



Federal Communications Commission  
Washington, D.C. 20554

February 17, 2006

**DA 06-370**

**Released: February 17, 2006**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Delmarva Broadcast Service General Partnership  
WMDT(TV)  
P.O. Box 4009  
Salisbury, MD 21803

Re: Delmarva Broadcast Service General Partnership  
WMDT(TV), Salisbury, MD  
Facility ID No. 16455  
File No. BRCT-20040528AJA  
NAL/Acct. No. 0641420033  
FRN: 0001806629

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), 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 television broadcast licensee to publicize the existence and location of the Children's Television Programming Reports.

Under the Commission's rules implementing the Children's Television Act of 1990 (CTA),<sup>1</sup> 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).<sup>2</sup> The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Section 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 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 Section 73.3526(e)(11)(iii), licensees are also

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<sup>1</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

<sup>2</sup> 47 C.F.R. § 73.671.

required to file the reports with the Commission and to publicize for the public the existence and location of the reports.

On May 28, 2004, you filed a license renewal application (FCC Form 303-S) for station WMDT(TV), Salisbury, Maryland (File No. BRCT-20040528AJA). In response to Section IV, Question 10 of that application, you certified that, station WMDT(TV) 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. In Exhibit 24 to station WMDT(TV)'s renewal application, you indicated that due to a misunderstanding of the Commission's rules, the licensee did not publicize the existence and location of its Children's Television Programming Reports. You also describe corrective measures taken in May 2004 and additional procedures scheduled to begin in June 2004.

WMDT(TV)'s failure to publicize the existence and location of the station's Children's Television Programming Reports constitutes a willful and repeated violation of Section 73.3526(e)(11)(iii). You indicate that the licensee confused this requirement with another requirement. However, a misunderstanding of the Commission's rules does not excuse the violation. Moreover, while you may have belatedly implemented policies and procedures to prevent subsequent violations, that does not relieve you of liability for the violation which has occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

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>3</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>4</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 Rules set a base forfeiture amount of \$10,000 for public file violations. As explained above, the

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<sup>3</sup> 47 U.S.C. § 503(b).

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)(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).

licensee has failed to comply with Section 73.3526(e)(11)(iii) of the Rules. We note also that this violation apparently continued throughout the license term. Specifically, it indicates that it only began publicizing the existence and location of the Children's Television Programming Reports in May 2004.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.283 and 1.80 of the Rules, Delmarva Broadcast Service General Partnership is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violations of Section 73.3526(e)(11)(iii) 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, Delmarva Broadcast Service General Partnership 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.<sup>5</sup>

Finally, 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 Delmarva Broadcast Service General Partnership at the address listed above, and to Joseph M. Di Scipio, Esquire, Fletcher Heald & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

Sincerely,

Donna C. Gregg  
Chief, Media Bureau

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<sup>5</sup> See 47 C.F.R. § 1.1914.