

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

In the Matter of:)	
)	
First Media Radio, LLC)	FRN: 0005557988
Licensee of Station WNVN-LP)	NAL/Acct. No. 201341420022
Roanoke Rapids, North Carolina)	Facility ID No. 43758

FORFEITURE ORDER

Adopted: September 20, 2013

Released: September 23, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules,¹ we find that First Media Radio, LLC, licensee of Station WNVN-LP, Roanoke Rapids, North Carolina, repeatedly violated (i) Section 73.3526(e)(11)(ii) by failing to place in the station's public inspection file all required records concerning compliance with the children's programming commercial limits and (ii) Section 73.3526(e)(11)(iii) of the Commission's Rules by failing to file electronically with the Commission in a timely manner the Station's Children's Television Programming Reports (FCC Form 398). Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture of Six Thousand Dollars (\$6,000.00).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on June 21, 2013.² The NAL notified the Licensee that its failure to place records regarding its compliance with the children's programming commercial limits constituted apparent willful or repeated violations of Section 73.3526(e)(11)(ii) of the Commission's rules and its failure to file timely its Children's Television Programming Reports during 3 quarters of the license period constituted apparent willful or repeated violations of Section 73.3526(e)(11)(iii) of the Commission's rules.³ The Division concluded that the Licensee was apparently liable for a forfeiture of \$6,000. The Licensee did not file a response to the NAL.

III. DISCUSSION

3. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is

¹ 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

² *First Media Radio, LLC*, Notice of Apparent Liability for Forfeiture, DA 13-1416 (Jun. 21, 2013). The notice was sent to the Licensee's address on record by certified mail, return receipt requested, and was signed for by a representative of the licensee on June 24, 2013.

³ 47 C.F.R. § 73.3526(e)(11)(iii).

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.⁴ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁵ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁶ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(e)(11) (ii) & (iii) of the Commission's rules. We ultimately conclude that the forfeiture amount should not be reduced from the amount proposed in the NAL.

4. The Community Broadcasters Protection Act requires that Class A television stations comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.⁷ The Commission rules establish that Class A licensees must (i) offer informational and educational children's programming; (ii) prepare and place in a public inspection file quarterly Children's Television Programming Reports; and (iii) electronically file those reports with the Commission.⁸ Commission rules also require each Class A licensee to prepare and place in its public inspection file records sufficient to permit substantiation of its certification that it complied with the commercial limits on children's programming established in Section 73.670 of the Commission's rules.

5. The Licensee received the NAL and did not offer any rebuttal regarding the violations identified in the NAL during the thirty day response period. These deficiencies, regardless of the cause, constitute repeated violations of the relevant Commission rules.

6. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.⁹ In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include "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."

⁴ 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

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

⁶ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

⁷ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

⁸ *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000); 47 C.F.R. § 73.3526 (a)(2) & (e)(11)(iii).

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), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

7. In the NAL, the Video Division proposed a forfeiture amount of \$6,000. Having carefully reviewed the record, we do not find any basis to reduce the forfeiture amount.

IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,¹⁰ First Media Radio, LLC SHALL FORFEIT to the United States the sum of six thousand dollars (\$6,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. §§ 73.3526(e)(11) (ii) & (iii).

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

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

11. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to First Media Radio, LLC, 306 Port Street, Easton, Maryland, 21601, and to its counsel, M. Anne Swanson, Dow Lohnes PLLC, 1200 New Hampshire Avenue NW, Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

¹¹ See 47 C.F.R. § 73.6001(d).