

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

In the Matter of	)	
	)	
Indiana Wesleyan University	)	Facility I.D. No. 29292
Licensee of Station WIWU-CD	)	NAL/Acct. No. 201241420007
Marion, Indiana	)	FRN: 0013222245

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: March 26, 2012**

**Released: March 29, 2012**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”),<sup>1</sup> we find Indiana Wesleyan University (the “Licensee”), licensee of Class A television station WIWU-CD, Marion, Indiana (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>2</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>3</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 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.<sup>4</sup>

<sup>1</sup> 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 Section 0.283 of the Rules. See 47 C.F.R. § 0.283

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

<sup>3</sup> 47 C.F.R. § 73.3526.

<sup>4</sup> 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 24, 2011, the Chief, Video Division, Media Bureau, issued a letter to the Licensee (“Letter”), stating that Commission records indicated that Indiana Wesleyan University failed to make the required Form 398 electronic filings for WIWU-CD for all four quarters in 2009 and 2010. The Letter required the Licensee to provide information, supported by the declaration of a person with personal knowledge,<sup>5</sup> identifying the quarters in 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 28, 2011, the Licensee filed a Response to the Letter, acknowledging that it inadvertently failed to prepare and file Children’s Television Programming Reports for all four quarters of 2009 and 2010. In this regard, the Licensee’s station manager explained that while he remembers working on the reports during 2009 and 2010, he was not able to locate any of the reports in the Commission’s online electronic filing system for Children’s Television Programming Reports after trying different call sign combinations. Consequently, the station manager indicated that he filed new reports on March 29, 2011, for all four quarters of 2009 and 2010. He further explained that the station’s public inspection file is computer-based, and that the station’s website has a link to the Commission’s online children’s reports filing system. Thus, the Licensee not only failed to file the required reports with the Commission but, based on its use of a computer-based public inspection file, also failed to maintain a public inspection file containing the required reports.

### III. DISCUSSION

5. The Licensee’s failure to file the Children’s Television Programming Reports for WIWU-CD 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). 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>6</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>7</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>8</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>9</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both

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<sup>5</sup> See 47 C.F.R. § 1.16.

<sup>6</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>7</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>8</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

Sections 312 and 503(b) of the Act,<sup>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</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>12</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>13</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>14</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 all four quarters in 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 Indiana Wesleyan University 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*, Indiana Wesleyan University 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 [Shaleim.Henry@fcc.gov](mailto:Shaleim.Henry@fcc.gov).

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

<sup>11</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

<sup>12</sup> 47 U.S.C. § 312(f)(2).

<sup>13</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>14</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.

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>15</sup>

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Indiana Wesleyan University, 4201 South Washington Street, Marion, Indiana 46953-4999, and to its counsel, Peter Tannenwald, Esquire, Fletcher, Heald & Hildreth, 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.