

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

In the Matter of	)	
	)	
Barrington Toledo License LLC	)	Facility I.D. No. 73351
Licensee of Station WNWO-TV	)	NAL/Acct. No.: 201341420057
Toledo, Ohio	)	FRN: 0015041809

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: November 5, 2013**

**Released: November 6, 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”),<sup>1</sup> the Commission finds that Barrington Toledo License LLC (the “Licensee”), licensee of Station WNWO-TV, Toledo, Ohio (the “Station”), apparently willfully and repeatedly violated Section 73.3526<sup>2</sup> of the Rules by failing to publicize the existence and location of the Station’s Children’s Television Programming Reports. 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 four thousand five dollars (\$4,500).

**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>3</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. On June 3, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.<sup>4</sup> In response to Section IV, Question 10 of the Application, the Licensee stated that its standard announcement concerning the existence and location of Children’s Television Programming Reports “apparently ceased airing following the centralization of traffic management responsibilities with other stations owned by the Station’s ultimate parent, Barrington Broadcasting Group.”<sup>5</sup> The Licensee clarified in a follow-up communication with the Commission that the last announcement aired on

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

<sup>2</sup> 47 C.F.R. § 73.3526.

<sup>3</sup> 47 C.F.R. § 73.3526.

<sup>4</sup> File No. BRCDDT-20130603BEG.

<sup>5</sup> *Id.*, Exhibit 27.

December 16, 2008.<sup>6</sup>

### III. DISCUSSION

4. The Licensee apparently failed to publicize the existence and location of the Station's Children's Television Programming Reports for approximately four and a half years. These constitute apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii).<sup>7</sup> The Licensee may have since taken corrective actions to prevent subsequent violations of the children's television rules and policies; however, the Commission has found that the fact that a broadcast station may have implemented a plan to prevent future violations of the Commission's children's television rules and policies does not relieve the licensee of liability for prior violations.<sup>8</sup>

5. 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.<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>

6. 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.<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

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<sup>6</sup> Email from Michael Beder, counsel for WNWO-TV, to Peter Saharko, Attorney Adviser, Video Division (Nov. 1, 2013).

<sup>7</sup> The Licensee consummated a transfer of control in 2011. File No. BTCCDT-20110711ADC. This transfer of control does not eliminate liability for the violations that occurred prior to the transfer because the licensee remains the same and therefore liability, as a legal matter, remains with the licensee. *Korean American TV Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, DA 13-1642 at 2 n.6 (Jul. 26, 2013); *Mapleton Licensee of San Luis Obispo*, Forfeiture Order, 27 FCC Rcd. 4099, 4101 n.19 (EB 2012); *Hensley Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1115, 116 n.9 (EB 2009). The certification instructions on the Media Bureau broadcast renewal form do not require a different result because "issues of where liability lies for violations that occurred prior to a transfer of control and whether a new owner can certify to actions that took place prior to the transfer of control are entirely different issues." *Korean American TV Broadcasting Corp.*, Forfeiture Order, DA 13-2021 (Oct. 22, 2013) (quoting *Hensley Broadcasting, Inc.*, 24 FCC Rcd at 116 n. 9)).

<sup>8</sup> 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).

<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.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>13</sup> 47 U.S.C. § 312(f)(2).

<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.

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 failed to publicize the Station’s Children’s Television Programming Reports for approximately four and a half years, we believe that a forfeiture in the amount of \$4,500 is appropriate for this violation. Accordingly, we find that the Licensee is liable for a forfeiture in the amount of \$4,500 for its apparent willful and repeated violations of Sections 73.3526.<sup>16</sup>

#### IV. ORDERING CLAUSES

7. 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 Barrington Toledo License LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand five hundred dollars (\$4,500) for its apparent willful and repeated violation of Sections 73.3526 of the Commission’s Rules.

8. 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*, Barrington Toledo License LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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).

10. 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: Peter Saharko, Attorney Adviser, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above. A copy should also be sent by email to peter.saharko@fcc.gov

11. 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.

12. 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>

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<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); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>16</sup> Based upon the record before us, we think that an admonishment is warranted for the station's failure to identify CORE children’s programming for publishers of program guides.

<sup>17</sup> *See* 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Barrington Toledo License LLC, 650 East Algonquin Road, Schaumburg, Illinois, 60173, and to its counsel, Michael Beder, Covington & Burling LLP, 1201 Pennsylvania Avenue NW, Washington, D.C. 20004-2401.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau