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

In the Matter of	)	
	)	
KHQ, Incorporated	)	Facility I.D. No. 12427
Licensee of Station KNDU(TV)	)	NAL/Acct. No. 0841420060
Richland, Washington	)	FRN: 0001582816

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 3, 2008 **Released: September 5, 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 KHQ, Incorporated (the "Licensee"), licensee of Station KNDU(TV), Richland, Washington (the "Station"), apparently willfully and repeatedly violated Section 73.3526(e)(11)(i) of the Rules, by failing to place in the Station's public inspection file all required TV issues/programs lists.[3] 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 four thousand dollars ($4,000).

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.[4] As set forth in subsection 73.3526(e)(11)(i), a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter 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.[5]

3. On September 29, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KNDU(TV) (the "Application") (File No. BRCT-20060929ATL). In response to

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[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)(i).

[4] *See* 47 C.F.R. § 73.3526.

[5] *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).

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 18, and in an August 12, 2008 amendment to the Application, the Licensee indicated that in April 2002, it discovered that TV issues/programs lists for the third and fourth quarters of 2000 and the first and second quarters of 2001 were missing from the public inspection file. According to the Licensee, when it discovered this omission, it immediately recreated TV issues/programs lists for the all of the missing quarters and placed them in the public file in April 2002. The Licensee also described corrective measures it has taken to prevent recurrence of this violation.

III. DISCUSSION

4. The Licensee's failure to place in its Station KNDU(TV) public inspection file all required TV issues/programs lists constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(i) 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.[6] 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.[7] 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,[8] and the Commission has so interpreted the term in the Section 503(b) context.[9] 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."[10]

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 public file violations.[11] 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."[12]

6. In this case, the Licensee reported that TV issues/programs lists for the third and fourth quarters of 2000 and the first and second quarters of 2001 were missing from the public inspection file. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of $4,000 for its apparent willful and repeated violation of Section 73.3526(e)(11)(i).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act

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[6] 47 U.S.C. § 503(b)(1)(B); s*ee also* 47 C.F.R. § 1.80(a)(1).

[7] 47 U.S.C. § 312(f)(1).

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

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

[10] 47 U.S.C. § 312(f)(2).

[11] *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.

[12] 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.

of 1934, as amended, and Section 1.80 of the Commission's Rules, that KHQ, Incorporated is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars ($4,000) for its apparent willful and repeated violation of Section 73.3526(e)(11)(i) 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,* KHQ, Incorporated 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 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).

10. 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.

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.[13]

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KHQ, Incorporated, P.O. Box 600, Spokane, Washington 99210-0600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[13] *See* 47 C.F.R. § 1.1914.