

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

In the Matter of	)	
	)	
Liberman Television of Dallas License Corp.	)	Facility I.D. No. 73701
Licensee of Station KMPX(TV)	)	NAL/Acct. No. 0841420057
Decatur, Texas	)	FRN: 0009473927

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: July 28, 2008**

**Released: July 31, 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”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Liberman Television of Dallas License Corp. (the “Licensee”), licensee of Station KMPX(TV), Decatur, 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.<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 thirteen thousand dollars (\$13,000).

**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.<sup>4</sup> Subsection 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 (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. 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 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

<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)(11)(iii).

<sup>4</sup> See 47 C.F.R. § 73.3526.

the licensee's rule violation.<sup>5</sup>

3. On April 3, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KMPX(TV) (the "Application") (File No. BRCT-20060403BKA). In response to Section IV, Question 6 of the Application, the Licensee stated that, since its acquisition of the Station in January 2004, it had failed to file with the Commission, Children's Television Programming Reports. In Exhibit 20, the Licensee indicated that in preparation for the filing of the Application, it discovered that Children's Television Programming Reports had not been filed with the Commission since January 2004. The Licensee attributed this error to an oversight. The Licensee reported that in March 2006, it filed these reports with the Commission and placed them in the public inspection file.

4. In response to Section IV, Question 10 of the Application, the Licensee stated that, it had 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, the Licensee indicated that in March 2006, it began airing announcements publicizing the existence and location of the Station's Children's Television Programming Reports.

### III. DISCUSSION

5. The Licensee's failure to file with the Commission, place in the Station's public inspection file, and publicize the existence and location of Station KMPX(TV)'s Children's Television Programming Reports constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(iii). 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>6</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>7</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>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</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>10</sup>

6. 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.<sup>11</sup> Also, the Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations. 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

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<sup>5</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>6</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>10</sup> 47 U.S.C. § 312(f)(2).

<sup>11</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.

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>12</sup>

7. 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 until March 2006. Additionally, the Licensee reported that did not publicize the existence and location of its Children’s Television Programming Reports until March 2006. Considering the record as a whole, we believe that a \$13,000 proposed forfeiture is appropriate for the apparent willful and repeated violation of Section 73.3526(e)(11)(iii).

#### IV. ORDERING CLAUSES

8. 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 Liberman Television of Dallas License Corp. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission’s Rules.

9. 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*, Liberman Television of Dallas License Corp. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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).

11. 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.

12. 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.

13. 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

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<sup>12</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.

1-A625, Washington, D.C. 20554.<sup>13</sup>

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Liberman Television of Dallas License Corp., 1845 Empire Avenue, Burbank, California 91504, and to its counsel, Kathleen Kirby, Esquire, Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>13</sup> See 47 C.F.R. § 1.1914.