

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

|  |   |                          |
|--|---|--------------------------|
| In the Matter of                           | ) |                          |
|  | ) |                          |
| Griffin OKC Licensing, L.L.C. <sup>1</sup> | ) | Facility ID No. 25382    |
| Licensee of Station KWTW(TV)               | ) | NAL/Acct. No. 0841420024 |
| Oklahoma City, Oklahoma                    | ) | FRN: 0002147155          |

**FORFEITURE ORDER**

**Adopted: February 16, 2010****Released: February 17, 2010**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000), to Griffin OKC Licensing, L.L.C. (“Licensee”), licensee of Station KWTW(TV), Oklahoma City, Oklahoma (“Station”), for its apparent willful and repeated violation of Section 73.3526(e)(11)(iii) of the Commission’s Rules (“Rules”) by failing to publicize the existence and location of its Children’s Television Programming Reports.<sup>2</sup>

**II. BACKGROUND**

2. On January 24, 2008, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Licensee for violation of Section 73.3526(e)(11)(iii) of the Rules.<sup>3</sup> Licensee filed a Response to Notice of Apparent Liability for Forfeiture (“Response”) on February 21, 2008.

3. On January 30, 2006, Licensee filed an application to renew the license of the Station (“Application”) (File No. BRCT-20060130AMU). Section IV, Item 10 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that it has published the existence and location of the station’s Children’s Television Programming Reports, FCC Form 398, as required by Section 73.3526(e)(11)(iii) of the Rules. Licensee indicated “No” to that certification and stated in Exhibit 1 and in a June 15, 2006 amendment to its Application that since January 6, 2006, the Station has publicized the existence and location of its Children’s Television Programming Reports over the air. Licensee also stated that prior to January 6, 2006, its Children’s Television Programming Reports were available throughout the license term on the Station’s website, and any persons who called the Station regarding the Children’s Television Programming Reports were informed as to the existence and location of the reports. On January 24, 2008, the staff advised Licensee of its apparent liability for a forfeiture of \$10,000 for

<sup>1</sup> Subsequent to the filing of the KWTW(TV) license renewal application, the Commission granted the *pro forma* application (File No. BALCT-20061020ABE) assigning the KWTW(TV) license from Griffin Entities, L.L.C. to Griffin OKC Licensing, L.L.C.

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>3</sup> *Griffin Entities, L.L.C.*, 23 FCC Rcd 790 (MB 2008).

willfully and repeatedly violating Section 73.3526(e)(11)(iii) of the Rules throughout the license term, as the Licensee did not begin to publicize the existence and location of its Children's Television Programming Reports until January 2006. Subsequently, Licensee filed the subject Response seeking cancellation or a reduction of the proposed \$10,000 forfeiture.

4. In support of its Response, Licensee submits that the \$10,000 forfeiture should be cancelled as Section 73.3526(e)(11)(iii) of the Rules requires that a licensee publicize the existence and location of its Children's Television Programming Reports in an *appropriate manner*, leaving discretion to Licensee to choose Licensee's website as its means of compliance. Licensee claims that the Commission has suggested examples of compliance with this requirement, but has not specified any particular *appropriate manner*.<sup>4</sup> Furthermore, Licensee argues that "the Commission has never specifically held that the use of a station's website to publicize the existence and location of a station's Form 398 is inappropriate,"<sup>5</sup> and that the Commission "places a high value on placing information on station websites," as the Commission "recently determined that it is in the public interest for all television stations to have a website to place the contents of their public inspection files online."<sup>6</sup>

5. Next, Licensee states that should Commission deem a forfeiture is necessary, the Commission should "take into consideration the station's unblemished history of overall compliance with the Commission's [R]ules, and the station's good faith efforts to comply with the [R]ules" and that "In the past, the Commission has deemed it appropriate to reduce significantly a proposed forfeiture when such factors are present."<sup>7</sup> As such, Licensee claims, "The Commission is directed to accord the same treatment to similarly situated parties."<sup>8</sup> Finally, Licensee states that "in prior instances where the Media Bureau has determined that a licensee failed to publicize the existence and location of its Form 398 Reports, the Media Bureau has proposed substantially smaller forfeiture amounts."<sup>9</sup>

### III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>10</sup> Section 1.80 of the Rules,<sup>11</sup> and the Commission's *Forfeiture Policy Statement*.<sup>12</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature,

---

<sup>4</sup> Response at 2 (citing *Policies and Rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660, ¶¶ 66-67 (1996) ("Children's Television Programming Order")).

<sup>5</sup> Response at 2.

<sup>6</sup> *Id.* at 2 -3 (citing *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274, ¶10 (2008)).

<sup>7</sup> Response at 3 -4 (citing *Three Angels Broadcasting Network, Inc.*, 22 FCC Rcd 16764 (EB 2007); *Palouse Country, Inc.*, 17 FCC Rcd 183 (EB 2007)).

<sup>8</sup> Response at 4 (citing *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965)).

<sup>9</sup> Response at 10 (citing *Ramar Communications II, Ltd.*, 22 FCC Rcd 2676 (MB 2007); *Nextar Broadcasting, Inc.*, 22 FCC Rcd 8508 (MB 2007); *WNJX-TV, Inc.*, 21 FCC Rcd 12389 (MB 2006); *Libco, Inc.*, 20 FCC Rcd 16553 (MB 2005)).

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement").

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>13</sup>

7. Licensee disputes that the Station failed to publicize the existence and location of its Children's Television Programming Reports as the Station's Form 398 Reports were available throughout the license term on the Station's website. Since January 2006, however, Licensee has altered its practice and has publicized its website and the inclusion thereon of the Children's Television Programming Reports, through on-air broadcasts. We find that Licensee's current publicizing practice qualifies as an *appropriate manner* pursuant to Section 73.3526(e)(11)(iii) of the Rules. In contrast, Licensee's prior practice of posting the Form 398 Reports on its website without periodically apprising the public of the existence and location of its Children's Television Programming Reports did not satisfy the publicizing requirement.

8. Regarding Licensee's claim that "in prior instances where the Media Bureau has determined that a licensee failed to publicize the existence and location of its Form 398 Reports, the Media Bureau has proposed substantially smaller forfeiture amounts." The cases cited by Licensee are not analogous to the case at hand. In each of the cases cited by Licensee, the licensees failed to publicize the existence and location of their Children's Television Programming reports for only a portion of the licensing term. Here, Licensee failed to publicize the existence and location of its Children's Television Programming Reports for the entire licensing term. Accordingly, we reject Licensee's argument that the Media Bureau proposed smaller forfeiture amounts in prior instances of the same violation.

9. Licensee states in its Response that the Station, since January 2006, has publicized the existence and location of its children's programming reports both by periodic over the air broadcasts and on the Station's website. While we recognize Licensee's efforts, corrective action taken to come into compliance with the Rules is expected and does not nullify or mitigate any prior forfeitures or violations.<sup>14</sup>

10. We have considered Licensee's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>15</sup> and repeatedly<sup>16</sup> violated Section 73.3526 of the Rules. However, given Licensee's history of compliance with the Rules, we reduce the forfeiture amount to \$8,000.<sup>17</sup>

#### IV. ORDERING CLAUSES

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

---

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> *Pittman Broadcasting Services, L.L.C.*, Forfeiture Order, 23 FCC Rcd 2742, 2744 (EB 2008).

<sup>15</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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd at 4387-88 (1991), *recon. denied*, 7 FCC RCD 3453 (1992) ("*Southern California*").

<sup>16</sup> Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>17</sup> See, e.g., *Claro Communications, Ltd.*, Forfeiture Order, 23 FCC Rcd 359, 362 (EB 2008) (reducing forfeiture amount based on licensee's history of compliance); *Traffic Control Products of Florida Inc.*, 23 FCC Rcd 5452, 5454 (EB 2008) (same). See also 47 C.F.R. § 1.80, Note to Paragraph (b)(4), Downward Adjustment Criteria.

of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,<sup>18</sup> that Griffin OKC Licensing, L.L.C., SHALL FORFEIT to the United States the sum of \$8,000 for willfully and repeatedly violating Section 73.3526(e)(11)(iii) of the Commission's Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>19</sup> Payment of the 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).<sup>20</sup>

13. IT IS FURTHER ORDERED, that a copies of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested and by First Class Mail, to David F. Griffin, Griffin OKC Licensing, L.L.C., 7401 North Kelley Avenue, Oklahoma City, Oklahoma, 73111-8420, and to its counsel, to David A. O'Conner, Esquire, Holland & Knight LLP, 2099 Pennsylvania Avenue, NW, Suite 100, Washington, DC 20006-6801.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

<sup>18</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>19</sup> 47 U.S.C. § 504(a).

<sup>20</sup> 47 C.F.R. § 1.1914.