

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

In the Matter of)	
)	
KVOA Communications, Inc.)	Facility I.D. No. 25559
Licensee of Station KRIS-TV)	NAL/Acct. No. 0841420022
Corpus Christi, Texas)	FRN: 0005762778

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: January 15, 2008

Released: January 18, 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 KVOA Communications, Inc. (the “Licensee”), licensee of Station KRIS-TV, Corpus Christi, Texas (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. In the Children’s Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter*

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).

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. 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 commercial time (a "program-length commercial").⁶ In addition, the Commission reiterated its long-standing policy against "host-selling," *i.e.*, "the use of program talent to deliver commercials," including "endorsements or selling by animated cartoon characters as well as 'live' program hosts."⁷

4. On April 3, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KRIS-TV (the "Application") (File No. BRCT-20060403AWF). 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, the Licensee indicated that during preparation of the Application, it discovered that TV issues/programs lists for the third and fourth quarters of 1998, the first quarter of 1999, and the second quarter of 2000 were missing from the public inspection file.

5. 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 programming specified in Section 73.670 of the Rules. In Exhibit 1 and in a February 21, 2007 amendment to the Application, the Licensee reported that on December 23, 2006, the Station aired a CW Network commercial for Post Cereal's Cocoa Pebbles cereal during the "Xiaolin Showdown" program. The Licensee stated that this commercial contained "very small images of characters from the Xiaolin Showdown program that were visible for only a very brief period of time."⁸

III. DISCUSSION

6. 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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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

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

⁷ *Id.* at 2127 n. 147, 6 FCC Rcd at 5097; *see also Action for Children's Television*, 50 FCC 2d 1, 8, 16-17 (1974).

⁸ From the Licensee's description of the "Xiaolin Showdown" commercial, it appears that this incident is more akin to a violation of the Commission's "host-selling" policy, rather than a program-length commercial.

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

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

than once or, if such commission or omission is continuous, for more than one day.”¹³

7. 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.¹⁴ 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.”¹⁵

8. In this case, the Licensee acknowledged that TV issues/programs lists for the third and fourth quarters of 1998, the first quarter of 1999, and the second quarter of 2000 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

9. 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 KVOA Communications, Inc. 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.

10. 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*, KVOA Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 911-6229.

12. 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.

13. 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 47 U.S.C. § 312(f)(2).

¹⁴ 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.

¹⁵ 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.

14. 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. 20554.¹⁶

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KVOA Communications, Inc., 409 South Staples Street, Corpus Christi, Texas 78401, and to its counsel, Kevin P. Latek, Esquire, Dow Lohnes PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ See 47 C.F.R. § 1.1914.