

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

In the Matter of	)	
	)	
Victory Communications, Inc.	)	Facility I.D. No. 70105
Licensee of Station K48MR-D	)	NAL/Acct. No.: 201341420025
Bentonville & Rogers, Arkansas	)	FRN: 0007422868

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: July 9, 2013**

**Released: July 10, 2013**

By the Deputy 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> we find that Victory Communications, Inc. (the “Licensee”), licensee of Station K48MR-D (the “Station”), apparently willfully and/or repeatedly violated (i) Section 73.3526(e)(11)(iii) of the Rules by failing to prepare, place in its public inspection file, and file timely with the Commission the Station’s Children’s Television Programming Reports<sup>2</sup> and (ii) Section 73.3514(a) of the Rules by failing to report the violations in its renewal application.<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 twenty thousand dollars (\$20,000).

**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 the existence and location of the reports.

3. Section 73.3514(a) of the Rules provides that “[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . .” Section II, Question 4 of the Form 303-S license renewal application requires licensees to report any “violations of the Communications Act of 1934, as amended, or the rules or regulations of the Commission during the preceding license term” and to “submit an explanatory exhibit providing complete descriptions of all violations.”

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

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

<sup>3</sup> 47 C.F.R. § 73.3514(a).

<sup>4</sup> 47 C.F.R. § 73.3526.

4. On March 24, 2011, the Deputy Chief, Video Division, Media Bureau, issued a letter to the Licensee (“Letter”), stating that Commission records indicated that the Licensee failed to make the required Form 398 electronic filings for K48MR-D<sup>5</sup> for the second through fourth quarters of 2009 and all four quarters in 2010. The Letter required the Licensee to provide information identifying the quarters in 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.

5. On May 2, 2011, the Licensee responded to the letter and admitted that it failed to prepare, place the reports in the public file, and file the forms electronically with the Commission in a timely manner.

6. On January 29, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for Station K48MR-D (the “Application”).<sup>6</sup> The Licensee did not report its admitted violations of Section 73.3526 in its application. Nor did the Licensee report that additional Children’s Television Programming Reports not raised as part of the Commission inquiry were filed late during the license period.<sup>7</sup>

### III. DISCUSSION

7. The Licensee’s failure to prepare, place in the public file, and file with the Commission in a timely manner its Children’s Television Programming Reports constitute an apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii). Moreover, the Licensee’s failure to report these violations in its renewal application constitutes a violation of Section 73.3514 of the Commission’s Rules.<sup>8</sup>

8. 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 and/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>9</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>10</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>11</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>12</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>13</sup>

9. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations and \$3,000 for failure to file a required form

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<sup>5</sup> The station’s call letters were then K45EI.

<sup>6</sup> File No. BRTTA-20130129AER.

<sup>7</sup> In total, the Licensee filed its Children’s Television Programming Reports late for 25 quarters during the license period.

<sup>8</sup> 47 C.F.R. § 73.3514.

<sup>9</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>10</sup> 47 U.S.C. § 312(f)(1).

<sup>11</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>12</sup> *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

<sup>13</sup> 47 U.S.C. § 312(f)(2).

or information.<sup>14</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>15</sup> In this case, the Licensee repeatedly failed to prepare and place in its public file its Children’s Television Programming Reports in a timely manner and we therefore conclude that the Station is apparently liable for a \$10,000 forfeiture for the public file violation. The Licensee also failed to file the reports with the Commission in a timely manner during the quarters identified in the Commission inquiry and other quarters during the license period, and we therefore conclude that the Station is apparently liable for a \$7,000 forfeiture. We further find that the Licensee omitted material information from its renewal application and is therefore liable for an additional \$3,000 forfeiture. We thus conclude that the Licensee is liable for a total forfeiture of \$20,000 for these apparent violations.

#### IV. ORDERING CLAUSES

10. 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 Victory Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of Section 73.3526(e)(11)(iii) of the Commission’s Rules.

11. 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, that Victory Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. In the event that the Licensee wishes to revert K48MR-D to low power television status, the Licensee need only notify us of this election and request a change in status for the station.<sup>16</sup> Should the Licensee elect to revert K48MR-D to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

13. 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).

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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.

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<sup>14</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>15</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.

<sup>16</sup> See 47 C.F.R. § 73.6001(d).

15. 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.

16. 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>17</sup>

17. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Victory Communications, Inc., P.O. Box 177, Centerton, Arkansas, 72719.

FEDERAL COMMUNICATIONS COMMISSION

Hossein Hashemzadeh  
Deputy Chief, Video Division  
Media Bureau

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<sup>17</sup> See 47 C.F.R. § 1.1914.