

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

In the Matter of
Triple J Community Broadcasting LLC
Licensee of Station W09DB-D
Williamsport, PA
Facility ID No. 68143
NAL/Acct. No.: 201541420021
FRN: 0005012992

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 28, 2015

Released: September 28, 2015

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"), we find that Triple J Community Broadcasting LLC (the "Licensee"), licensee of Station W09DB-D (formerly W05BG), Williamsport, Pennsylvania (the "Station"), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file with the Commission in a timely manner its Children's Television Programming Reports for twelve (12) quarters and Section 73.3514(a) of the Rules for failing to report these violations in its license renewal application. 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 twelve thousand dollars (\$12,000).

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, place them in their public file by the tenth day of the succeeding calendar quarter, and publicize the existence and location of the reports.

3. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . ." Section IV, Question 3 of the Form 303-S license renewal application requires licensees to certify "that the

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

2 47 C.F.R. § 73.3526(e)(11)(iii).

3 47 C.F.R. § 73.3514(a).

4 See generally, 47 C.F.R. § 73.3526.

5 47 C.F.R. § 73.3526(e)(11)(iii).

6 Id.

7 47 C.F.R. § 73.3514(a).

documentation, required by 47 C.F.R. Section 73.3526 . . . has been placed in the station's public inspection file at the appropriate times."<sup>8</sup> Section IV, Question 6 of the license renewal application requires licensees to certify that it has filed with the Commission its Children's Television Programming Reports according to the requirements of Section 73.3526 of the Commission's rules and requires the Licensee to submit a statement of explanation as an exhibit if the Licensee has failed to do so.<sup>9</sup>

4. On February 27, 2015, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.<sup>10</sup> Although the Licensee did not report the violations in its renewal application, a Commission review of the Station's online public file revealed that the Station did not file its Children's Television Programming Reports for twelve (12) quarters in a timely manner.<sup>11</sup>

### III. DISCUSSION

5. The Licensee's failure to file electronically the Station's Children's Television Programming Reports in a timely manner for twelve (12) quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.<sup>12</sup> The Licensee's failure to report these violations constitutes an apparent willful and/or repeated violation of Section 73.3514(a).<sup>13</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>14</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>15</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>16</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>17</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>18</sup>

7. The Commission's *Forfeiture Policy Statement* and the note to Section 1.80(b)(8) of the Rules establishes a base forfeiture amount of \$3,000 for failure to file a required form or information.<sup>19</sup> In

<sup>8</sup> FCC Form 303-S available at: <http://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> File No. BRTVA-20150227AAH.

<sup>11</sup> According to Commission records, the Licensee filed its Children's Television Programming Reports late for the following twelve quarters: (1) fourth quarter 2009 (one day late); (2) first quarter 2010 (days late); (3) second quarter 2010 (one day late); (4) third quarter 2010 (days late); (5) third quarter 2012 (over a year late); (6) fourth quarter 2012 (over a year late); (7) first quarter 2013 (over a year late); (8) second quarter 2013 (months late); (9) third quarter 2013 (months late); (10) fourth quarter 2013 (months late); (11) first quarter 2014 (months late); and (12) second quarter 2014 (months late).

<sup>12</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>13</sup> 47 C.F.R. § 73.3514(a).

<sup>14</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

<sup>15</sup> 47 U.S.C. § 312(f)(1).

<sup>16</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>17</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>18</sup> 47 U.S.C. § 312(f)(2).

<sup>19</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)(8), note to paragraph (b)(8), Section I.

determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(E) 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>20</sup>

8. Based on our review of the facts and circumstances before us, we find that a forfeiture in the amount of \$9,000 for failing to file its Children’s Television Programming Reports in a timely manner for twelve (12) quarters is appropriate. Furthermore, we find that a forfeiture in the amount of \$3,000 for the Licensee’s failure to report the aforementioned violations in its renewal application is warranted. Accordingly, we find that the Licensee is apparently liable in the amount of \$12,000 for its willful and/or repeated violations of Section 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.<sup>21</sup>

9. We also find, pursuant to Section 309(k) of the Act,<sup>22</sup> that the Licensee’s apparent violation does not constitute a “serious violation” warranting designation for evidentiary hearing. Moreover, we find no evidence that the violations, when considered together, evidence a pattern of abuse.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission’s Rules, 47 C.F.R. § 1.80, that Triple J Community Broadcasting LLC, the licensee of Station W09DB-D, Williamsport, Pennsylvania, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars (\$12,000) for its apparent willful and/or repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Commission’s Rules, 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission’s Rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release date of this *NAL* Triple J Community Broadcasting LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. In the event that the Licensee wishes to revert W09DB-D to low power television status, the Licensee need only notify us of this election and request a change in status for the station.<sup>23</sup> Should the Licensee elect to revert W09DB-D to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

13. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>24</sup> When completing the FCC Form

<sup>20</sup> 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section II.

<sup>21</sup> 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

<sup>22</sup> 47 U.S.C. § 309(k). Section 309(k) of the Act provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application. If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act, 47 U.S.C. § 309(e)—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.” 47 U.S.C. § 309(k)(2).

<sup>23</sup> *See* 47 C.F.R. § 73.6001(d).

<sup>24</sup> Payment may be made at the Commission’s online Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.<sup>25</sup>

- 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 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.

14. 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: Evan S. Morris, Attorney-Advisor, Room 2-C827, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

15. 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.<sup>26</sup>

16. 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>27</sup>

**17. IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Triple J Community Broadcasting LLC, 1057 East Tenth Street, Hazelton, PA 18201 and to its counsel Peter Gutmann, Womble Carlyle Sandridge and Rice, LLP, 1200 19<sup>th</sup> Street, NW, 5<sup>th</sup> Floor, Washington, D.C. 20036.

#### FEDERAL COMMUNICATIONS COMMISSION

<sup>25</sup> For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>26</sup> See *San Jose State Univ.*, 26 FCC Rcd 5908 (2011) (noting that, “[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....”).

<sup>27</sup> See 47 C.F.R. § 1.1914.

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