

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

In the Matter of	)	
	)	
Ho'ona'auao Community Television, Inc.	)	File No.: EB-02-HL-074
	)	NAL/Acct. No. 200232860003
Licensee of Station KWBN-TV	)	FRN 0004-0750-57
Honolulu, Hawaii	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 3, 2003**

**Released: September 5, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we grant, to the extent indicated below, a petition for reconsideration filed on May 30, 2003, by Ho’ona’auao Community Television, Inc. (“Ho’ona’auao”), licensee of Station KWBN-TV, Honolulu, Hawaii of a *Forfeiture Order*<sup>1</sup> issued in this proceeding. The *Forfeiture Order* issued a \$4,000 forfeiture for Station KWBN-TV’s failure to retransmit the Emergency Alert System Required Monthly Test (“EAS RMT”) in willful and repeated violation of Section 11.61(a)(1)(v) of the Commission’s Rules (“Rules”).<sup>2</sup> For the reasons discussed below, we reduce the monetary forfeiture to \$2,000.

**II. BACKGROUND**

2. On July 1, 2002, an agent from the FCC Honolulu, Hawaii Resident Agent Office (“Honolulu Office”) monitored television broadcast Station KWBN, Channel 44, from 11:15 a.m. HST until 1:15 p.m. HST. During this period, KWBN did not retransmit the EAS RMT initiated by Hawaii State Civil Defense at approximately 11:15 a.m. HST.

3. On August 1, 2002, an agent from the Honolulu Office monitored television broadcast Station KWBN, Channel 44, from 11:10 a.m. HST until 12:37 p.m. HST. During this period, KWBN did not transmit the EAS RMT initiated by Hawaii State Civil Defense at approximately 11:15 a.m. HST.

4. On August 2, 2002, agents from the Honolulu Office inspected the EAS equipment installed at the KWBN studio at 875 Waimanu Street, #632, Honolulu, Hawaii 96813. The EAS receipts generated by the EAS Encoder/Decoder show that the EAS RMTs were not retransmitted on either July 1, 2002 or August 1, 2002. No log entries existed in any station log explaining why no RMTs were retransmitted in July or August, 2002.

5. On September 3, 2002, an agent from the Honolulu Office monitored television broadcast Station KWBN-TV, Channel 44, from 11:10 a.m. HST until 12:30 p.m. HST. During this period, KWBN did not retransmit the EAS RMT initiated by Hawaii State Civil Defense at approximately 11:15 a.m. HST.

<sup>1</sup> 18 FCC Rcd 1486 (Enf. Bur. 2003).

<sup>2</sup> 47 C.F.R. § 11.61(a)(1)(v).

6. As a result of the agents' investigation, on September 27, 2002, the Honolulu Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$4,000 to Ho'ona'auao<sup>3</sup> for willful and repeated violation of Section 11.61(a)(1)(v) of the Rules. Ho'ona'auao did not file a response to the NAL. On February 4, 2002, the Bureau issued a *Forfeiture Order* affirming the forfeiture proposed by the NAL. Ho'ona'auao filed a petition for reconsideration of the *Forfeiture Order* on February 7, 2003.

7. In its petition for reconsideration, Ho'ona'auao does not deny the violation but requests cancellation or reduction of the forfeiture based on its inability to pay.

### III. DISCUSSION

8. Section 11.61(a)(1)(v) of the Rules specifically requires that monthly tests be retransmitted within 60 minutes by broadcast stations in an EAS Local Area or State. We conclude, on the basis of the evidence before us, that Ho'ona'auao willfully and repeatedly violated Section 11.61(a)(1)(v).

9. We have reviewed the financial information provided by Ho'ona'auao to support its claim of inability to pay and conclude that a reduction of the forfeiture is warranted. Accordingly, we will reduce the forfeiture amount to \$2,000.<sup>4</sup> Notwithstanding the reduction, we emphasize that strict compliance with our rules relating to EAS is important to public safety. Accordingly, we expect full compliance in this important public safety area. Future violations may result in even more serious enforcement action.

### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 405 of the Communications Act of 1934, as amended ("Act"),<sup>5</sup> and Sections 1.106 of the Rules,<sup>6</sup> Ho'ona'auao Community Television, Inc.'s petition for reconsideration of the February 4, 2003, *Forfeiture Order* **IS GRANTED** to the extent that the \$4,000 monetary forfeiture **IS REDUCED** to \$2,000.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>7</sup> within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>8</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232860003 and FRN 0004-

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct.No. 200232860003 (Enf. Bur., Honolulu Office, released September 27, 2002).

<sup>4</sup> We note that Ho'ona'auao states that since being notified of the violation it has operated Station KWBN-TV in compliance with Section 11.61(a)(1)(v) of the Rules. However, we give no credit for this remedial action, since it is well established that remedial actions taken to correct a violation are not mitigating factors justifying reduction of a forfeiture. See e.g. *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.* 42 FCC 2d 258, 259 (1973).

<sup>5</sup> 47 U.S.C. § 405

<sup>6</sup> 47 C.F.R. § 1.106.

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 47 U.S.C. § 504(a).

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0750-57. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>9</sup>

12. **IT IS FURTHER ORDERED THAT** a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to Ho'ona'auao Community Television, Inc., 875 Waimanu Street, Suite 632, Honolulu, Hawaii 96813, and its counsel Robert L. Olender, Esq., Koerner, Olender, P.C. , 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914.