

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

In the Matter of
Carolina Rays, LLC
Licensee of Station WLNN-LP,
Boone, North Carolina
Facility I.D. No. 60888
NAL/Acct. No. 201341420005
FRN: 0018324095

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: March 27, 2013

Released: March 28, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL") we find that Carolina Rays, LLC (the "Licensee"), licensee of Class A television station WLNN-LP, Boone, North Carolina (the "Station"), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file electronically with the Commission certain of the Station's Children's Television Programming Reports (Form 398). 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 Three Thousand Dollars (\$3,000).

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. 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 for the public the existence and location of the reports.

3. On March 30, 2011, the Chief, Video Division, Media Bureau, issued a letter to the Licensee ("Letter"), stating that Commission records indicate that Licensee failed to make the required Form 398 electronic filings for the Station for the third quarter in 2008, the second quarter of 2009, and all four quarters in 2010. The Letter required the Licensee to provide information identifying the quarters in 2008, 2009, and 2010 for which a Children's Television Programming Report was prepared and placed in the Station's public inspection files, and the location of the files. The Letter further required that this information be filed within 30 days and stated that failure to provide the requested information, or to

1 This NAL is 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"). See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Chief, Video Division, Media Bureau, has delegated authority to issue the NAL under Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

2 47 C.F.R. § 73.3526(e)(11)(iii).

3 47 C.F.R. § 73.3526.

notify the staff that the Licensee was electing to let the Station revert to low power television status, would result in the institution of a forfeiture proceeding and/or loss of Class A television status.

4. On May 5, 2011, the Licensee filed a Response to the Letter, stating that it had attempted to file the reports electronically during the missing quarters but that “electronic mistakes” may have occurred because of the Station’s lack of understanding of the Commission’s electronic filing system. The Licensee later provided signed documents certifying that the reports had been placed in the Station’s hard copy public file. All of the required reports have also now been electronically filed with the Commission.

### III. DISCUSSION

5. The Licensee’s failure to file electronically with the Commission the Children’s Television Programming Reports for the Station constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii). Although the Licensee essentially argues that the violations resulted from inadvertence, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing a licensee’s rule violation.<sup>4</sup> Furthermore, corrective actions may have been taken to prevent subsequent violations of the children’s television rules and policies, but that too, does not relieve the Licensee of liability for the violations which have occurred.<sup>5</sup>

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.<sup>6</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>7</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>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</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>10</sup>

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.<sup>11</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the

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<sup>4</sup> See, e.g., *Hayco Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15039 (2012); *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).

<sup>5</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>6</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>10</sup> 47 U.S.C. § 312(f)(2).

<sup>11</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.

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.”<sup>12</sup>

8. In this case, the Licensee failed to file electronically with the Commission the Station’s Children’s Television Programming Reports for six quarters. Based on the record before us, we believe that a forfeiture in the amount of \$3,000 for the Station is appropriate for the Licensee’s apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii).

#### IV. ORDERING CLAUSES

9. 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 Carolina Rays, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Three Thousand Dollars (\$3,000) for its apparent willful and repeated violations of Section 73.3526 of the Commission’s Rules.

10. 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*, Carolina Rays, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. Nos. and FRN Nos. 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 numbers in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to Peter.Saharko@fcc.gov.

12. 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. Nos. referenced above.

13. 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.

14. 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>13</sup>

<sup>12</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) and note to paragraph (b)(4), Section II.

<sup>13</sup> *See* 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Carolina Rays LLC, P.O. Box 67, Linville, North Carolina, 28646.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau