

**Federal Communications Commission**

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

In the Matter of	)	
	)	
HTV/HTN/Hawaiian TV Network, Ltd.	)	File Number EB-08-HL-0089
	)	
Licensee of Class A Television Station KHLU-LP	)	NAL/Acct. No. 200932860001
Honolulu, Hawaii	)	FRN 0003787835
Facility ID # 27969	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: March 27, 2009

By the Resident Agent, Honolulu Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that HTV/HTN/Hawaiian TV Network, Ltd. ("HTV"), licensee of station KHLU-LP, in Honolulu, Hawaii, apparently willfully and repeatedly violated Section 73.1225(a)<sup>1</sup> of the Rules by failing to make the station available for FCC inspection; Section 73.1125(c)<sup>2</sup> of the Rules by failing to maintain an accessible local main studio in its community of license, and Section 73.3526(c)<sup>3</sup> of the Rules for failing to make the KHLU-LP public inspection file available for public inspection during regular business hours. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> that HTV is apparently liable for a forfeiture in the amount of twenty-four thousand dollars (\$24,000).

**II. BACKGROUND**

2. On October 28, 2008, Honolulu agents attempted to conduct a station inspection of the KHLU-LP main studio, which is co-located with their transmitter at the shared Salem Communications site on Palehua Ridge, Oahu, Hawaii.<sup>5</sup> The agents observed two locked gates prohibiting public vehicular access en-route to the transmitter site. The KHLU-LP transmitter site was enclosed by a locked chain-link fence, and there were signs posted on the fence to warn the public not to approach because of the danger of exposure to high electromagnetic fields. The agents did not have keys to access the site, and attempted to contact KHLU-LP by telephone. There was neither a studio address nor telephone listing for KHLU-LP in the Oahu Hawaiian Telcom Directory. An agent called the phone number listed for "HTV/Hawaiian Television," and was connected to an answering machine. The agent left a message identifying himself only by his first name, provided a call back number, and requested access to the KHLU-LP public inspection file. Not receiving any response, the agents waited at the site for an

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<sup>1</sup> 47 C.F.R. § 73.1225(a).

<sup>2</sup> 47 C.F.R. § 73.1125(c).

<sup>3</sup> 47 C.F.R. § 73.3526(c).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> Salem Communications of Hawaii, Inc., is the licensee of KAIM-FM.

additional hour, without result. The agents did not observe any vehicles indicating the presence of station personnel at the studio, and were able to ascertain that the studio was locked and unoccupied.<sup>6</sup>

3. On October 29, 2008, Honolulu agents again attempted to conduct a station inspection of the KHLU-LP main studio. The agents observed two locked gates prohibiting public vehicular access en-route to the transmitter site. The KHLU-LP transmitter site was enclosed by a locked chain-link fence, and there were signs posted on the fence to warn the public not to approach because of the danger of exposure to high electromagnetic fields. The agents did not have keys to access the site, and attempted to contact KHLU-LP by telephone. An agent again left a message identifying himself only by first name, provided a call back number, and requested access to the KHLU-LP public inspection file. Not receiving any response, the agents waited at the site for an additional hour, without result. The agents did not observe any vehicles indicating the presence of station personnel at the studio, and were able to ascertain that the studio was locked and unoccupied.

4. On November 12, 2008, an agent of the Honolulu Office attempted to contact HTV by telephone, and left a message on the answering machine requesting to inspect KHLU-LP and its main studio and public inspection file on November 18, 2008, at 10 a.m. The agent specifically identified himself as an FCC agent, provided a call back phone number, and requested that station personnel meet him at the first locked gate en-route to the KHLU-LP studio site. The agent did not receive any response to his request.

5. On November 18, 2008, Honolulu agents waited at the specified locked gate from 9:55 a.m. until 11:00 a.m. No KHLU-LP personnel arrived during this period.

### **III. DISCUSSION**

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>7</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

7. Section 73.1225(a) of the Rules states "[t]he licensee of a broadcast station shall make the station available for inspection by representatives of the FCC during the station's business hours, or at any time it is in operation."<sup>9</sup> Honolulu agents called the licensee's listed telephone number during regular business hours and requested access to the station on October 28, 2008, October 29, 2008, November 3, 2008, and November 12, 2008. No response was received to any of these requests. The Honolulu agents initially attempted to inspect the KHLU-LP main studio on October 28, 2008 and October 29, 2008, but found the studio unattended and locked. Finally the Honolulu agents gave HTV six days prior notice of their planned station inspection and requested that KHLU-LP personnel meet them to conduct a KHLU-LP station

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<sup>6</sup> The agents were able to bypass the locked gate and access the KHLU-LP studio on-foot.

<sup>7</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>8</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) 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>9</sup> 47 C.F.R. § 73.1225(a).

inspection on November 18, 2008. Despite repeated attempts to contact KHLU-LP by phone and in person at their main studio, HTV failed to make KHLU-LP available for inspection by the FCC agents. HTV was given notice by the Honolulu agents of the request for inspection on the phone number held out by HTV to be used to contact KHLU-LP, therefore the violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based upon the evidence before us, we find that HTV apparently willfully and repeated violated Section 73.1225(a)<sup>10</sup> of the Rules, by failing to make the station available for inspection.

8. Section 73.1125(c) of the Rules requires the licensee of a Class A television station to maintain a main studio within the station's predicted Grade B contour.<sup>11</sup> The station's main studio must serve the needs and interests of the residents of the station's community of license. In particular, the main studio must be accessible to the public during normal business hours "[t]o assure meaningful public participation in [the Commission's] licensing process."<sup>12</sup> To fulfill these functions, a station must, among other things, maintain a meaningful managerial and staff presence at its main studio.<sup>13</sup> The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.<sup>14</sup> In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful."<sup>15</sup> Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."<sup>16</sup> The site held out by HTV as the main studio location for KHLU-LP had no public access, and no staff presence. In fact, any attempt to access the main studio's current location requires passage through areas of apparently excessive radiofrequency radiation ("RFR").<sup>17</sup> HTV is aware of the requirement to maintain an accessible main studio, given that it holds out the above-referenced location as its main studio, therefore, its violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based upon the evidence before us, we find that HTV apparently willfully and repeated violated Section 73.1125(c)<sup>18</sup> of the Rules, by failing to maintain an accessible local main studio.<sup>19</sup>

9. Section 73.3526(b) of the Rules requires that Class A broadcast stations maintain a public inspection file and that the file be located at the main studio of the station.<sup>20</sup> Section 73.3526(c) of the Rules

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<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 73.1125(c).

<sup>12</sup> *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3218 (1987), *clarified* 3 FCC Rcd 5024, 5026 (1988).

<sup>13</sup> 2 FCC Rcd at 3217-18.

<sup>14</sup> *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified* 7 FCC Rcd 6800 (1992).

<sup>15</sup> *Id.*

<sup>16</sup> 7 FCC Rcd at 6802.

<sup>17</sup> *See A-O Broadcasting Corporation*, 17 FCC Rcd 24184 (2002) (Section 73.1125 violated where main studio lacked meaningful staff presence, and was surrounded by a locked fence which also enclosed excessive areas of RFR).

<sup>18</sup> 47 C.F.R. § 73.1125(c).

<sup>19</sup> Section 73.1125(e) of the Rules requires each Class A TV broadcast station to maintain a local telephone number in its community of licensee. 47 C.F.R. § 73.1125(e). There was neither a studio address nor telephone listing for KHLU-LP in the Oahu Hawaiian Telcom Directory. Although there is a telephone listing for "HTV/Hawaiian Television," the station licensee, the line is connected to an answering machine, and calls are not returned. Even if the public was able to ascertain beforehand that they could contact the broadcast station through HTV, they would find it an exercise in futility to leave a message on that answering machine. Maintaining a phone number that is not answered and where messages are not returned does not comply with the intent of Section 73.1123(e).

<sup>20</sup> 47 C.F.R. § 73.3526(b). Section 73.3526(b)(2) of the Rules allows a station to place the contents of their public

requires that the file be available for public inspection at any time during regular business hours.<sup>21</sup> On October 28, 2008, October 29, 2008, and November 18, 2008, Honolulu agents attempted to inspect the file during regular business hours but were unable to access the file. KHLU-LP is aware of the requirement to maintain a public inspection file, given its certification in its most recent license renewal,<sup>22</sup> therefore its violation was willful. The violation occurred on more than one day, therefore, it was repeated.

10. Pursuant to The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failure to permit inspection is \$7,000, the base forfeiture for failing to comply with the main studio requirements is \$7,000, and the base forfeiture for violations of the public file rules is \$10,000.<sup>23</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>24</sup> Applying the Forfeiture Policy Statement, Section 1.80, and the statutory factors to the instant case, we conclude that HTV is apparently liable for a total forfeiture in the amount of \$24,000.

#### **IV. ORDERING CLAUSES**

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, HTV/HTN/Hawaiian TV Network, Ltd. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-four thousand dollars (\$24,000) for violations of Sections 73.1225(a), 73.1125(c), and 73.3526(c) of the Rules.<sup>25</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, HTV/HTN/Hawaiian TV Network, Ltd. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, 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, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When 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). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625,

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on its website. The Honolulu agents could locate no such website for KHLU-LP.

<sup>21</sup> 47 C.F.R. § 73.3526(c).

<sup>22</sup> See File No. BRTTA - 20060927ANH, Section IV, Question 3, granted February 27, 2007.

<sup>23</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>24</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>25</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1225(a), 73.1125(c) and 73.3526(c).

**Federal Communications Commission**

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Washington, D.C. 20554.<sup>26</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. HTV/HTN/Hawaiian TV Network, Ltd. will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Honolulu Resident Agent Office, P.O. Box 971030, Waipahu, Hawaii, 96797-1030 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to HTV/HTN/Hawaiian TV Network, Ltd.

FEDERAL COMMUNICATIONS COMMISSION

John Raymond  
Resident Agent  
Honolulu Resident Agent Office  
Western Region  
Enforcement Bureau

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<sup>26</sup> See 47 C.F.R. § 1.1914.