

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

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| In the Matter of |) | |
| |) | |
| Sage Broadcasting Corporation |) | Facility I.D. No. 58559 |
| Licensee of Station KIDU-LP |) | NAL/Acct. No. 0841420045 |
| Brownwood, Texas |) | FRN: 0001688712 |

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: May 22, 2008

Released: May 27, 2008

By the Chief, Video Division, 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, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Sage Broadcasting Corporation (the “Licensee”), licensee of Station KIDU-LP, Brownwood, Texas (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file with the Commission, place in the Station’s public inspection file, and publicize the existence and location of the Station’s Children’s Television Programming Reports.³ Moreover, we find that the Licensee apparently willfully and repeatedly violated Section 73.670 of the Rules, by failing to comply with the limits on commercial matter in children’s programming.⁴ 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 twenty thousand dollars (\$20,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁵ 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. Moreover, 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 that it has made during the quarter to serve the educational and informational needs of children. As set forth in 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

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)(iii).

⁴ See 47 C.F.R. § 73.670.

⁵ See 47 C.F.R. § 73.3526.

reports. 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.⁶

3. 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.⁷ 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.

4. On March 31, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KIDU-LP (the "Application") (File No. BRCT-20060331AZN). In Exhibit 20 and in a March 12, 2008 amendment to the Application, the Licensee indicated that it had failed to prepare, file with the Commission, and place in its public inspection file Children's Television Programming Reports for Station KIDU-LP from 2002 through 2005.⁸ The Licensee stated that the Station is one of a group of five co-owned Class A television stations, all of which carry the same educational and informational programming for children. The Licensee reported that during the license term, Children's Television Programming Reports were filed for only one of these stations. Specifically, the Licensee indicated that Children's Television Programming Reports were filed only for Station KIDB-CA, Sweetwater, Texas. The Licensee stated that the Station employee responsible for the filing of the reports mistakenly believed that Children's Television Programming Reports needed to be filed only for KIDB-CA, since only that station had a -CA suffix on its callsign, whereas the other stations continue to have an -LP suffix, and low power television stations are not required to file the reports. The Licensee reported that it has now filed the reports with the Commission and placed them in the public inspection file. In Exhibit 1 and in an April 11, 2008 amendment to the Application, the Licensee stated that the existence and location of the Children's Television Programming Reports for Station KIDB-CA were publicized by broadcast spot announcements on Station KIDU-LP.

5. In Exhibit 17, the Licensee reported that although it placed TV issues/programs lists in its public inspection file in a timely manner during the license term, it subsequently discovered that these lists did not include information as to the time, date, program content, issue covered, and duration of responsive programming. The Licensee stated its TV issues/programs lists contained only a listing of issues "facing" the community and a listing of the Station's responses to these issues. In an April 3, 2008 amendment to the Application, the Licensee stated that it discovered these deficiencies in its TV issues/programs lists only recently and that due to the passage of time, it was unable to reconstruct listings for prior quarters during its license term. The Licensee asserted, however, that beginning with the third quarter of 2007, it prepared and placed in its public file complete TV issues/programs lists.⁹

6. 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 limits on commercial matter in children's

⁶ 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).

⁷ Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b and 394.

⁸ The Commission's records reflect that Station KIDU-LP was granted Class A status on February 27, 2002. (BLTTA-20010510AAV).

⁹ We admonish the Licensee for its failure to include all information required by Section 73.3526(e)(11)(i) in its TV issues/programs lists, and we expect full compliance with that rule in the future.

programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee indicated that the Station exceeded the children's television commercial limits on five occasions during the license term. Of those five overages, two were 30 seconds in duration, one was two minutes in duration, one was four minutes in duration, and one was four minutes and thirty seconds in duration. The Licensee attributed the overages to human error, and described the procedures it implemented to prevent future violations.

III. DISCUSSION

7. The Licensee's failure to file with the Commission, place in its Station's public inspection file, and publicize the existence and location of KIDU-LP's Children's Television Programming Reports constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(iii). Further, by the Licensee's admission, on five occasions, Station KIDU-LP broadcast material that exceeded the children's television commercial limits. Such action constitutes an apparent willful and repeated violation of Section 73.670. Although the Licensee argued that the overages resulted from human error, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing violations of the children's television commercial limits.¹⁰ Furthermore, corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, but that, too, does not relieve the Licensee of liability for the violations which have occurred.¹¹

8. 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.¹² 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ 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."¹⁶

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form and a base forfeiture amount of \$10,000 for public file violations.¹⁷ Also, the Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$8,000 for violation of the children's

¹⁰ See, e.g., *LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994).

¹¹ 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).

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

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁶ 47 U.S.C. § 312(f)(2).

¹⁷ 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.

television commercialization requirements. 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 such other matters as justice may require.”¹⁸

10. In this case, the Licensee has acknowledged that it failed to file with the Commission and place in its public inspection file Children’s Television Programming Reports from 2002 through 2005. It also appears that the Licensee failed to publicize the existence and location of KIDU-LP’s Children’s Television Programming Reports. Based on the record before us, we believe that a forfeiture in the amount of \$15,000 is appropriate for the Licensee’s apparent willful and repeated violations of Section 73.3526(e)(11)(iii). In addition, we find that a forfeiture in the amount of \$5,000 is warranted for the Licensee’s apparent willful and repeated violation of Section 73.670, for a total forfeiture in the amount of \$20,000.

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 Sage Broadcasting Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of Sections 73.3526 and 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*, Sage Broadcasting Corporation 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

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.

¹⁸ 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.

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. 20554.¹⁹

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Sage Broadcasting Corporation, 406 South Irving, San Angelo, Texas 76903, and to its counsel, Howard M. Weiss, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁹ See 47 C.F.R. § 1.1914.