

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

In the Matter of)
)
Ellis Communications KDOC Licensee, LLC) Facility ID No. 24518
Licensee of Station KDOC-TV) NAL/Acct. No.: 201541420002
Anaheim, California) FRN: 0014866487

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 19, 2015

Released: March 19, 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"), the Commission finds that Ellis Communications KDOC Licensee, LLC (the "Licensee"), licensee of Station KDOC-TV, Anaheim, California (the "Station"), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file timely with the Commission its Children's Television Programming Reports for five (5) quarters and Section 73.3514(a) of the Rules for failing to report these violations in its license renewal application (FCC Form 303-S). 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 six thousand dollars (\$6,000).

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 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 license renewal application requires a licensee to certify that required documentation "has been placed in the public file at the appropriate times." In addition, Section IV, Question 6 of 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 47 C.F.R. § 73.3514(a).

7 FCC Form 303-S available at: http://transition.fcc.gov/Forms/Form303-S/303s.pdf.

license renewal application requires the Licensee to certify that it has filed with the Commission “the Children’s Television Programming Reports (FCC Form 398) as described in 47 C.F.R. Section 73.3526.”⁸

4. On August 1, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.⁹ A Commission review of the Station’s online public file revealed that the Station did not file its Children’s Television Programming Reports for five (5) quarters in a timely manner.¹⁰ Furthermore, the investigation revealed that the Licensee did not report these violations in its license renewal application.

III. DISCUSSION

5. The Licensee apparently failed to file with the Commission the Children’s Television Programming Reports for the Station in a timely manner for five (5) quarters. These late filings constitute apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules. Moreover, the Licensee’s failure to report these violations in its license renewal application constitutes an apparent willful and/or repeated violation of Section 73.3514(a) of the Rules.

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.¹¹ 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.¹² 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,¹³ and the Commission has so interpreted the term in the Section 503(b) context.¹⁴ 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.”¹⁵

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.¹⁶ 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.”¹⁷

⁸ *Id.*

⁹ File No. BRCDDT-201400801ACJ.

¹⁰ The five late filed quarters include: (1) third quarter 2007 (over four months late); (2) fourth quarter 2007 (over one month late); (3) first quarter 2008 (over five months late); (4) second quarter 2008 (over one year late); and (5) fourth quarter 2009 (under one month late).

¹¹ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

¹² 47 U.S.C. § 312(f)(1).

¹³ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁵ 47 U.S.C. § 312(f)(2).

¹⁶ *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.

¹⁷ 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)(8); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section II.

8. Based on our review of the facts and circumstances before us, we find that a forfeiture in the amount of \$3,000 for failing to file its Children's Television Programming Reports in a timely manner for five (5) quarters and a forfeiture in the amount of \$3,000 for the Licensee's failure to report the aforementioned violation in its license renewal application is appropriate. Accordingly, we find that the Licensee is apparently liable in the amount of \$6,000 for its willful and/or repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.¹⁸

IV. ORDERING CLAUSES

9. 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 Ellis Communications KDOC Licensee, LLC, the licensee of Station KDOC-TV, Anaheim, California, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand dollars (\$6,000) 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) .

10. **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*, Ellis Communications KDOC 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.

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. 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).

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: Evan S. Morris, Attorney-Advisor, Room 2-C827, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. 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.¹⁹

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. 20554.²⁰

¹⁸ 47 C.F.R. § 73.3526(e)(11)(iii); 47 C.F.R. § 73.3514(a).

¹⁹ 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....").

²⁰ 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 Ellis Communications KDOC Licensee, LLC, 888 3rd Street, NW, Suite A, Atlanta, GA 30318, and to its counsel, Joseph A. Godles, Esq., Goldberg Godles Wiener & Wright LLP, 1229 19th Street, N.W., Washington, D.C. 20036-2413.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau