

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

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| In the matter of |) | |
| |) | |
| Libco, Inc. |) | Facility ID No. 13988 |
| Licensee of KAIT(TV), Jonesboro, AR |) | NAL/Acct. No. 064142004 |
| |) | FRN: 0005087408 |

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: October 19, 2005

Released: October 26, 2005

By the Acting Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Acting Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Jonesboro, Arkansas. We find that Libco, Inc., licensee of station KAIT(TV), Jonesboro, Arkansas, willfully and repeatedly violated Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii) of the Commission's Rules (Rules), by failing to place in the station's public inspection file the Children's Television Programming Reports and records concerning compliance with the children's programming commercial limits.¹ For the reasons set forth below, we find Libco, Inc. apparently liable in the amount of four thousand dollars (\$4,000) for its violations of Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii) of the Rules.

II. BACKGROUND

2. Under the Commission's rules implementing the Children's Television Act of 1990 (CTA),² each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).³ The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Section 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in Section 73.3526, licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the

¹ 47 C.F.R. §§ 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii).

² Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

³ 47 C.F.R. § 73.671.

reports. Section 73.3526(e)(11)(ii) of the Rules also requires each licensee of a commercial broadcast station to place in the public inspection file for its station records concerning compliance with the commercial limits on children's programming. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁴

3. On February 1, 2005, the licensee filed a license renewal application (FCC Form 303-S) for station KAIT(TV), Jonesboro, Arkansas (File No. BRCT-20050201BCV). In response to Section IV, Question 3 of that application, the licensee certified that, during the previous license term, station KAIT(TV) failed to place in the public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to the renewal application, the licensee states that the records concerning compliance with commercial limits for the third and fourth quarters of 1997, and the third quarter of 1999 were missing from station KAIT(TV)'s public inspection file. Further, the licensee indicates that the Children's Television Programming Reports were also missing for the same period. The licensee reports that it subsequently placed in the public file the Children's Television Programming Reports for the third and fourth quarters of 1997, and the third quarter of 1999. Further, the licensee describes the steps it has taken to ensure future compliance.

4. In Exhibit 19, the licensee further reports that it placed in the public file station records concerning compliance with the commercial limits for the third quarter of 1999. With respect to the commercial limits for the third and fourth quarters of 1997, however, it has no station records regarding compliance, but it has confirmed that the ABC Network children's programming, which comprised the majority of the station's programming, was formatted to comply with the Commission's commercial limits. Nevertheless, the licensee states, it has been unable to definitively confirm the station's compliance for the third and fourth quarters of 1997.

5. In addition, in response to Section IV, Question 10 of the renewal application, the licensee certified that KAIT(TV) failed to publicize the existence and location of the station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24 to the renewal application, the licensee indicates that the station did not publicize the existence and location of its Children's Television Programming Reports from December 2003 until December 2004. The licensee states that prior to December 2003, the station ran periodic on-air announcement publicizing the existence and location of the Children's Television Programming Reports. The licensee also reports that in November of 2003, the employee responsible for scheduling the announcements left the station and due to an inadvertent administrative oversight, this responsibility was not reassigned. The licensee claims that this violation was discovered during preparation of the instant renewal application and describes the corrective measures to ensure future compliance.

⁴ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

III. DISCUSSION

6. KAIT(TV)'s failure to place in its public inspection file the required documentation and to publicize the existence and location of its Children's Television Programming Reports constitute willful and repeated violations of Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii). While the licensee may have belatedly implemented policies and procedures to prevent subsequent violations, that does not relieve it of liability for the violations which have occurred. *International Broadcasting Corp.*

7. Section 503(b) of the Communications Act of 1934, as amended, (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully 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.⁵ In determining the appropriate forfeiture amount, we must consider 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."⁶

8. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules set a base forfeiture amount of \$10,000 for public file violations. In this case, the licensee has corrected the violation and instituted measures to prevent its recurrence. Based on the record before us, we believe that a \$4,000 forfeiture is appropriate for the licensee's apparent violations of Section 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii) of the Rules.

9. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.⁷ Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."⁹

10. On balance, we find that Libco Inc.'s violations of Section 73.3526 do not constitute a "serious violation" of the Commission's rules warranting designation for evidentiary

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 309(k).

⁸ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station KAIT(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.61, 0.283 and 1.80 of the Rules, Libco, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for willful and repeated violations of Sections 73.3526(e)(11)(ii) and 73.3526(e)(11)(iii) of the Rules.

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, Libco, 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 must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, and P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail to the licensee at 2215 B Renaissance Drive, Suite 5, Las Vegas, Nevada 89119 and to its attorney of record, Scott S. Patrick, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

14. Finally, IT IS ORDERED that, the application (File No. BRCT-20050201BCV) of Libco, Inc. for renewal of license for station KAIT(TV), Jonesboro, Arkansas, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Acting Chief
Media Bureau

¹⁰ See 47 C.F.R. § 1.1914.