

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

In the Matter of)	
)	
Kevin O’Kane)	Facility I.D. Nos. 34341, 34342
Licensee of Stations:)	NAL/Acct. No. 201341420015
WWDG-CA, Rome, New York)	FRN: 0007581788
WCUL-CA, Oneida, New York)	

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: May 22, 2013

Released: May 23, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”)¹ we find that Kevin O’Kane (the “Licensee”), licensee of Class A television stations WCUL-CA, Oneida, New York and WWDG-CA, Rome, New York (the “Stations”), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file electronically with the Commission certain of the Station’s Children’s Television Programming Reports in a timely manner (Form 398).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 Three Thousand Dollars (\$3,000) for each station, for a total forfeiture of Six Thousand Dollars (\$6,000).

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.

3. On March 25, 2011, the Chief, Video Division, Media Bureau, issued letters to the Licensee (“Letters”) regarding each station, stating that Commission records indicated that Licensee failed to make the required Form 398 electronic filings for both WWDG-CA and WCUL-CA for all four quarters in 2007, 2008, 2009, and 2010. The Letters required the Licensee to provide information identifying the quarters in 2007, 2008, 2009, and 2010 for which a Children’s Television Programming Report was prepared and placed in the Stations’ public inspection files, and the location of the files. The

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 Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3526.

Letters 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 Stations 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 21, 2011, the Licensee filed substantially similar responses to both letters, stating that the reports had been placed in the Stations' public files at the appropriate time but admitting that they were not filed electronically during the missing quarters. All of the required reports have now been electronically filed with the Commission.

III. DISCUSSION

5. The Licensee's failure to file electronically with the Commission the Children's Television Programming Reports for both Stations constitutes an apparent willful and/or 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.⁴ 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.⁵

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.⁶ 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.⁷ 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,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ 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."¹⁰

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.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the

⁴ See, e.g., *Hayco Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15039 (2012); *WCVB Hearst Television, Inc. (WCVB-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6128 (2010); *WSOC Television, Inc. (WSOC-TV)*, Notice of Apparent Liability for Forfeiture Letter, 25 FCC Rcd 6124 (2010); *Media General Communications Holdings, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6132 (2010).

⁵ See, e.g., *WSOC Television*, 25 FCC Rcd at 6125; *WCVB Hearst Television, Inc.*, 25 FCC Rcd at 6129-30; *WFTV, Inc. (WFTV-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6140 (2010).

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

⁷ 47 U.S.C. § 312(f)(1).

⁸ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁰ 47 U.S.C. § 312(f)(2).

¹¹ 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.

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.”¹²

8. In this case, the Licensee failed to file electronically with the Commission both Stations’ Children’s Television Programming Reports in a timely manner for 16 quarters. Based on the record before us, we believe that a forfeiture in the amount of \$3,000 for each Station, for a total forfeiture amount of \$6,000, is appropriate for the Licensee’s apparent willful and/or 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 Kevin O’Kane is hereby NOTIFIED of the Licensee’s APPARENT LIABILITY FOR FORFEITURE in the amount of Six Thousand Dollars (\$6,000) for the 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*, Kevin O’Kane SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. In the event that WCUL-CA or WWDG-CA wishes revert to low power television status, you need only notify us of this election and request a change in status for the station.¹³ Should the stations elect to revert to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

12. 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. Nos. and FRN Nos. 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 numbers 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 Peter.Saharko@fcc.gov.

13. 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. Nos. referenced above.

14. 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

¹² 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.

¹³ *See* 47 C.F.R. § 73.6001(d).

the claim by reference to the financial documentation submitted.

15. 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. 20554.¹⁴

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Kevin O’Kane, 4811 Jenkins Road, Vernon, New York, 13476 and his counsel, Jim Oyster, Esq. at 108 Oyster Lane, Castleton, Virginia, 22716.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See 47 C.F.R. § 1.1914.