

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

In the Matter of)	
)	
KLFY, L.P.)	Facility ID No. 35059
Station KLFY-TV)	NAL/Acct. No. 0641420041
Lafayette, Louisiana)	FRN: 0005575733
)	File No. BRCT-20050201BOI

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: March 22, 2006

Released: March 29, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, acting pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹ by the Chief, Media Bureau, pursuant to delegated authority,² has before it for consideration the above-captioned renewal application of KLFY, L.P. for the license for Station KLFY-TV, Lafayette, Louisiana. We find that KLFY, L.P. apparently willfully and repeatedly violated Sections 73.3526(e)(11)(ii) and (e)(5) of the Commission's Rules (the "Rules") by failing to place in the station's public inspection file records concerning its compliance with the children's programming commercial limits and its 2003 Biennial Ownership Report.³ For the reasons set forth below, we find KLFY, L.P. apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for these apparent violations.

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.⁴ Pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee's certification, in its renewal application, of its compliance with the children's television commercial limits imposed by Section 73.670 of the Rules.⁵ This subsection of 73.3526 requires licensees to place such records concerning its compliance with

¹ 47 U.S.C. § 503(b).

² 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.3526(e)(11)(ii) and 73.3526(e)(5).

⁴ See 47 C.F.R. § 73.3526.

⁵ 47 C.F.R. § 73.670. This rule limits the amount of commercial matter that a commercial television station may air during children's programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.

the commercial limits in the public inspection file by the tenth day of the succeeding calendar quarter.⁶ Section 73.3526(e)(5) of the Rules 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.⁷

3. On February 1, 2005, KLFY, L.P. filed its above-captioned license renewal application (FCC Form 303-S) for Station KLFY-TV (the "Application"). In response to Section IV, Question 3 of the Application, KLFY, L.P. 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 a June 9, 2005 amendment to the Application, KLFY, L.P. indicated that, in its review of the public file in preparation for the filing of the instant renewal application, it discovered that some required documents had not been prepared or were incomplete. Specifically, KLFY, L.P. states that its records concerning compliance with the children's programming commercial limits for the second quarter of 1997 through the first quarter of 2000 and its 2003 Biennial Ownership Report were missing from the public file. In addition, KLFY, L.P. reports that its records concerning compliance with the children's programming commercial limits for the second quarter of 2000 through the third quarter 2004 consisted of certifications regarding network commercial material, but not local or syndicated commercial material. KLFY, L.P. reports that, upon discovery of the omissions, it located or prepared and placed the required documents in the public inspection file.

III. DISCUSSION

4. KLFY, L.P.'s failure to prepare and place in its Station KLFY-TV public inspection file records concerning compliance with the children's programming commercial limits and its Biennial Ownership Report for 2003 constitutes an apparent willful and repeated violation of Sections 73.3526(e)(11)(ii) and (e)(5) of the Rules. 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.⁸ In determining the appropriate forfeiture amount, we must consider the

⁶ Section 73.3615 of the Rules requires broadcast licensees to file an Ownership Report (FCC Form 323) when filing the station's application for renewal of license and every two years thereafter, on the anniversary of the date its renewal application is due to be filed. 47 C.F.R. § 73.3615(a).

⁷ 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).

⁸ 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).

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.”⁹

5. *The Commission’s Forfeiture Policy Statement* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.¹⁰ In this case, KLFY, L.P. acknowledges that the station’s 2003 Biennial Ownership Report and records concerning compliance with commercial limits on children’s programming for several quarters had not been prepared and placed in the public inspection file. Moreover, it appears that KLFY, L.P. did not discover these deficiencies until it prepared the Application. Considering the record as a whole, we believe that a proposed forfeiture in the amount of \$10,000 is appropriate for the apparent violations in this case.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,¹¹ KLFY, L.P. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Sections 73.3526(e)(11)(ii) and (e)(5) of the Rules.

7. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability, KLFY, L.P. 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 of the proposed forfeiture under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹²

8. The response, if any, must be mailed to Office of the Secretary, Federal

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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).

⁹ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

¹⁰ 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.

¹¹ 47 C.F.R. §§ 0.283 and 1.80.

¹² *See* 47 C.F.R. § 1.1914.

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.

9. 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.

10. Finally, IT IS FURTHER ORDERED that copies of this Notice shall be sent by First Class and Certified Mail, Return Receipt Requested, to the licensee at KLFY, L.P., c/o Brooks, Pierce McLendon Humphrey & Leonard LLP, P.O. Box 1800, Raleigh, NC 27602, and to its counsel, Mark J. Prak, Esquire, Brooks Pierce, McLendon Humphrey & Leonard LLP, P.O. Box 1800, Raleigh, NC 27602.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau