

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

In the Matter of	)	
	)	
Simons Broadcasting, LP	)	Facility I.D. No. 42359
Licensee of Station KTAQ(TV)	)	NAL/Acct. No. 0741420008
Greenville, Texas	)	FRN: 0004953022

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: February 8, 2007**

**Released: February 9, 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”),<sup>1</sup> by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Simons Broadcasting, LP (the “Licensee”), licensee of Station KTAQ(TV), Greenville, Texas (the “Station”), apparently violated Sections 73.3526(e)(5), (e)(11)(i), and (e)(11)(iii) of the Rules, by failing to place in the Station’s public inspection file its 2005 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).

**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. 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 biennially. Section 73.3615 requires broadcast licensees to file a Biennial Ownership Report 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

<sup>1</sup> 47 U.S.C. § 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)(5), 73.3526(e)(11)(i), and 73.3526(e)(11)(iii).

<sup>4</sup> See 47 C.F.R. § 73.3526.

due to be filed.<sup>5</sup> 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>6</sup>

3. On April 3, 2006, the Licensee filed its license renewal application for Station KTAQ(TV) (the "Application") (File No. BRCT-20060403BPV). 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 an August 28, 2006 amendment to the Application, the Licensee indicated that in January 2006 it discovered that the Station's Children's Television Programming Report for the fourth quarter of 2005, the Station's TV issues/programs lists for 2004 and 2005, and the 2005 Biennial Ownership Report were missing from the public inspection file. The Licensee maintained that copies of all missing documents were subsequently placed in the public inspection file and that it has instituted procedures to ensure full compliance in the future.

### III. DISCUSSION

4. The Licensee's failure to place in its Station KTAQ(TV) public inspection file all of the required documentation constitutes an apparent willful and repeated violation of Sections 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>7</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>8</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>9</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>10</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>11</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>12</sup> 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

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<sup>5</sup> 47 C.F.R. § 73.3615.

<sup>6</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>7</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

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

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

<sup>11</sup> 47 U.S.C. § 312(f)(2).

<sup>12</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.

offenses, ability to pay, and such other matters as justice may require.”<sup>13</sup>

6. In this case, the Licensee has acknowledged that the Station’s Children’s Television Programming Report for the fourth quarter of 2005, the Station’s TV issues/programs lists for 2004 and 2005, and the 2005 Biennial Ownership Report were missing from the public inspection 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)(5), (e)(11)(i), and (e)(11)(iii) of the Rules.

#### IV. ORDERING CLAUSES

7. 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 Simons Broadcasting, LP 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)(5), (e)(11)(i), and (e)(11)(iii) of the Commission’s Rules.

8. 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*, Simons Broadcasting, LP SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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.

10. 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.

11. 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.

12. 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>14</sup>

<sup>13</sup> 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.

<sup>14</sup> *See* 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Simons Broadcasting, LP, 510 N. Valley Mills Drive, Suite 304, Waco, Texas 76710, and to its counsel, Erwin G. Krasnow, Esq., Garvey Schubert Barer, 1000 Potomac Street, N.W., Fifth Floor, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai  
Chief, Media Bureau