

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

In the Matter of	)	
	)	
<b>TURNER BROADCASTING SYSTEM, INC.</b>	)	File No.: EB-12-IH-0874
	)	NAL/Acct. No.: 201432080009
	)	FRN: 0006873228

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 5, 2013**

**Released: November 5, 2013**

By the Acting Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Turner Broadcasting System, Inc. (Turner) apparently willfully violated Section 325(a) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Section 11.45 of the Commission's rules by transmitting or causing the transmission of Emergency Alert System (EAS) codes or Attention Signals or simulations thereof in the absence of an actual national, state or local area emergency or authorized test of the EAS.<sup>2</sup> As a result, we find Turner apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000).

**II. BACKGROUND**

2. The EAS is a national public warning system that requires broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers to supply the communications capability to the President of the United States to address the American public during a national emergency. Federal, state, and local authorities may also use the EAS to deliver important emergency information, such as AMBER alerts and weather information targeted to specific areas. The EAS uses a four-part message for an emergency activation.<sup>3</sup> The component sounds of an EAS message serve the purpose of gaining the listener's or viewer's attention and also conveying specially coded information for the equipment that is activated by the EAS message as part of an actual emergency or authorized test. In particular, the EAS codes consist of distinctive audible sounds in which encoded information concerning the particular alert may be embedded. The separate EAS Attention Signal that follows the EAS codes is comprised of two tones that are transmitted simultaneously.<sup>4</sup>

3. The Commission received a Complaint, dated April 26, 2012, which alleges that the complainant viewed a promotion for the *Conan* show on the TBS Network, which included simulations of

<sup>1</sup> See 47 U.S.C. § 325(a).

<sup>2</sup> 47 C.F.R. § 11.45.

<sup>3</sup> The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and, Preamble and EAS End Of Message (EOM) Codes. 47 C.F.R. § 11.31.

<sup>4</sup> 47 C.F.R. § 11.31(a)(2).

the EAS Attention Signal or codes.<sup>5</sup> Specifically, the Complaint states that the promotional announcement “used the emergency weather tones to gain attention for a commercial regarding Jack Black being on the show for April 26, 2012.”<sup>6</sup>

4. In response to the Complaint, the Enforcement Bureau’s Investigations and Hearings Division sent a letter of inquiry to Turner, dated February 15, 2013, directing Turner to submit, among other things, recordings of the *Conan* promotion and sworn written statements concerning these allegations.<sup>7</sup> Turner responded on February 26, 2013.<sup>8</sup> In the LOI Response, Turner admits, *inter alia*, that it produced and distributed a promotion intended to be used prior to the April 26, 2012, episode of the *Conan* show. This promotion included a “sound effect” in part derived from an online source.<sup>9</sup> The records Turner provided to the Bureau reflect that Turner “aired” the promotion on April 26, 2012.<sup>10</sup> Further, Turner states that, based on a technical review of the promotion conducted after it received the LOI, it determined that the promotion did not include any portion of an actual EAS code, but did include a prerecorded “sound burst” followed by a “bars and tone” sound.<sup>11</sup> Turner provided a recording of the promotion to the Commission and also provided copies of additional written complaints that it independently received from viewers, also alleging that a promotional announcement for *Conan* used the sounds associated with an EAS Attention Signal or codes.<sup>12</sup> In its LOI Response, Turner admits that the promotion was not made in connection with an actual national, state or local emergency or authorized test of the EAS.<sup>13</sup> Turner notes that the promotion was produced within such a tight timeframe that the production team did not submit the promotion in question for standards and practices review, but that, since May 2012, all similar promotions for the *Conan* show have undergone standards and practices review.<sup>14</sup>

### III. DISCUSSION

5. Pursuant to Section 503(b)(1) of the Act, 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>15</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>16</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>17</sup> and the

<sup>5</sup> See Complaint, Form 2000D, Key No. 12-C00392073-1 (Apr. 26, 2012) (on file in EB-12-IH-0874) (Complaint).

<sup>6</sup> *Id.*

<sup>7</sup> See Letter from Jeffrey J. Gee, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Louise S. Sams, Executive Vice President, General Counsel and Secretary, Turner Broadcasting System, Inc. (Feb. 15, 2013) (on file in EB-12-IH-0874) (LOI).

<sup>8</sup> Letter from Louise S. Sams, Executive Vice President, General Counsel and Secretary, Turner Broadcasting System, Inc., to Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 26, 2013) (on file in EB-12-IH-0874) (LOI Response).

<sup>9</sup> See *id.* at 2.

<sup>10</sup> *Id.* at Appendix B.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at Appendix D.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(2).

<sup>16</sup> 47 U.S.C. § 312(f)(1).

<sup>17</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

Commission has so interpreted the term in the Section 503(b) context.<sup>18</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>19</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>20</sup> In order to impose such a 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.<sup>21</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>22</sup> As described in greater detail below, we conclude under this procedure that Turner is apparently liable for a monetary forfeiture, for apparently willfully and repeatedly violating Section 325(a) of the Act and Section 11.45 of the Commission’s rules.

6. Pursuant to Section 325(a) of the Act, “[n]o person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto.”<sup>23</sup> Under Section 11.45 of the Commission’s rules, “[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.”<sup>24</sup> Moreover, as Section 11.45 of the Commission’s rules clearly and separately addresses “simulation” of the EAS codes or Attention Signal, it is axiomatic that a “simulation” of the EAS codes or Attention Signal is not limited to recordings of actual EAS codes or Attention Signals,<sup>25</sup> but also includes the transmission of sounds that mimic or are substantially similar to the sounds made by the transmission of EAS codes or the EAS Attention Signal.

7. The record reflects that Turner itself produced the *Conan* promotion and inserted it into the TBS Network programming.<sup>26</sup> It is our understanding that TBS Network programming is delivered by Turner to various multichannel video programming distributors (MVPDs) throughout the country via satellite with the intent (indeed, the contractual obligation) that the network programming ultimately be transmitted by the MVPDs to the MVPDs’ subscribers.<sup>27</sup> It is our further understanding that Turner actually delivers two feeds of its network programming in this manner—an East Coast feed and an essentially identical West Coast feed, which is the same programming time-shifted by three hours.<sup>28</sup>

<sup>18</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

<sup>19</sup> See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (assessing a forfeiture for a cable television operator’s repeated signal leakage).

<sup>20</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>22</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

<sup>23</sup> 47 U.S.C. § 325(a).

<sup>24</sup> 47 C.F.R. § 11.45.

<sup>25</sup> See 47 C.F.R. § 11.31 (defining Attention Signal).

<sup>26</sup> See LOI Response at 2.

<sup>27</sup> See Time Warner Inc., Annual Report 2012 (Form 10-K), at 2 (Feb. 22, 2013) (“Turner . . . generates revenues principally from providing programming to cable system operators, satellite service distributors, telephone companies and other distributors (known as affiliates) that have contracted to receive and distribute this programming to subscribers.”) (*Annual Report*).

<sup>28</sup> See Cable Television Advertising Bureau, *Live vs. Dual Feed Cable Networks*, <http://www.thecab.tv/main/resources/lvdFeeds/index.shtml> (last visited Aug. 19, 2013).

Based on the foregoing, we find that Turner transmitted, or caused to be transmitted, the *Conan* promotion on April 26, 2013.

8. Based on our review of the recording of the promotion provided by Turner in the LOI Response, we find that the *Conan* promotion includes audio material that constitutes a simulation of the EAS codes and Attention Signal. Although Turner asserts that none of the material includes embedded EAS data,<sup>29</sup> as noted above, a “simulation” need not be an exact copy or recording of the EAS codes. Nor does the rule require the inclusion of embedded EAS data.<sup>30</sup> Based on our review of the recording, we find that the sounds used in the material are substantially similar to the sounds made by the transmission of EAS codes such that an average audience member would reasonably mistake the sounds for the sounds made by actual EAS codes.<sup>31</sup> Turner further asserts that the second audio element in the *Conan* promotion was similar to the “bars and tone” sound associated with color bar test patterns.<sup>32</sup> Based on our review of the recording, however, we find that the second audio element used in the *Conan* promotion was a dual tone sound that is substantially similar to the dual-tone EAS Attention Signal<sup>33</sup>—such that an average listener would reasonably mistake the sounds for an actual EAS Attention Signal—and was unlike the single tone sound typically used in bars and tone test patterns. As Turner admits that none of the material in question was transmitted in connection with an actual national, state or local emergency or authorized test of the EAS,<sup>34</sup> we find that the transmission of the *Conan* promotion described herein violated Section 11.45 of the Commission’s rules.

9. In addition, misuse of the EAS codes or Attention Signal or simulations thereof may violate Section 325(a) of the Act, which prohibits transmission of false distress signals.<sup>35</sup> For example, in *Emmis Broadcasting Corp. of St. Louis*, the Commission found a radio station in Missouri apparently liable for a forfeiture for its violation of Section 325(a) after the station aired a hoax announcement that the United States was under nuclear attack and broadcast a “bleep” that listeners mistook as the tone for an authentic emergency signal.<sup>36</sup> The Commission held that using the tone to “cry wolf” undermined the integrity of the Emergency Broadcast System (EBS) and endangered the effectiveness of the EBS warning tone as a method of alerting the public to danger in the first instance.<sup>37</sup> At that time, the Commission lacked a rule that explicitly prohibited misuse of emergency broadcast signals, and relied on Section 325(a), finding that such misuse of the emergency broadcast signals constituted a false distress signal.<sup>38</sup> The Commission pointed to the effect of the broadcast on the EBS (the predecessor to EAS) as an exacerbating factor, even though the station did not use the actual EBS attention signal.<sup>39</sup> Even as the

<sup>29</sup> See LOI Response at 2.

<sup>30</sup> See 47 C.F.R. § 11.45.

<sup>31</sup> In particular, audiences relying primarily on audio cues, such as those with visual impairments or those listening from another room, would reasonably focus on such sounds.

<sup>32</sup> See LOI Response at 2.

<sup>33</sup> See 47 C.F.R. § 11.31(a)(2).

<sup>34</sup> See LOI Response at 2.

<sup>35</sup> See 47 U.S.C. § 325(a) (“No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signals of distress, or communication relating thereto . . .”).

<sup>36</sup> See *Emmis Broadcasting Corp. of St. Louis*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2289 (1991) (*Emmis*).

<sup>37</sup> See *id.* at 2289–90 (Emmis announced, with the sound of civil defense sirens in the background, that the tone was not a test and the United States was under nuclear attack).

<sup>38</sup> See *id.*

<sup>39</sup> *Id.* (noting that Emmis used a common “bleep” tone rather than the two-tone EBS warning and thus no EBS

(continued....)

Commission subsequently proposed and adopted the prohibition in Section 11.45, however, it continued to affirm that false use of the EAS codes and Attention Signal “will be considered a false distress communication.”<sup>40</sup>

10. In this case, we find that Turner’s inclusion of simulated EAS codes and Attention Signals caused the transmission of false distress signals in violation of Section 325(a) of the Act.<sup>41</sup> As noted above, the Commission has affirmed that such actions “will be considered a false distress communication.”<sup>42</sup> Since the origin of the EBS, and its evolution into the current EAS System, preserving the integrity of the system has been of paramount importance.<sup>43</sup> It is imperative that the public not be desensitized to the serious implications of the EAS codes and Attention Signal or a simulation thereof.<sup>44</sup> By including in its network programming the EAS codes and Attention Signal or simulations thereof, in non-emergency situations that are promotional or commercial in nature, Turner created a “cry wolf” scenario similar to that encountered in *Emmis*.<sup>45</sup> Indeed, the complaints Turner received directly from its viewers specifically express concern that such transmissions created a false sense of emergency and have the potential to desensitize the public to the signal that could be life-saving in a real national, state or local area emergency.<sup>46</sup> The Complaint expresses similar concerns.<sup>47</sup>

11. Based upon the evidence before us, we find that Turner apparently willfully and repeatedly violated Section 11.45 of the Commission’s rules and Section 325(a) of the Act. The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of eight thousand dollars (\$8,000) for false distress communications.<sup>48</sup> In assessing the monetary forfeiture amount, we must take into account

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equipment was activated, but listeners mistook the tone for the authentic EBS signal). The Commission nevertheless noted that the airing of such sound-alike “mimic” tones conflicted with the underlying purpose of the EBS rules, i.e., “to ensure prior authentication of a true national emergency before activation of the tone for emergency cuing.” *Id.* at 2290.

<sup>40</sup> See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcasting System*, Notice of Proposed Rule Making/Further Notice of Proposed Rule Making, 7 FCC Rcd 6903, 6907–08, paras. 39–45 (1992) (*1992 EBS Notice*); Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 1786, 1815, para. 84 (1994) (*1994 EBS Order*) (subsequent history omitted) (stating “[s]uch false use and misconduct will be considered a false distress communication and will be subject to Commission penalties, such as monetary forfeiture or other appropriate sanctions”).

<sup>41</sup> See 47 U.S.C. § 325(a).

<sup>42</sup> See *1994 EBS Order* at 1815, para. 84.

<sup>43</sup> See *1992 EBS Notice*, 7 FCC Rcd at 6907, para. 39; *Emmis*, 6 FCC Rcd at 2290.

<sup>44</sup> See *1992 EBS Notice*, 7 FCC Rcd at 6907, paras. 39–40; *1994 EBS Order*, 10 FCC Rcd at 1815, paras. 83–84 (noting that several commenters stressed that any use of the EBS attention signal, other than for tests and activations, could be “an enormous detriment to the system.” And further stating that “[s]uch false use and misconduct will be considered a false distress communication, and will be subject to Commission penalties, such as monetary forfeiture or other appropriate sanctions”).

<sup>45</sup> See *Emmis*, *supra* note 36.

<sup>46</sup> See LOI Response at Appendix D (referring to complaints received by Turner expressing concern that the *Conan* promotion uses the EAS tone, which “should be reserved for emergencies,” and that the *Conan* promotion includes an “alarm” which makes viewers nervous “because they live in an area that depends on such alarms for safety”).

<sup>47</sup> See Complaint (stating, in part, “I am very concerned that such usage of the emergency tones undermines the seriousness of those tones when aired on T.V.”).

<sup>48</sup> See *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

the statutory factors set forth in Section 503(b)(2)(E) of the Act and Section 1.80 of the Commission's rules, 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 other such matters as justice may require.<sup>49</sup>

12. As noted above, violations of this nature are particularly serious because they undermine the integrity of the EAS and therefore implicate substantial public safety concerns. As described above, it is our understanding that Turner distributes dual feeds of the TBS Network (i.e., East Coast and West Coast programming feeds) and nothing in the record indicates that the promotion at issue was removed from the second feed. Moreover, Turner transmitted, or caused the transmission of, simulated EAS codes and Attention Signals, in circumstances other than an actual emergency or authorized test of the EAS, over a network with a substantial nationwide audience. Turner's parent company, Time Warner Inc. (Time Warner), states in its 2012 *Annual Report* that the TBS Network, which includes the *Conan* show, "reached approximately 99.7 million U.S. television households as of December 2012."<sup>50</sup> The fact that Turner's violations reached such a potentially vast audience greatly increases the extent and gravity of the violations.

13. With respect to Turner's ability to pay, we note that Turner is part of Time Warner's Networks Division, which reported annual revenues in excess of \$14.2 billion dollars, as of December 31, 2012.<sup>51</sup> As the Commission made clear in the *Forfeiture Policy Statement*, companies with higher revenues, such as Turner, may expect the imposition of forfeitures higher than those reflected in the base amounts.<sup>52</sup>

14. Although Turner asserts that it changed its review practices following viewer complaints about the *Conan* promotion, we cannot find that such efforts fully mitigated the violations addressed herein. It is well settled precedent that subsequent remedial actions do not excuse or nullify a licensee's violation of a Commission rule.<sup>53</sup> Although we may consider pre-investigative remedial measures when we determine the sanction to be imposed for a rule violation,<sup>54</sup> we cannot find that Turner's efforts in this

<sup>49</sup> See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(4).

<sup>50</sup> See *Annual Report* at 3.

<sup>51</sup> See *id.* at 54.

<sup>52</sup> Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violators, we recognize that for large or highly profitable communications entities, the base forfeiture amounts . . . are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level. For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts . . . we intend to take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

*Forfeiture Policy Statement*, 12 FCC Rcd at 17099–100, para. 24.

<sup>53</sup> See, e.g., *Seawest Yacht Brokers dba San Juan Marina Friday Harbor*, Notice of Forfeiture, 9 FCC Rcd 6099 (1994) (noting that "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations") citing *Station KGVL, Inc.*, Memorandum Opinion and Order, 42 FCC 2d 258, 259, para. 6 (1973) (*Seawest*); *Executive Broadcasting Corp.*, 3 FCC 2d 699, 699, para. 6 (1966) ("The fact that prompt corrective action was taken . . . does not excuse the prior violations.").

<sup>54</sup> See, e.g., *Guy Gannett Publishing Co.*, Memorandum Opinion and Order, 5 FCC Rcd 7688, 7689, para. 12 (Mass (continued...))

instance outweigh the other factors described above. Therefore, based on the nature and extent of the violations at issue, the nationwide scope of Turner's audience reach, and Turner's ability to pay, along with the factors as outlined in the Commission's *Forfeiture Policy Statement*, we find that a forfeiture of twenty-five thousand dollars (\$25,000) is appropriate.<sup>55</sup>

#### IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>56</sup> and Section 1.80 of the Commission's rules,<sup>57</sup> and authority delegated by Sections 0.111, 0.204, and 0.311 of the Commission's rules,<sup>58</sup> that Turner Broadcasting System, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for apparently willfully and repeatedly violating Section 11.45 of the Commission's rules<sup>59</sup> and Section 325(a) of the Act.<sup>60</sup>

16. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules,<sup>61</sup> that within thirty (30) days of the release date of this NAL, Turner Broadcasting System, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Turner Broadcasting System, Inc. shall send electronic notification of payment to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Kenneth.Scheibel@fcc.gov, and Jennifer.Lewis@fcc.gov, on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>62</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- 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.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank

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Media Bur. 1990) ("[T]he Commission generally considers prompt and effective remedial action by a licensee as mitigative in determining the appropriate sanction level in an enforcement proceeding.").

<sup>55</sup> See *Seawest*, *supra* n.53; see also *SBC Communications Inc. v. FCC*, 373 F.3d 140, 152 (D.C. Cir. 2004) (noting that "substantial and widespread" behavior with a national scope may warrant an increased forfeiture, and that it is "reasonable to expect that a larger fine might be necessary to deter a large company . . .").

<sup>56</sup> 47 U.S.C. § 503(b).

<sup>57</sup> 47 C.F.R. § 1.80.

<sup>58</sup> 47 C.F.R. §§ 0.111, 0.204, and 0.311.

<sup>59</sup> 47 C.F.R. § 11.45.

<sup>60</sup> 47 U.S.C. § 325(a).

<sup>61</sup> 47 C.F.R. § 1.80.

<sup>62</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then 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.

18. Any request to make full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>63</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. The response, if any, must be mailed to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C330, Washington, D.C. 20554, and **SHALL INCLUDE** the NAL/Acct. Number referenced above. In addition, to the extent practicable, a copy of the response, if any, should also be transmitted via e-mail to Terry.Cavanaugh@fcc.gov, Jeffrey.Gee@fcc.gov, Kenneth.Scheibel@fcc.gov, and Jennifer.Lewis@fcc.gov.

20. 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.

21. **IT IS FURTHER ORDERED**, that the Complaint referenced in this proceeding **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and the complaint proceeding **IS HEREBY TERMINATED**.<sup>64</sup>

22. **IT IS FURTHER ORDERED**, that copies of this NAL shall be sent, by First Class Mail and Certified Mail, to Susan A. Mort, Assistant General Counsel, Time Warner Inc., 800 Connecticut Avenue, NW, Suite 800, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe  
Acting Chief, Enforcement Bureau

<sup>63</sup> See 47 C.F.R. § 1.1914.

<sup>64</sup> For purposes of the forfeiture proceeding initiated by this NAL, Turner Broadcasting System, Inc. shall be the only party to this proceeding.