

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

In the Matter of)
)
Sorensen Television Systems, Inc.) Facility I.D. No. 29232
Licensee of Station KTGM(TV)) NAL/Acct. No.: 201541420032
Tamuning, Guam) FRN: 0013877352

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 10, 2015

Released: November 10, 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 Sorensen Television Systems, Inc. (the "Licensee"), licensee of Station KTGM(TV), Tamuning, Guam ("KTGM(TV)"): (1) willfully and/or repeated violated Section 73.3526(e)(11)(iii) of the Rules by failing to file with the Commission in a timely manner Children's Television Programming Reports (FCC Form 398) for nine quarters; and (2) willfully and/or repeatedly violated Section 73.3514(a) of the Rules by failing to report those late filings in its 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 Nine Thousand Dollars (\$9,000).

2. We also find that the Licensee apparently willfully and/or repeatedly violated Section 73.3526(b)(2) of the Rules by failing to upload (i.e. file) in the Station's electronic public file ("e-pif") copies of its quarterly TV issues/programs lists for twelve quarters. We hereby admonish the Licensee for this violation of the Commission's rules.

II. BACKGROUND

3. 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 for each calendar quarter reflecting, inter alia, the efforts that it made during that quarter to serve the educational and informational needs of children. Those reports must be prepared and placed in the public file by the 10th day after the close of the reporting quarter. That subsection also requires licensees to file the reports with the Commission and

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 47 C.F.R. § 73.3526(e)(11)(i).

to publicize the existence and location of the reports.⁵ A staff review of the Station's electronic public file revealed that the station failed to file nine Children's Television Programming Reports in a timely manner.⁶

4. Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its public file, on a quarterly basis, a TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issue addressed, the time, date, duration, and title of each program in which the issue was treated. TV issues/programs lists must be placed in the Station's public file by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.⁷

5. In 2012 the Commission adopted Section 73.3526(b)(2) of the Rules, which requires licensees to upload elements of stations' public files to an on-line Commission hosted website (*i.e.*, a Station's "e-pif"). This requirement includes uploading copies of a station's quarterly TV issues/programs lists to its e-pif.⁸ Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station's public file, with limited exception, to their e-pif on a moving forward basis. By February 4, 2013, stations were required to upload to their e-pif, with limited exceptions, documents that were already in their physical public file prior to August 2, 2012.⁹ A staff review of the Station's e-pif revealed that the station failed to timely upload twelve quarterly TV issues/programs lists.¹⁰

6. 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"¹¹ Section IV, Question 3 of the Form 303-S license renewal application requires licensees to certify "that the documentation, required by 47 C.F.R. Section 73.3526 ... has been placed in the station's public inspection file at the appropriate times." In its renewal application filed on September 19, 2014, the

⁵ 47 C.F.R. § 73.3526(e)(11)(iii).

⁶ Licensee filed its Children's Television Programming Reports late for the following quarters: first, second, and fourth quarters of 2007; first, second, and third quarters of 2008; third quarter of 2009; and first and second quarters of 2010.

⁷ 47 C.F.R. § 73.3526(e)(11)(i).

⁸ 47 C.F.R. § 73.3526(b)(2); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report, Second Report and Order*, 27 FCC Rcd 4535 (2012) ("*Second Report and Order*") (requiring broadcast television stations to post their public inspection files, with limited exception, to an online Commission-hosted database).

⁹ See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding station's to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013) (providing a final reminder to broadcasters to upload copies of existing public file documents to their electronic public file); see also *Second Report and Order*, 27 FCC Rcd at 4580, para. 97 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

¹⁰ Licensee untimely uploaded its TV issues/programs lists to its e-pif for the following quarters: first, second, third, and fourth quarters of 2007; first, second, and third quarters of 2008; first and second quarters of 2009; third quarter of 2010; third quarter of 2012; and third quarter of 2013.

¹¹ 47 C.F.R. § 73.3514(a).

Licensee failed to disclose that it filed nine Children's Television Programming Reports late, and it untimely uploaded twelve TV issues/programs lists to its e-pif.

III. DISCUSSION

7. The Licensee's failure to timely file electronically the Station's Children's Television Programming Reports for nine quarters, along with its failure to report the violations, constitutes an apparent willful and/or repeated violation of Sections 73.3526(e)(11)(iii) and 73.4514(a). Furthermore, although Licensee timely prepared and placed hard copies of the Station's TV issues/programs lists in its physical public file, its failure to timely upload copies of the Station's TV issues/programs lists to the Station's e-pif for twelve quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(b)(2) of the Rules.

8. 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."¹² 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.¹³ Furthermore, the Commission has held that any inadvertent errors, oversights or failures to become familiar with Commission requirements are willful violations.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ Section 312(f)(2) of the Act also 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."¹⁷

9. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹⁸ 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)(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

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

¹³ 47 U.S.C. § 312(f)(1); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "Commission interpretations of 'willful' do not require licensee intent to engage in a violation").

¹⁴ *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that "[t]he fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional"); *see also Southern California*, 6 FCC Rcd at 4387 (finding that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁵ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ *See Southern California*, 6 FCC Rcd at 4388.

¹⁷ 47 U.S.C. § 312(f)(2); *see also Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

¹⁸ *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), note to paragraph (b)(8), Section I.

offenses, ability to pay, and such other matters as justice may require.”¹⁹ The Licensee willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file in a timely manner nine Children’s Television Programming Reports and willfully and/or repeatedly violated Section 73.3514(a) of the Rules²⁰ for failing to report those late filings in its renewal application. In this case we propose a total forfeiture in the amount of \$9,000—\$6,000 for the Licensee’s failure to file its Children’s Television Programming Reports in a timely manner and \$3,000 for Licensee’s failure to report those late filings in its renewal application. Furthermore, we admonish the Licensee for its violation of Section 73.3526(b)(2) of the Rules.²¹

10. We also find, pursuant to Section 309(k) of the Act,²² 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

11. 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 Sorensen Television Systems, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Nine Thousand Dollars (\$9,000) for its apparent willful and/or repeated violation of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.

12. **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*, Sorensen Television Systems, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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. Electronic notification of payments should also be sent to Adrienne Denysyk at Adrienne.Denysyk@fcc.gov on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ 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).²⁴

¹⁹ 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) and note to paragraph (b)(8), Section II.

²⁰ 47 C.F.R. § 73.3514(a).

²¹ *See e.g. NPG of Oregon, Inc.*, Notice of Apparent Liability of Forfeiture, 30 FCC Rcd 4782 (2015); *Allen Broadcasting Corp.* Notice of Apparent Liability of Forfeiture, 30 FCC Rcd 4512 (2015).

²² 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).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

- 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. Any request for 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. 20554.²⁵ If there are questions regarding payment procedures, the respective Company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. 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: Adrienne Denysyk, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. In addition, to the extent practicable, a copy of the response, if any, should be sent via e-mail to Adrienne.Denysyk@fcc.gov.

16. 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.²⁶

17. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Sorensen Television Systems, Inc., 111 Chalen Santo Papa, Suite 800, Hagatna, Guam 96910, and to its counsel, Allan G. Moskowitz, Esq., 10845 Tuckahoe Way, North Potomac, MD 20878..

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁵ See 47 C.F.R. § 1.1914.

²⁶ See *San Jose State Univ.*, 26 F.C.C. 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....”).