

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

In the Matter of	)	
	)	
Waubonsee Community College	)	Facility I.D. No. 71111
Licensee of Station W40CN-D	)	NAL/Acct. No. 201241420012
Sugar Grove, Illinois	)	FRN: 0006490338

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: November 19, 2012**

**Released: November 20, 2012**

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 Waubonsee Community College (the “Licensee”), licensee of Class A television station W40CN-D, Sugar Grove, Illinois (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file with the Commission, and place in the Station’s public inspection file, 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> 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 made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees 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 inspection 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

<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> 47 C.F.R. § 73.3526.

rule violation.<sup>5</sup>

3. On March 23, 2011, the Chief, Video Division, Media Bureau, issued a letter to the Licensee (“Letter”), stating that Commission records indicated that the required Form 398 electronic filings for W40CN-D had not been made for the fourth quarter of 2008 and all four quarters of 2009 and 2010. The Letter required the Licensee to provide information, supported by the declaration of a person with personal knowledge,<sup>6</sup> identifying the quarters in 2008, 2009, and 2010 for which a Children’s Television Programming Report was prepared and placed in the Station’s public inspection file, and the location of the file. The Letter further required that this information be filed within 30 days and stated that failure to provide the requested information or to notify the staff that the Licensee was electing to let the Station revert to low power television status would result in the institution of a forfeiture proceeding and/or loss of Class A television status.

4. On April 22, 2011 the Licensee filed a response to the Letter (“Response”), and on September 20, 2012 the Licensee supplemented that Response (“Supplement”). In its Response, the Licensee claims that it was not required to electronically file and maintain in its public file quarterly Form 398 reports for the years 2008-2010. The Licensee explains that while it filed to convert its authorized LPTV construction permit facility to a Class A Facility on August 12, 2008,<sup>7</sup> it did not file its license to cover construction permit for its Class A facility until January 3, 2011.<sup>8</sup> Thus, the Licensee states that it was not required to file electronic quarterly Form 398 reports and maintain such reports in its public file until April 10, 2011, when such a report was prepared and filed by the Licensee. The Licensee also notes that the instructions for FCC Form 398 specifically refer to “licensees,” and not to “permittees,” as was the Station’s status from 2008-2010. In its Supplement, the Licensee reiterates its arguments presented in its Response and further explains that from the time it filed its application to convert its authorized LPTV construction permit to Class A status in 2008, W40CN-D met all Class A programming requirements, including children’s programming.<sup>9</sup>

### III. DISCUSSION

5. The Licensee’s failure to file quarterly Form 398, Children’s Television Programming Reports for W40CN-D with the Commission and place such reports in the Station’s public inspection file constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(iii). The Licensee was required to file quarterly Form 398 reports and place such reports in its public file beginning with the last quarter of 2008, the first quarter after the licensee filed to convert its authorized LPTV construction permit facility to a Class A Facility.<sup>10</sup> In its CP Conversion Application, the Licensee certified that it was in compliance with the operating requirements set forth in subpart H and J of 47 C.F.R. Part 73 that are applicable to Class A stations.<sup>11</sup> Therefore, with the submission of the CP Conversion Application, the Licensee certified that it was in compliance with the requirement to file quarterly Form 398, Children’s Television Programming Reports with the Commission and place such reports in the Station’s public

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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> See 47 C.F.R. § 1.16.

<sup>7</sup> FCC File No. BLTTA-20080812ACU (granted Nov. 7, 2008) (“CP Conversion Application”).

<sup>8</sup> FCC File No. BLDTA-201101103ACG (granted Fed. 2, 2011).

<sup>9</sup> The Licensee electronically filed all of its missing Form 398 reports with the Commission in September 2012.

<sup>10</sup> FCC File No. BLTTA-20080812ACU (granted Nov. 7, 2008).

<sup>11</sup> *Id.* at §II, no. 10.

inspection file, as required by Section 73.3526(e)(11)(iii).<sup>12</sup> Although the Licensee essentially argues that the violations resulted from inadvertence, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing a licensee's rule violation.<sup>13</sup> 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.<sup>14</sup>

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.<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.<sup>16</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>17</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>18</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>19</sup>

7. 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.<sup>20</sup> 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."<sup>21</sup>

8. In this case, the Licensee has acknowledged that it failed to file with the Commission and place in the public inspection file Children's Television Programming Reports for the fourth quarter of 2008 and all four quarters in 2009 and 2010. Based on the record before us, we believe that a forfeiture in the amount of \$13,000 is appropriate for the Licensee's apparent willful and repeated violations of Section 73.3526(e)(11)(iii).

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<sup>12</sup> 47 C.F.R. 73.3526(e)(11)(iii).

<sup>13</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("Inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance."); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986) ("Employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations.")

<sup>14</sup> See, e.g., *Sage Broadcasting Corporation*, 23 FCC Rcd 8160, 8162 (Vid. Div. 2008); *HP Television, L.P.*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc.*, 9 FCC Rcd 2545, 2546 (MMB 1994).

<sup>15</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>16</sup> 47 U.S.C. § 312(f)(1).

<sup>17</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>18</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

<sup>19</sup> 47 U.S.C. § 312(f)(2).

<sup>20</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.+

<sup>21</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) and note to paragraph (b)(4), Section II.

#### 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 Waubensee Community College is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful and repeated violations of Section 73.3526 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, Waubensee Community College 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 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). Licensee will also send electronic notification on the date said payment is made to [adrienne.denysyk@fcc.gov](mailto:adrienne.denysyk@fcc.gov).

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.

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.<sup>22</sup>

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<sup>22</sup> See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Waubonsee Community College, c/o James Pike, Route 47 at Waubonsee Drive, Sugar Grove, IL 60554, and to its counsel, Shainis & Peltzman, Chartered, c/o Lee J. Peltzman, Esq., 1850 M Street, NW, Suite 240, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau