

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

In re Application of
WNJX-TV, Inc.
For Renewal of License for
Station WNJX-TV
Mayaguez, Puerto Rico
Facility I.D. No. 73336
NAL/Acct. No. 0741420003
FRN: 0003753225
File No. BRCT-20041001AWD

MEMORANDUM OPINION AND ORDER
AND NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: October 31, 2006

Released: November 3, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the above-captioned license renewal application of WNJX-TV, Inc. (the "Licensee") for Station WNJX-TV, Mayaguez, Puerto Rico (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"), by the Commission, by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules, we find that the Licensee apparently violated Section 73.3526(e)(11)(iii) of the Rules, by failing to publicize the existence and location of its Children's Television Programming Reports. 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 three thousand dollars (\$3,000), and we grant the license renewal application.

II. BACKGROUND

2. Under the Commission's rules implementing the Children's Television Act of 1990 (CTA), 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). The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Subsection 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 (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. As set forth in

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

2 See 47 C.F.R. § 0.283.

3 See 47 C.F.R. § 73.3526(e)(11)(iii).

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

5 47 C.F.R. § 73.671.

Subsection 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports.

3. On October 1, 2004, the Licensee filed its above-captioned license renewal application (FCC Form 303-S) for Station WNJX-TV (the "Application"). In response to Section IV, Question 10 of the Application, the Licensee stated that, it had 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.⁶ In Exhibit 24, it indicated that, it discovered that it did not publicize the existence and location of the Station's Children's Television Programming Reports. The Licensee claimed that it corrected this omission by airing an announcement in September 2004. In addition, the Licensee indicated that it took steps to ensure future compliance.

III. DISCUSSION

4. The Licensee's failure to publicize the existence and location of the Children's Television Programming Reports constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(iii). 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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ 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."¹¹

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 73.3526.¹² 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."¹³

6. In this case, the Licensee acknowledged that it failed to publicize the existence and location of the Station's Children's Television Programming Reports. It appears that its efforts to comply

⁶ On January 26, 2001, the Commission granted an application to transfer control of the licensee of Station WNJX-TV from T. Michael Whitney to LIN Television of San Juan, Inc. (BTCCT-19991124ACB). That transfer of control was consummated on March 1, 2001.

⁷ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

¹² *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.

¹³ 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).

with Section 73.3526(e)(11)(iii) only began in September 2004. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$3,000 for its apparent willful and repeated violation of Section 73.3526(e)(11)(iii).

7. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁴ 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.¹⁵ 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.”¹⁶

8. On balance, we find that the Licensee's violation of Section 73.3526 does 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 WNJX-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

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 WNJX-TV, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000) for its apparent willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission's 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*, WNJX-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 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 12th 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

¹⁴ 47 U.S.C. § 309(k).

¹⁵ 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).

¹⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

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. 20554.¹⁷

15. IT FURTHER IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the application (File No. BRCT-20041001AWD) of WNJX-TV, Inc. for renewal of license for Station WNJX-TV, Mayaguez, Puerto Rico, IS GRANTED.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WNJX-TV, Inc., c/o LIN Television Corporation, 4 Richmond Square, Providence, Rhode Island 02906, and to, Marcia L. Greene, LIN Television Corporation, 11 Dupont Circle, Suite 365, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.