



Federal Communications Commission
Washington, D.C. 20554

October 28, 2005

DA 05-2827

Released: October 28, 2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Virgin Islands Public Television System
WTJX-TV
P.O. Box 7879
Charlotte Amalie
St. Thomas, VI 00801

Re: Virgin Islands Public Television System
WTJX-TV, Charlotte Amalie, Virgin Islands
Facility ID No. 70287
NAL/Acct. No. 0641420006
FRN: 0006610273

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), for willful and repeated violations of the Commission's rule requiring noncommercial educational television broadcast stations to place in the station's public inspection file TV issues/programs lists for each calendar quarter and willful violation of the Commission's rule requiring noncommercial educational television broadcast stations to place in the station's public inspection file an EEO public file report on an annual basis.

Section 73.3527 of the Commission's Rules (Rules) requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.¹ Section 73.3527(e)(8) provides that a TV issues/programs list is to be placed in a noncommercial educational TV broadcast station's public inspection file each calendar quarter. Section 73.3527 also requires licensees to place TV issues/programs lists for each quarter in the public inspection file by the tenth day of the succeeding calendar quarter. Moreover, Section 73.3527(e)(6) provides that an EEO public file report is to be placed in a noncommercial educational TV broadcast station's public inspection file annually, on the anniversary of the date its renewal application is due to be filed. Where lapses occur in maintaining the public file, neither the

¹ See 47 C.F.R. § 73.3527.

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 October 1, 2004, you filed a license renewal application (FCC Form 303-S) for station WTJX-TV, Charlotte Amalie, Virgin Islands (File No. BRET-20041001AOR). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WTJX(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3527 of the Rules. In Exhibit 17 of that application, you state that in preparing the instant renewal application, it was discovered that the station's TV issues/programs lists from May 1998 until approximately September 2004 and the 2003 EEO public file report were missing from the station's public inspection file. You claim that these omissions took place during the tenure of a former station general manager. You also recount measures taken since discovery of these omissions to prepare the missing documents and place them in station WTJX-TV's public file, and state that TV issues/programs lists dating back to December 2001 have been prepared and placed in the public file. Further, you state that the station's 2004 EEO public file report includes the period from March 10 through September 30, 2003. In an amendment to the renewal application filed on March 30, 2005, you report that all previously omitted TV issues/programs lists have been prepared in placed in the station's public inspection file. Moreover, you assert that steps have been taken to ensure future compliance.

Virgin Islands Public Television System's (Virgin Islands) failure to prepare and place TV issues/programs lists and an EEO public file report in station WTJX-TV's public inspection file constitutes a willful and repeated violation of Section 73.3527 of the Commission's Rules. 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 Virgin Islands has willfully and repeatedly violated Section 73.3527.³

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.⁴ In determining the appropriate forfeiture

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 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).

⁴ 47 U.S.C. § 503(b).

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.”⁵

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 establish a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the licensee concedes that the station’s TV issues/programs lists from May 1998 until approximately September 2004 and the station’s 1993 EEO public file report were missing from the public inspection file. Moreover, it appears that the licensee did not discover these deficiencies until it prepared station WTJX-TV’s renewal application. As a result, the public file was not complete for the majority of the license term. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the apparent 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.⁷ 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.”⁸

The public inspection file serves the critical function of making available to the public important information related to station operations. On balance, however, we find that Virgin Islands’ violations of Section 73.3527 do 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 WTJX-TV served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

⁵ 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).

⁶ 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.

⁷ 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).

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of Act, and Sections 0.283 and 1.80 of the Rules, Virgin Islands Public Television System is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violations of Sections 73.3527(e)(6) and 73.3527(e)(8) 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, Virgin Islands Public Television System 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. 20554.⁹

IT IS FURTHER ORDERED that, the application (File No. BRET-20041001AOR) of Virgin Islands Public Television System for renewal of license for station WTJX-TV, Charlotte Amalie, Virgin Islands, IS GRANTED.

Finally, IT IS ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to Virgin Islands Public Television System at the address listed above, and to its counsel, Lawrence M. Miller, Esquire, Schwartz, Woods & Miller, 1350 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036-1717.

Sincerely,

Donna C. Gregg
Acting Chief, Media Bureau

⁹ See 47 C.F.R. § 1.1914.