

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

In the Matter of)	
)	
CMCG Puerto Rico Licensee LLC)	Facility I.D. No. 32142
Licensee of Station WQQZ-CA)	NAL/Acct. No.: 201341420004
Ponce, Puerto Rico)	FRN: 0019998640

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: February 22, 2013

Released: February 25, 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 CMCG Puerto Rico Licensee LLC (the “Licensee”), licensee of Station WQQZ-CA, Ponce, Puerto Rico (the “Station”), apparently willfully and repeatedly violated Section 73.670 of the Rules, by exceeding the commercial limitations in children’s programming.² 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 dollars (\$4,000).

II. BACKGROUND:

2. 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.³ In the Children’s Television Act of 1990 (“CTA”),⁴ Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children’s programming⁵ and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children’s programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.

3. On October 2, 2012, the Licensee filed its license renewal application (FCC Form 303-S) for Station WQQZ-CA (the “Application”) (File No. BRTTA-20121001APU). In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, it failed to

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

² See 47 C.F.R. § 73.670.

³ 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).

⁴ Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303(a), 303(b), and 394.

⁵ “Children’s programming” is defined as a program originally produced and broadcast primarily for an audience of children 12 years old and under. *Children’s Television Programming*, Report and Order, 6 FCC Rcd 2111, 2112, *recon. granted in part*, 6 FCC Rcd. 5093, 5098 (1991).

comply with limits on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 22, the Licensee indicated that it violated the children's television commercial limits by 45 seconds on a total of 15 broadcasts during the Fourth Quarter of 2007 and First Quarter of 2008.

4. The Licensee blamed its noncompliance on "glitches in the station's automated traffic system." The Station reported that, on December 3, 2007, its traffic system converted from a manual system to the automatic WideOrbit trafficking program with the goal of achieving a more organized trafficking approach. The Licensee states that during the transition, management of the Station mistakenly assumed that the commercial unit load complied with the FCC's limitations. According to the application, the situation was exacerbated by a brief court-ordered shutdown of the station between December 17, 2007 and January 4, 2008. Finally, the Licensee claims that in March 2008, the Station discovered that the commercial limits were incorrect in the system and immediately reprogrammed its system to ensure compliance.⁶

III. DISCUSSION

5. Station WQQZ-CA's record of exceeding the children's television commercial limits on 15 occasions during the last license term constitutes a willful and repeated violation of Section 73.670 of the Rules.⁷ It appears that the 45-second overages occurred as a result of the failure of the Station's staff to monitor properly the new automated trafficking system. The Commission has repeatedly rejected inadvertence and human error as a basis for excusing violations of the children's television commercial limits.⁸ 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.⁹

6. 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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ 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

⁶ Exhibit 22, License Renewal Application.

⁷ See *WSOC Television, Inc. (WSOC-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6124 (2010).

⁸ See, e.g., *WCVB Hearst Television, Inc. (WCVB-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6128 (2010); *WSOC Television, Inc. (WSOC-TV)*, Notice of Apparent Liability for Forfeiture Letter, 25 FCC Rcd 6124 (2010); *Media General Communications Holdings, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6132 (2010).

⁹ 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).

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

¹¹ 47 U.S.C. § 312(f)(1).

¹² See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

than once or, if such commission or omission is continuous, for more than one day.”¹⁴

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$8,000 for violation of Section 73.670.¹⁵ 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.”¹⁶ In this case, a downward adjustment is justified in light of the relatively limited number of commercial overages over a relatively short period of time, the reportedly inadvertent nature of the violations, and the Station’s efforts to remedy the problem immediately upon discovery. Accordingly, we find that the Licensee is liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violation of Section 73.670.

IV. ORDERING CLAUSES

8. 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 CMCG Puerto Rico Licensee LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated violation of Section 73.670 of the Commission’s Rules.

9. 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*, CMCG Puerto Rico Licensee LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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).

11. 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.

12. 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

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ 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.

¹⁶ 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.

the claim by reference to the financial documentation submitted.

13. 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. 20554.¹⁷

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to CMCG Puerto Rico Licensee LLC, 900 Laskin Road, Virginia Beach, Virginia 23451 c/o Erwin G. Krasnow, Esquire, Garvey Schubert Barer, 1000 Potomac Street, N.W., 5th Floor, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ See 47 C.F.R. § 1.1914.