



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

**DA 03-3038
Released: October 6, 2003**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

WFTV-TV Holdings, Inc.
3993 Howard Hughes Parkway
Suite 250
Las Vegas, NV 89109

Re: WRDQ-DT, DTV Channel 14
Orlando, FL
Facility ID: 55454
BLCDT-20020724AAA
BSTA-20030213ABV
NAL/Acct. No. 0441420001
FRN-0001842848

Dear Licensee:

This letter addresses the above-captioned application for a license to cover the construction of DTV Station WRDQ-DT, Orlando, Florida, and the above-captioned application for special temporary authority (“STA”) for the station to cease operations commencing on February 27, 2003, for a period of no more than 180 days. This letter also constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE against WFTV-TV Holdings, Inc. (“Licensee”), licensee of WRDQ-DT, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), under authority delegated to the Chief, Media Bureau, by Section 0.283 of the Commission’s Rules, 47 C.F.R. §0.283. As set forth herein, we find and Licensee concedes that it engaged in unauthorized operation of WRDQ-DT in violation of Section 73.1745 of the Commission’s Rules.

On February 1, 2001, Licensee was issued a construction permit authorizing the construction of WRDQ-DT. Because the proposed operation of DTV Channel 14 could cause objectionable interference to existing land mobile radio facilities in the 460 to 470 MHz band, the WRDQ-DT authorization contained a condition that required Licensee to submit documentation that no such interference would be caused. Licensee was required to submit that documentation along with a request to commence operation pursuant to Program Test Authority (“PTA”). The permit specifically provided: “Program tests shall not be commenced under Section 73.1620(a) of the Commission’s Rules and may only be started after specific authority is granted by the Commission.”

After the station was constructed, on July 22, 2002, Licensee advised the Commission by letter that WRDQ-DT commenced program tests. On July 24, 2002, Licensee filed an application (BLCDT-20020724AAA) for a covering license for Station WRDQ-DT. In that application, Licensee also indicated that the station was already operating under PTA.

On November 27, 2002, John Demshock, WRDQ's Chief Engineer, advised the Commission that Licensee failed to submit the necessary documentation relative to interference to land mobile stations in a request for PTA upon the completion of station construction as required by the construction permit. He stated that Licensee concluded that the station would not pose any risk of interference to land mobile operations and, as a result, it was not necessary to first seek PTA before commencing operations. Demshock states that Licensee should have disclosed these conclusions, and Licensee then requested a waiver of the Commission's rules "to the extent necessary to continue operating WRDQ-DT until action on the license application."

On February 13, 2003, Licensee filed an STA request to permit WRDQ-DT to cease operations on February 27, 2003, stating that land mobile stations on frequencies adjacent to Channel 14 reported objectionable interference. Licensee sought to remain silent for no more than 180 days to permit it to investigate and eliminate any objectionable interference.

Discussion. As a permittee on DTV Channel 14, Licensee did not seek specific authority to commence operation of WRDQ-DT pursuant to PTA as expressly required by the condition on its construction permit. Licensee concedes that fact in its STA request. Section 73.1745 of the Commission's rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license. Among the reasons for such a condition in the case of a station operating on Channel 14 is to prevent interference to land mobile operations as that caused by Licensee. Further, Licensee filed a request for waiver of that condition *after* it constructed and commenced operation of WRDQ-DT and *after* the occurrence of such interference. In view of the above, it appears that from at least July 22 through November 27, 2002 (when it first sought a waiver of the rules), and continuing until at least February 27, 2003, when it ceased operating, Licensee willfully and repeatedly violated Section 73.1745 of the Commission's rules by operating WRDQ-DT without prior Commission approval or authority.¹ We believe that Licensee should be sanctioned for its violation of the Commission's rules, and that a monetary forfeiture should be imposed for the apparent violation.

In determining the appropriate forfeiture amount, we note that in *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (Forfeiture Policy Statement), the Commission adopted guidelines for assessing forfeitures. These guidelines provide for a forfeiture of \$10,000 as the base amount for the construction and/or operation of a broadcast

¹ Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80(a) of the Commission's Rules each state that any person who willfully or repeatedly fails to comply with the provisions of the Communications Act or the Commission's rules shall be liable for a forfeiture penalty. WFTV-TV Holdings, Inc.'s conduct in this regard was both "willful" and "repeated" within the meaning of Section 503(b)(1)(B) of the Communications Act and Section 1.80(a)(2) of the Commission's Rules. As the Commission has held, an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *See Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3453 (1992). Further, a continuing violation is "repeated" if it lasts more than one day. *Id.* at 4388.

station without an instrument of authorization. In this case, we believe that this amount is appropriate given the circumstances in which the violation arose, as discussed above.

Based on our review of the facts and circumstances as set forth above, IT IS HEREBY ORDERED, That pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283, and 1.80 of the Commission's Rules, WFTV-TV Holdings, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the total amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 73.1745 of the Commission's Rules.

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, WFTV-TV Holdings, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and also must note the NAL/Acct. No. referenced above. Other relevant provisions of Section 1.80(f)(3) of the Commission's Rules are summarized in the attachment to this Notice.

Under the Small Business paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If Licensee qualifies as a small entity and wishes to be treated as a small entity for tracking purposes, it should so certify to us within thirty (30) days of this NAL, either in its response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Licensee's certification should indicate whether it, including parent entities and subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this *Notice of Apparent Liability*. This information will be used for tracking purposes only. Licensee's response or failure to respond to this question will have no effect on its rights and responsibilities pursuant to Section 503(b) of the Communications Act. If Licensee has any questions regarding any of the information contained in Attachment A, it should contact OCBO at (202) 418-0990.

IT IS FURTHER ORDERED That a copy of this NOTICE OF APPARENT LIABILITY shall be sent by First Class and Certified Mail, Return Receipt Requested, to WFTV-TV Holdings, Inc., 3993 Howard Hughes Parkway, Suite 250, Las Vegas, Nevada 89109 and to its counsel Kevin P. Latek, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036-6802.

IT IS FURTHER ORDERED That Licensee's application for a covering license will be held in abeyance until known interference to land mobile stations is identified and remedied. Thereafter, Licensee shall submit documentation showing that no objectionable interference will be caused to any existing land mobile radio facilities. The condition placed upon the WRDQ-DT

authorization was designed to avoid the situation that has occurred here. Under these circumstances, Licensee's request for waiver of Section 73.1745 IS DENIED, and its request for Special Temporary Authority IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree
Chief, Media Bureau

Enclosures