

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

In the Matter of)	
)	
Highland Park Broadcasting, LP)	Facility I.D. No. 25722
Licensee of Station W33BY)	NAL/Acct. No. 201241420009
Detroit, Michigan)	FRN: 0000014720

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: November 20, 2012

Released: November 21, 2012

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”),¹ we find that Highland Park Broadcasting, LP (the “Licensee”), licensee of Class A television station W33BY, Detroit, MI (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.² 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.³ 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 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.⁴

¹ This NAL is 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”). See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Chief, Video Division, Media Bureau, has delegated authority to issue the NAL under Sections 0.61 and 0.283 of the Rules. See 47 C.F.R. §§ 0.61, 0.283.

² See 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3526.

⁴ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (MMB 1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 7 FCC Rcd 6361 (FOB 1992).

3. On March 23, 2011, the Deputy Chief, Video Division, Media Bureau, issued a letter to the Licensee (“March 23rd Letter”), stating that Commission records indicate that the Licensee failed to make the required Form 398 electronic filings for W33BY for the first, second, and third quarters of 2006 and 2008 and for all four quarters of 2007, 2009, and 2010. The March 23rd Letter required the Licensee to provide information, supported by the declaration of a person with personal knowledge,⁵ identifying the quarters in 2006, 2007, 2008, 2009, and 2010 for which a Children’s Television Programming Report was prepared and placed in the Station’s public inspection file, as well as the location of the public file. The March 23rd 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, could result in the institution of a forfeiture proceeding and/or loss of Class A television status. On August 3, 2011, the Deputy Chief, Video Division issued a second letter (“August 3rd Letter”) to the Licensee, repeating that the Licensee had failed to make the required Form 398 electronic filings for W33BY and that failure to provide the information required within 30 days could result in a change in the station’s status from Class A television to low power television status.

4. On August 24, 2011 the Video Division received the Licensee’s first response to its inquiries. The Licensee claims that it did not receive the March 23rd Letter as it had relocated, and the March 23rd Letter was mailed to its former address.⁶ Upon receipt of the August 3rd Letter, however, the Licensee explains that it immediately submitted the missing Form 398 electronic filings to the Commission. Furthermore, the licensee pledges to file such reports on time in the future. Subsequently, the Licensee submitted a second response, dated March 1, 2012, stating that it prepared the Children’s Programming Television Reports for the first, second, and third quarters of 2006 and 2008 and for all four quarters of 2007, 2009, and 2010 and placed the reports in the Station’s public file on August 14 and 15, 2011.

III. DISCUSSION

5. The Licensee’s failure to file the Children’s Television Programming Reports for W33BY 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). Licensee acknowledges that it did not electronically file its missing Children’s Television Programming Reports with the Commission until receipt of the Video Division’s August 3rd Letter. Furthermore, by Licensee’s own admission, it did not prepare its Children’s Programming Television Reports for the first, second, and third quarters of 2006 and 2008 and for all four quarters of 2007, 2009, and 2010 or place them in the Station’s public file until August 14 and 15, 2011. Although corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, such actions do not relieve the Licensee of liability for the violations that have occurred.⁷

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.⁸ 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.⁹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

⁵ See 47 C.F.R. § 1.16.

⁶ Licensee failed to notify the Commission of its change of address as required by the Commission’s rules. 47 C.F.R. 1.947(b). The Video Division mailed the Letter to the Licensee’s address of record.

⁷ 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).

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

⁹ 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ 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.”¹²

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.¹³ 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.”¹⁴

8. In this case, the Licensee acknowledged that it failed to file with the Commission and place in the public inspection file Children’s Television Programming Reports for the first, second, and third quarters of 2006 and 2008 and for all four quarters in 2007, 2009, and 2010. Based on the record before us, we believe that 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).

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 Highland Park Broadcasting, LP 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*, Highland Park Broadcasting, LP 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

¹⁰ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

¹² 47 U.S.C. § 312(f)(2).

¹³ 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.

¹⁴ 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.

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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. 20554.¹⁵

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Highland Park Broadcasting, LP, 160 Victor Street, Highland Park, MI, 48203.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁵ See 47 C.F.R. § 1.1914.