



Federal Communications Commission
Washington, D.C. 20554

October 28, 2005

DA 05-2826

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Jovon Broadcasting Corporation
WJYS(TV)
18600 S. Oak Drive
Tinley Park, Illinois 60477

Re: Jovon Broadcasting Corporation
WJYS(TV), Hammond, Indiana
Facility ID No. 32334
NAL/Acct. No. 0641420007
FRN: 0003781291

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each commercial broadcast station to place in its public inspection file records concerning compliance with the children's programming commercial limits and TV issues/programs lists.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.¹ As set

¹ See 47 C.F.R. § 73.3526.

forth in Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Further, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning commercial limits and TV issues/programs lists for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Similarly, Section 73.3526(e)(11)(iii) of the Rules requires a commercial television broadcast licensee to quarterly prepare and timely place in its station's public inspection file and file with the Commission the Children's Television Programming Reports (FCC Form 398). 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.²

On March 31, 2005, you filed a license renewal application (FCC Form 303-S) for station WJYS(TV), Hammond, Indiana (File No. BRCT-20050331BDW). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WJYS(TV) failed to place in its 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 station WJYS(TV)'s renewal application, you indicate that in preparing the instant renewal application, the licensee discovered that it had not prepared TV issues/programs lists during the license term. You also state that evidence of compliance with the commercial limits in children's programming was not placed in the station's public inspection file. You assert that the licensee prepared daily statements certifying that the station complied with the Commission's limits on commercial matter and placed these statements in its internal files, rather than the station's public file. Finally, you indicate that several Children's Television Programming Reports were placed in the station's public inspection file and/or filed with the Commission after the applicable deadlines and that the annual EEO Public File Reports were not prepared and timely placed in the public inspection file as required by Section 73.3526(e)(7) of the Commission's Rules.³

You describe the measures taken by station WJYS(TV) to avoid similar violations from occurring in the future and the steps taken to bring WJYS(TV)'s public file up to date. After reviewing its internal files, the licensee confirmed its compliance with the commercial limits throughout the license term and placed the appropriate documentation of compliance in the station's public file in March 2005.

² 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).

³ The most recent version of the manual entitled "The Public and Broadcasting" was also not included in WJYS(TV)'s public inspection file.

In an amendment to the renewal application filed on April 26, 2005, you also state that since filing the renewal application, the licensee discovered that it had, in fact, prepared and placed in the station's public inspection file TV issues/programs lists during the license term. Specifically, you claim that TV issues/programs lists for the fourth quarter of 1997 through the fourth quarter of 2000 were placed in the station's public inspection file, but that these lists were subsequently moved to internal files. You also state that the station prepared lists of issue-responsive public service announcements for the period January 1, 2001 through December 31, 2004 and that these lists were also maintained in station WJYS(TV)'s internal files. Finally, you report that the licensee has returned the TV issues/programs lists and the lists of issue-responsive public service announcements to station WJYS(TV)'s public inspection file and placed the most recent version of the manual in that file.

Jovon Broadcasting Corporation's (Jovon Broadcasting) failure to retain the required documentation in station WJYS(TV)'s public inspection file constitutes a willful and repeated violation of Section 73.3526(e). While corrective actions may have been taken to prevent future violations, this does not relieve you of the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969). Accordingly, we conclude that Jovon Broadcasting has willfully and repeatedly violated Section 73.3526(e).⁴

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 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

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

⁴ 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 the Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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." 47 U.S.C. § 312(f)(2).

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).

Rules establish a base forfeiture amount of \$10,000 for public file violations.⁷ Here, the licensee acknowledges that various records were not included in, removed from, missing, or late-filed in the WJYS(TV) public inspection file and/or with the Commission. The public inspection file serves the critical function of making available to the public important information related to station operations, and the licensee was remiss for a substantial period of the license term in ensuring and maintaining the completeness of WJYS(TV)'s public inspection file. Considering the record as a whole, we believe that a \$15,000 forfeiture is appropriate for the violations in this case.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). 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

The public inspection file rule serves the critical function of making available to the public important information related to station operations. On balance, however, we find that Jovon Broadcasting's violation of Section 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WJYS(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of Act, and Sections 0.283 and 1.80 of the Rules, Jovon Broadcasting Corporation is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violations of Section 73.3526(e) of the 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 of Apparent Liability, Jovon Broadcasting

⁷ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

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).

Corporation 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, at 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

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 Jovon Broadcasting Corporation at the address listed above, and to its counsel, John R. Feore, Jr., Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, D.C. 20036.

Finally, IT IS ORDERED that, the application (File No. BRCT-20050331BDW) of Jovon Broadcasting Corporation for renewal of license for station WJYS(TV), Hammond, Indiana, IS GRANTED.

Sincerely,

Donna C. Gregg
Acting Chief, Media Bureau

¹⁰ See 47 C.F.R. § 1.1914.