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

In the Matter of:	)	
	)	
	)	
Lincoln Broadcasting Company	)	FRN: 0009298266
Licensee of Station KTSF	)	NAL/Acct. No. 201441420044
San Francisco, California	)	Facility ID No. 37511
	)	

FORFEITURE ORDER

Adopted: April 1, 2015 **Released: April 1, 2015**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules ("Rules"),[1] we find that Lincoln Broadcasting Company, licensee of Station KTSF, repeatedly violated Section 73.671 of the Rules by failing to properly identify children's programming via display of the "E/I" symbol on the television screen. Based on our review of the facts and circumstances, we find the Licensee liable for a forfeiture in the amount of three thousand dollars ($3,000).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on January 7, 2015.[2] The NAL notified the Licensee that the station's failure to properly identify children's programming via display of the "E/I" symbol on the television screen constituted an apparent willful or repeated violation of Section 73.671 of the Commission's Rules.[3] The Division concluded that the Licensee was apparently liable for a forfeiture in the amount of $3,000.

3. In a timely response dated February 5, 2015, the Licensee requested that the proposed forfeiture be reduced "in consideration of the licensee's overall history of compliance."[4]

III. DISCUSSION

4. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, 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.[5]

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[1] 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1) & (2).

[2] *Lincoln Broadcasting Company*, Notice of Apparent Liability for Forfeiture, DA 15-16 (Jan. 7, 2015).

[3] 47 C.F.R. § 73.671.

[4] Licensee Response to Notice of Apparent Liability ("Licensee Response") (Feb. 5, 2015).

[5] 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture order for

In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.[6] The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.[7] As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for violating Section 73.671 of the Commission's rules. We ultimately conclude that a reduction of this forfeiture is not warranted in this case.

5. As stated in the NAL, Commission policy establishes a base forfeiture amount of $8,000 for violations of our children's programming rules.[8] In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E) of the Communications Act of 1934, as amended (the "Act"), which include "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." In the NAL, we used our discretion based on these factors to adjust the base forfeiture amount downward, which resulted in a proposed forfeiture amount of $3,000.

6. In its Response, the Licensee does not dispute that it failed to properly identify children's programming via display of the "E/I" symbol on the television screen as described in the NAL. This deficiency, regardless of the cause, constitutes a violation of Commission rules. Licensee requests an "appropriate reduction" of the forfeiture amount pursuant to Section 1.80 of the Rules "in consideration of the licensee's overall history of compliance, which Commission records will confirm."[9] However, in determining the proposed forfeiture amount in the NAL, we already considered the factors in Section 503(b)(2)(E) of the Act, and appropriately adjusted the base forfeiture amount of $8,000 downward to $3,000. We see no reason now to reduce this amount further.

IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Act, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Rules,[10] Lincoln Broadcasting Company SHALL FORFEIT to the United States the sum of three thousand dollars ($3,000) for violating 47 C.F.R. 73.671.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80(h) of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act. The Licensee shall send

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violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.,* Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[6] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[7] *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

[8] *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.

[9] Licensee Response at 1.

[10] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

electronic notification of the payment to Alison Nemeth at alison.nemeth@fcc.gov on the date payment is made.

9. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). 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.

10. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Lincoln Broadcasting Company, A California Limited Partnership, 100 Valley Drive, Brisbane, CA 94005, and to its counsel, Lawrence M. Miller, Schwartz, Woods & Miller, Suite 610, The Lion Building, 1233 20th Street, NW, Washington, DC 20036-7322.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau