

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

In the Matter of	)	
	)	
The Allen Broadcasting Corp.	)	Facility ID No. 65395
Licensee of Station Kbfd-DT	)	NAL/Acct. No.: 20141420008
Honolulu, Hawaii	)	FRN: 0014866487

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 4, 2015**

**Released: May 4, 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”),<sup>1</sup> the Commission finds that The Allen Broadcasting Corporation (the “Licensee”), licensee of Station Kbfd-DT, Honolulu, Hawaii (the “Station”), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules<sup>2</sup> by failing to file timely with the Commission its Children’s Television Programming Reports for twenty (20) quarters. 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). We also find that the Licensee apparently willfully and/or repeatedly violated Section 73.3526(b)(2) of the Rules<sup>3</sup> by failing to upload (i.e. file) in the Station’s electronic public file (“e-pif”) copies of its quarterly TV issues/programs lists that were in the Station’s physical public file prior to August 2, 2012. We hereby admonish the Licensee for this violation of the Commission’s rules.

**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.<sup>4</sup> As set forth in Section 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.<sup>5</sup>

3. 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

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>4</sup> See generally, 47 C.F.R. § 73.3526.

<sup>5</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

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.<sup>6</sup>

4. 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.<sup>7</sup> 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.<sup>8</sup>

5. On September 30, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.<sup>9</sup> Section IV, Question 6 of the 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."<sup>10</sup> The Licensee certified that it did not comply and attached an exhibit. In that exhibit the licensee stated that it failed to file Children's Television Programming Reports for twenty-one (21) quarters in a timely manner.<sup>11</sup> Upon review staff confirmed that the Licensee had in fact filed only twenty (20) reports late.<sup>12</sup> In addition, 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."<sup>13</sup> In response to this question the Licensee disclosed that it failed to upload in a timely manner copies of the Station's TV issues/programs lists that were previously in the Station's physical public file. The Licensee did not upload these public file documents to its e-pif until August 2014, approximately 18 months after the deadline.<sup>14</sup>

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<sup>6</sup> 47 C.F.R. § 73.3526(e)(11)(i).

<sup>7</sup> 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).

<sup>8</sup> 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 stations 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).

<sup>9</sup> File No. BRC DT-20140930AHE ("KBFD-DT Renewal").

<sup>10</sup> FCC Form 303-S available at: <http://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

<sup>11</sup> KBFD-DT Renewal, Exhibit 23.

<sup>12</sup> The following Children's Television Programming Reports were filed between three days and four months late: Q1 2007, Q3 2007, Q3 2008, Q1 2009, Q4 2009, all quarters 2010, all quarters 2011, Q1 2012, Q3 2012, all quarters 2013, and Q1 2014.

<sup>13</sup> *Supra* note 10.

<sup>14</sup> KBFD-DT Renewal, Exhibit 20. The license renewal application was filed with the Commission on September 30, 2014. The Station's TV issues programs lists were all uploaded to the e-pif approximately six (6) weeks prior to the filing of license renewal application.

### III. DISCUSSION

6. The Licensee apparently failed to file with the Commission the Children's Television Programming Reports for the Station in a timely manner for twenty (20) quarters. While the Station did self-report its late filed Children's Television Programming Reports, these late filings still constitute apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules. Furthermore, the Licensee's failure to place in a timely manner copies of the Station's TV issues/programs lists into the Station's e-pif constitutes a violation of Section 73.3526(b)(2) of the Rules.

7. 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>15</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>16</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>17</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>18</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>19</sup>

8. The Commission's *Forfeiture Policy Statement* and the note to Section 1.80(b)(8) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.<sup>20</sup> 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."<sup>21</sup>

9. Based on our review of the facts and circumstances, 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 twenty (20) quarters is appropriate. We find the extent and duration of the violations to be noteworthy when arriving at this forfeiture amount. We also find that an admonition is appropriate for the Licensee's willful and/or repeated violation of Section 73.3526(b)(2) of the Rules for failing to upload to the Station's e-pif in a timely manner copies of the Station's TV issues/programs Reports that were previously located in the Station's physical public file. While these TV issues/programs lists were uploaded to the e-pif approximately 18 months late, the Licensee still placed these documents in the Station's e-pif prior to filing its license renewal application. While this late filing is still a violation of the Rules, the public was still able to undertake a full review of the Station's public file documents and if desired file a petition to deny within the time allotted by Section 73.3516(e) of the Rules.<sup>22</sup> Given these

<sup>15</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

<sup>16</sup> 47 U.S.C. § 312(f)(1).

<sup>17</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>18</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>19</sup> 47 U.S.C. § 312(f)(2).

<sup>20</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.

<sup>21</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)(8), note to paragraph (b)(8), Section II.

<sup>22</sup> *See* 47 C.F.R. § 73.3516(e) (requiring that a petition to deny be filed by the first day of the last full calendar month of the expiring license term). No such petition to deny was received by the Commission.

facts, we do not find the public interest was harmed in a manner that necessitates forfeiture for this violation. Accordingly, we find that the Licensee is apparently liable in the amount of \$9,000 for its willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules<sup>23</sup> and we admonish the Licensee for its violation of Section 73.3526(b)(2) of the Rules.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, that 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, The Allen Broadcasting Corp., licensee of Station KBFD-DT, Honolulu, Hawaii, 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 violations of Section 73.3526(e)(11)(iii) of the Commission's Rules, 47 C.F.R. § 73.3526(e)(11)(iii).

11. IT IS FURTHER ORDERED, that The Allen Broadcasting Corp., the licensee of Station KBFD-DT, Honolulu, Hawaii, is hereby ADMONISHED for its apparent willful and/or repeated violation of Section 73.3526(b)(2) of the Commission's Rules, 47 C.F.R. § 73.3526(b)(2).

12. IT IS FURTHER ORDERED, that 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*, The Allen Broadcasting Corp. 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 Alison Nemeth at [Alison.Nemeth@fcc.gov](mailto:Alison.Nemeth@fcc.gov) on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>24</sup> 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). 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.

<sup>23</sup> 47 C.F.R. § 73.3526(e)(11)(iii); 47 C.F.R. § 73.3514(a).

<sup>24</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>25</sup> 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](mailto:ARINQUIRIES@fcc.gov).

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 The Allen Broadcasting Corp., 1188 Bishop Street, Suite PH. 1, Honolulu, HI 96813, and to its counsel, Kenneth E. Satten, Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>26</sup> 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....”).

<sup>27</sup> See 47 C.F.R. § 1.1914.