



Federal Communications Commission  
Washington, D.C. 20554

December 16, 2005

**DA 05-3201**

**Released: December 16, 2005**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Emmis Television License, LLC  
WKCF(TV)  
3500 W. Olive Avenue  
Suite 1450  
Burbank, CA 91505

Re: Emmis Television License, LLC  
WKCF(TV), Clermont, Florida  
Facility I.D. No. 53465  
File No. BRCT-20041001AHW  
NAL/Acct. No. 0641420021  
FRN: 0011294444

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) 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 commercial television broadcast stations to place in the station's public inspection file a copy of the current FCC authorization to operate the station and TV issues/programs lists for each calendar quarter.

Section 73.3526 of the Commission's Rules (Rules) requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.<sup>1</sup> 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. Further, Section 73.3526(e)(1) requires that a copy of the current FCC authorization to operate the station be placed in the public inspection file. 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.<sup>2</sup>

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<sup>1</sup> See 47 C.F.R. § 73.3526.

<sup>2</sup> 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).

On October 1, 2004, you filed an application for renewal of license (FCC Form 303-S) for station WKCF(TV), Clermont, Florida (File No. BRCT-20041001AHW). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WKCF(TV) failed to place in its public inspection file at the appropriate times, the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 of that application, you indicate that during a recent self-inspection, the licensee discovered that TV issues/programs reports for four quarters, April 2003 through March 2004, were not in station WKCF(TV)'s public inspection file. You attribute the violation to a change in personnel that occurred during the second quarter of 2003. Moreover, you report that the station's main license was missing from the station's public inspection file. You state that these documents have been placed in the public inspection file and describe measures taken to prevent future violations.

Emmis Television License, LLC's (Emmis) failure to retain TV issues/programs lists and station license in the public inspection file for station WKCF(TV) constitutes a willful and repeated violation of Sections 73.3526(e)(11)(i) and 73.3526(e)(1) of the 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 Emmis has willfully and repeatedly violated Sections 73.3526(e)(11)(i) and 73.3526(e)(1) of the Rules.<sup>3</sup>

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.<sup>4</sup> 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."<sup>5</sup>

*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*

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<sup>3</sup> 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).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 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.<sup>6</sup> In this case, the licensee has corrected the violation and instituted measures to prevent its recurrence. Nevertheless, TV issues/programs lists for four quarters and the station's main license were missing from the public file. Considering the record as a whole, we believe that a \$4,000 forfeiture is appropriate for the violation in this case.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act. 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.<sup>7</sup> 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.”<sup>8</sup>

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 Emmis' 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 WKCF(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 the Act, and Sections 0.283 and 1.80 of the Rules, Emmis Television License, LLC 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)(i) and 73.3526(e)(1) 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, Emmis Television License, LLC 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

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<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

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.<sup>9</sup>

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 J. Scott Enright, Vice President & Secretary, Emmis Television License, LLC at the address listed above, and to John E. Fiorini, III, Esquire, Wiley Rein & Fielding, LLP, 1776 K Street, N.W., Washington, D.C. 20006.

Finally, IT IS ORDERED that, the application (File No. BRCT-20041001AHW) of Emmis Television License, LLC for renewal of license for station WKCF(TV), Clermont, Florida, IS GRANTED.

Sincerely,

Donna C. Gregg  
Chief, Media Bureau

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<sup>9</sup> See 47 C.F.R. § 1.1914.