

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

In the Matter of)	
)	
WDKA Acquisition Corporation)	Facility I.D. No. 39561
Licensee of Station WDKA(TV))	NAL/Acct. No.: 201341420049
Paducah, Kentucky)	FRN: 5013164

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: September 19, 2013

Released: September 23, 2013

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”),¹ the Commission finds that WDKA Acquisition Corporation (the “Licensee”), licensee of Station WDKA(TV), Paducah, Kentucky (“WDKA”), apparently willfully violated Section 73.3539(a) of the Rules by failing to timely file with the Commission its Application for Renewal of Broadcast Station License (Form 303-S). 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 one thousand, five hundred dollars (\$1,500).

II. BACKGROUND:

2. Section 73.3539(a) of the Rules requires a broadcast television license renewal application to be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed...”² The Licensee’s last license renewal for WDKA was granted on June 6, 2006, and was scheduled to expire on August 1, 2013. In accordance with Section 73.3539(a) of the Rules, the Licensee was required to file its Form 303-S to renew the license of WDKA on or before April 1, 2013. Licensee did not file its Form 303-S until May 6, 2013.³

III. DISCUSSION

3. The Licensee failed to file a timely application for renewal of its broadcast license for WDKA. A Form 303-S for WDKA was not filed with the Commission until May 6, 2013—one month and five days after the filing deadline. This late filing constitutes an apparent willful violation of Section 73.3539(a) of the Rules. In its late-filed application, Licensee did not provide any excuse or extenuating circumstances demonstrating why its Form 303-S was filed late.

4. 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

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² 47 C.F.R. § 73.3539(a).

³ See BRCDDT-20130506ACG.

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.”⁴ 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.⁵ Furthermore, the Commission has held that an inadvertent error, oversight or failure to become familiar with Commission requirements are willful violations.⁶ 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,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸

5. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.⁹ 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.”¹⁰ With the exception of the Licensee’s late-filed Form 303-S, over the course of its current license term the Licensee has demonstrated a history of compliance with the Rules, including the preparation and maintenance of quarterly issues and programs lists¹¹ and timely filing of quarterly filing Children’s Television Programming Reports.¹² Based on our review of the facts and circumstances here, including WDKA’s history of filing other required Commission documents in a timely fashion, we find that the Licensee is liable for a forfeiture in the amount of \$1,500 for its apparent willful violation of Section 73.3539(a) of the Rules.

IV. ORDERING CLAUSES

6. 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 WDKA Acquisition Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand, five hundred dollars (\$1,500) for its apparent willful violations of Section 73.3539(a) of the Commission’s Rules.

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

⁵ 47 U.S.C. § 312(f)(1); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “Commission interpretations of “willful” do not require licensee intent to engage in a violation”).

⁶ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that “[t]he fact that a licensee’s violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional”); *see also Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁸ *See Southern California*, 6 FCC Rcd at 4388.

⁹ *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), Section I.

¹⁰ 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)(5); 47 C.F.R. § 1.80(b), Section II.

¹¹ 47 C.F.R. § 73.3526(e)(11)(i).

¹² 47 C.F.R. § 73.3526(e)(11)(iii).

7. 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*, WDKA Acquisition Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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).

9. 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.

10. 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.¹³

11. 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

12. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WDKA Acquisition Corporation, P.O. Box 346, Rescue, Virginia, 23424, and to its counsel, Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C., 20016.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹³ See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that "[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").

¹⁴ See 47 C.F.R. § 1.1914.