

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

In re Application of	)	
	)	
WDBB-TV, Inc.	)	Facility I.D. No. 71325
	)	NAL/Acct. No. 0641420043
For Renewal of License for Station WDBB(TV)	)	FRN: 0004999660
Bessemer, Alabama	)	File No. BRCT-20041201BCQ

**MEMORANDUM OPINION AND ORDER  
AND NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: June 2, 2006**

**Released: June 6, 2006**

By the Chief, Media Bureau:

**I. INTRODUCTION**

1. The Commission has before it the above-captioned license renewal application of WDBB-TV, Inc. (the "Licensee") for Station WDBB(TV), Bessemer, Alabama (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"),<sup>1</sup> by the Commission, by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that the Licensee apparently violated Sections 73.3526(e)(1), (e)(5), (e)(11)(i), and (e)(11)(iii) of the Rules, by failing to place in the Station's public inspection file a copy of the current FCC authorization to operate the Station, its 2003 Biennial Ownership Report, and all required TV issues/programs lists and Children's Television Programming Reports.<sup>3</sup> Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000) and we grant the license renewal application.

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>4</sup> As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Subsection 73.3526(e)(11)(iii) of the Rules also requires commercial television stations to file the reports with the Commission and to publicize the existence and location of the reports. Further, subsection 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. Moreover, subsection 73.3526(e)(1)

<sup>1</sup> 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. §§ 73.3526(e)(1), 73.3526(e)(5), 73.3526(e)(11)(i), and 73.3526(e)(11)(iii).

<sup>4</sup> See 47 C.F.R. § 73.3526.

requires that a copy of the current FCC authorization to operate the station be placed in the public inspection file. Subsection 73.3526(e)(5) also requires each licensee of a commercial broadcast station to place in the public inspection file for its station, a copy of the most recent, complete Ownership Report filed with the Commission. 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 the licensee's rule violation.<sup>5</sup>

3. On December 1, 2004, the Licensee filed its above-captioned license renewal application for Station WDBB(TV) (the "Application"). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17 and in a March 9, 2006 amendment to the Application, it indicated that it discovered that the Station's Children's Television Programming Reports for the fourth quarter of 1997, the first and fourth quarters of 2001, the third quarter of 2002, and the fourth quarter of 2003 were missing from the public inspection file. In addition, the Licensee reported that the Station's TV issues/programs lists for 2001 through the third quarter of 2004, the 2003 Biennial Ownership Report and the Station's main license were missing from the public file. The Licensee claimed that copies of these documents have been placed in the Station's public file.

### III. DISCUSSION

4. The Licensee's failure to place in its Station WDBB(TV) public inspection file the required documentation constitutes an apparent willful and repeated violation of Sections 73.3526(e)(1), 73.3526(e)(5), 73.3526(e)(11)(i), and 73.3526(e)(11)(iii) of the Rules. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>6</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>7</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> 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."<sup>10</sup>

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.<sup>11</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

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<sup>5</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).

<sup>6</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>10</sup> 47 U.S.C. § 312(f)(2).

<sup>11</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>12</sup>

6. In this case, the Licensee has acknowledged that the Station’s Children’s Television Programming Reports for the fourth quarter of 1997, the first and fourth quarters of 2001, the third quarter of 2002, and the fourth quarter of 2003, the Station’s TV issues/programs lists for 2001 through the third quarter of 2004, the 2003 Biennial Ownership Report and the Station’s current main license were missing from the public file. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violations of Sections 73.3526(e)(1), (e)(5), (e)(11)(i), and (e)(11)(iii) of the Rules.

7. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act. Section 309(k)(1) 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 Act or the 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>13</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>14</sup>

8. On balance, we find that the Licensee’s violations of Sections 73.3526(e)(1), (e)(5), (e)(11)(i), and (e)(11)(iii) do not constitute “serious violations” of the 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 WDBB(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the renewal application below.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that WDBB-TV, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violations of Sections 73.3526(e)(1), (e)(5), and (e)(11)(i) and (iii) of the Rules.

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this *NAL*, WDBB-TV, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the proposed 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, Pennsylvania 15251-8340. Payment by

<sup>12</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

<sup>13</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 Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996, Order*, 11 FCC Rcd 6363 (1996).

<sup>14</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>15</sup>

15. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the application (File No. BRCT-20041201BCQ) of WDBB-TV, Inc. for renewal of license for Station WDBB(TV), Bessemer, Alabama IS HEREBY GRANTED.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WDBB-TV, Inc., 2820 Columbiana Road, Suite 210, Birmingham, Alabama 35216, and to its counsel, Francisco R. Montero, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17<sup>th</sup> Street, Eleventh Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg  
Chief, Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.