

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

In the Matter of)	
)	
Clear Channel Broadcasting Licenses, Inc.)	Facility I.D. No. 41212
Licensee of Station KASN(TV))	NAL/Acct. No. 0741420002
Pine Bluff, Arkansas)	FRN: 0001587971

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: March 19, 2007

Released: March 21, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Clear Channel Broadcasting Licenses, Inc. (the “Licensee”), licensee of Station KASN(TV), Pine Bluff, Arkansas (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(ii) of the Rules, by failing to place in the Station’s public inspection file all required records concerning its compliance with the children’s programming commercial limits.³ We also find the Licensee apparently violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children’s programming. 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 twelve thousand dollars (\$12,000) for its violations of Sections 73.3526(e)(11)(ii) and 73.670 of the Rules.

II. BACKGROUND

2. In the Children’s Television Act of 1990, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children’s programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits.⁴ Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as

¹ 47 U.S.C. § 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)(ii).

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

commercial time (a “program-length commercial”).⁵

3. Moreover, 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.⁶ 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.⁷ This subsection of Section 73.3526 requires licensees to place such records concerning commercial limits for each quarter in the station’s public inspection file by the tenth day of the succeeding calendar quarter. 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.⁸

4. On February 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station KASN(TV) (the “Application”) (File No. BRCT-20050201BHQ). 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.⁹ In Exhibit 17, it indicated that, in the fall of 2003, a station employee erroneously disposed of the Station’s commercial limits records from the fourth quarter of 2001 through the fourth quarter of 2003 that were in the public inspection file. The Licensee asserts that upon discovery of this error in June 2004, it promptly recreated the documents based on station records. The Licensee also recounts corrective measures taken to prevent future violations.

5. Moreover, in response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, the Station failed to comply with the limitations on commercial matter aired during children’s programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee indicated that on January 28, 2001, the Station aired a commercial for Kellogg’s Fruit Loop Cereal containing the “Buzz Lightyear” character during the “Buzz Lightyear” program. The Licensee attributed the overage to an error on the part of the advertising agency which provided the commercial to the station, and described the steps taken to ensure future compliance.

III. DISCUSSION

6. The Licensee’s failure to retain in its Station KASN(TV) public inspection file all required records concerning compliance with the children’s programming commercial limits constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(ii) of the Rules and its failure to comply with the limitations on commercial matter aired during children’s programming constitutes an apparent willful violation of Section 73.670 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

⁵ *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

⁶ See 47 C.F.R. § 73.3526.

⁷ 47 C.F.R. § 73.670.

⁸ 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).

⁹ On March 9, 2000, the Commission granted an application to assign the license of station KASN(TV) from Mercury Broadcasting Company, Inc., to Clear Channel Broadcasting Licenses, Inc. (BALCT-19991116AKO). That assignment of license transaction was consummated on May 2, 2000.

issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ 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.”¹⁴

7. Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs.¹⁵ Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children’s television commercial limits, stating that the program-length commercial policy “directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter.”¹⁶

8. The Licensee attributed the commercial overage to an error on the part of the advertising agency which provided the commercial to the Station. However, the Commission has consistently rejected a licensee’s reliance on another party, such as program distributor, for compliance with the Commission’s children’s television rules and policies, and has held that such reliance does not excuse or mitigate violations which have occurred.¹⁷ Furthermore, while corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, this does not relieve the Licensee of liability for the violations which have occurred.¹⁸

9. 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 and a base forfeiture amount of \$8,000 for violation of Section 73.670.¹⁹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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

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

¹¹ 47 U.S.C. § 312(f)(1).

¹² *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989).

¹⁶ *Children’s Television Programming*, 6 FCC Rcd at 2118.

¹⁷ *See, e.g., Max Television of Syracuse, L.P. (WSYT(TV))*, 10 FCC Rcd 8905 (MMB 1995); *Mt. Mansfield Television, Inc. (WCAX-TV)*, 10 FCC Rcd 8797 (MMB 1995); *Boston Celtics Broadcasting Limited Partnership (WFXT(TV))*, 10 FCC Rcd 6686 (MMB 1995).

¹⁸ *See, e.g., WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).

¹⁹ *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.

such other matters as justice may require.”²⁰

10. As discussed above, the Licensee acknowledged that several required commercial limits records were missing from the public file. Also, the Licensee reported that it aired one program-length commercial. Considering the record as a whole, we believe that a proposed forfeiture in the amount of \$12,000 is appropriate for the apparent willful and repeated violations of Section 73.3526(e)(11)(ii) and willful violation of Section 73.670.

IV. ORDERING CLAUSES

11. 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 Clear Channel Broadcasting Licenses, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and repeated violation of Section 73.3526(e)(11)(ii) and willful violation of Section 73.670 of the Commission’s Rules.

12. 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*, Clear Channel Broadcasting Licenses, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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.

14. 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.

15. 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.

16. 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. 20554.²¹

²⁰ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

²¹ *See* 47 C.F.R. § 1.1914.

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Clear Channel Broadcasting Licenses, Inc., P.O. Box 470408, Tulsa, Oklahoma 74147, and to its counsel, Dorann Bunkin, Esquire, Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau