internal Revenue Service as required by their rules and regulations or to lenders or investors in SATV10 in accordance with loan covenants and with the requirement that the information be kept in the strictest confidence.

(7) The tax returns are not available to the public except as discussed in the sixth item and even then kept confidential.

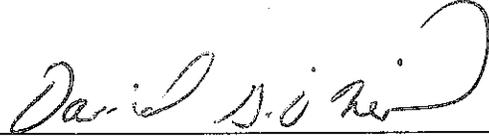
(8) SATV10 requests that the information be kept confidential by the Commission permanently, as the tax returns would never be made publicly available if retained by SATV10 and as SATV10 is producing the tax returns only in support of the financial hardship claim as part of the NALF.

### **Conclusion**

SATV10 is a broadcaster with a distinguished career in the industry, with a commitment to servicing the community of Del Rio. When the Commission takes into consideration the licensee's current financial status for the past three years, combined with the unblemished record of the license before the Commission, the cancellation of the forfeiture amount in the NALF is fair and warranted.

WHEREFORE, FOR THE FOREGOING REASONS, SATV10, LLC respectfully requests that the FCC cancel the monetary forfeiture.

SATV10, L.L.C.

A handwritten signature in black ink, appearing to read "David G. O'Neil", written over a horizontal line.

Rebecca J. Rini, Esq.  
David G. O'Neil, Esq.  
Rini O'Neil, PC  
1200 New Hampshire Avenue, NW  
Suite 600  
Washington, DC 20036  
(202) 463-4301

August 20, 2011

Its Attorney

**EXHIBIT 1**

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

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

In the Matter of	)	
	)	
SATV10, LLC	)	Facility I.D. No. 55762
Licensee of Station KYVV-TV	)	NAL/Acct. 201441420029
Del Rio, Texas	)	FRN: 0014562839

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: August 7, 2014**

**Released: August 7, 2014**

By the Deputy Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”)<sup>1</sup>, we find SATV10, LLC (the “Licensee”), licensee of full power television station KYVV-TV, Del Rio, Texas (the “Station”), apparently willfully and/or repeatedly violated the Commission’s Rules by: (1) failing to file the Station’s quarterly TV issues/programs lists, in violation of Section 73.3526(e)(11)(i)<sup>2</sup> and (2) failing to file timely with the Commission the Station’s Children’s Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)<sup>3</sup>. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of Sixteen Thousand Dollars (\$16,000).

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>4</sup> As set forth in subsection 73.3526(e)(11)(i), each commercial television licensee must prepare and place in its public inspection file a TV issues/programs list which details programs that have provided the station’s most significant treatment of community issues during the preceding three month period. As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.

3. On April 1, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for Station KYVV-TV (the “Application”).<sup>5</sup> The Licensee reported that it did not file issues/programs

<sup>1</sup> This NAL is issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”). See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Chief, Video Division, Media Bureau, has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>4</sup> 47 C.F.R. § 73.3526.

<sup>5</sup> File No. BRCDT-20140401AHD.

lists for the Station for 21 quarters and that the Licensee failed to file Children's Television Programming Reports for the Station in a timely manner for 4 quarters.

### III. DISCUSSION

4. The Licensee's failure to place in its public inspection file the Station's quarterly TV issues/programs lists for 21 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i). The Licensee's failure to file with the Commission in a timely manner its Children's Television Programming Reports for 4 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii).

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person determined by the Commission to have willfully and/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.<sup>6</sup> 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.<sup>7</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."<sup>10</sup>

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information and a base forfeiture amount of \$10,000 for public file violations.<sup>11</sup> 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, 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."<sup>12</sup>

7. In this case, the Licensee has not filed the quarterly issues/programs lists for the Station for 21 quarters, and we conclude that the Licensee is apparently liable for a \$10,000 forfeiture for this public file violation. The Licensee further failed to file its Children's Television Programming Reports in a timely manner for 4 quarters, and we therefore conclude that the Licensee is apparently liable for a \$6,000 forfeiture for this apparent violation. Based on the record before us, we therefore conclude that a total forfeiture in the amount of \$16,000 for the Station is appropriate for the Licensee's apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i) and (iii).

<sup>6</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

<sup>10</sup> 47 U.S.C. § 312(f)(2).

<sup>11</sup> *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)(4), note to paragraph (b)(4), Section I.

<sup>12</sup> 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)(4) and note to paragraph (b)(4), Section II.

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that SATV10, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Sixteen Thousand Dollars (\$16,000) for its apparent willful and/or repeated violations of Section 73.3526 of the Commission's Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, SATV10, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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. Nos. and FRN Nos. 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 numbers in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Peter.Saharko@fcc.gov.

11. 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: Peter Saharko, Attorney Advisor, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. Nos. referenced above.

12. 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.

13. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>13</sup>

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<sup>13</sup> See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to SATV10, LLC, 3680 South Maryland Parkway, Las Vegas, Nevada, 89169, and to its counsel, Marnie K. Sarver, Wiley Rein LLP, 1776 K Street NW, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau

**EXHIBIT 2**

**2011 TAX RETURN FOR SATV10, LLC**

**REDACTED**

**EXHIBIT 3**

**2012 TAX RETURN FOR SATV10, LLC**

**REDACTED**

**EXHIBIT 4**

**2013 TAX RETURN FOR SATV10, LLC**

**REDACTED**

**EXHIBIT 5**

**DECLARATION OF SCOTT ZEMNICK**

**DECLARATION OF SCOTT ZEMNICK**

My name is Scott Zemnack. I am an authorized signatory for SATV10, LLC, licensee of KYVV-TV, Del Rio, Texas, Facility Identification Number 55762. This declaration is submitted in support of the "Request for Cancellation of Forfeiture Amount" SATV10 is filing with the Federal Communications Commission.

I have reviewed the pleading and to the best of my information, knowledge, and belief the information contained therein is complete and accurate. This declaration is submitted under the penalty of perjury.



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Scott Zemnack  
SATV10, LLC

August 19, 2014

**CERTIFICATE OF SERVICE**

I, David G. O'Neil, hereby certify that a true and correct copy of the foregoing "Request for Cancellation of Forfeiture Order" was sent via e-mail this 20<sup>th</sup> day of August 2014 to the following:

Peter Saharko  
Attorney Advisor  
Video Division  
Media Bureau  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

  
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David G. O'Neil