

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

In the Matter of	)	
	)	
Univision Salt Lake City LLC	)	Facility I.D. No. 81451
Licensee of Station KUTH-DT	)	NAL/Acct. No.: 201541420004
Provo, UT	)	FRN: 0017777152

**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 Univision Salt Lake City LLC (the “Licensee”), licensee of Station KUTH-DT, Provo, Utah (the “Station”), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii)<sup>2</sup> of the Rules by failing to publicize the existence and location of the Station’s Children’s Television Programming Reports for a period of approximately three years. 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 three thousand dollars (\$3,000).

**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.<sup>3</sup> 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.<sup>4</sup>

3. On June 2, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.<sup>5</sup> In response to Section IV, Question 10 of the Application, the Licensee stated that its standard announcement concerning the existence and location of Children’s Television Programming Reports “apparently did not air for part of the license term, following the termination of traffic services provided by a service provider and a relocation of the Station’s main studio.”<sup>6</sup> According to the Licensee the announcements did not occur from approximately December 2008 through December 2011.<sup>7</sup>

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

<sup>2</sup> 47 C.F.R. § 73.3526.

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

<sup>4</sup> *Id.*

<sup>5</sup> File No. BRC DT-20140602ASP.

<sup>6</sup> *Id.* at Exhibit 27.

<sup>7</sup> *Id.*

### III. DISCUSSION

4. The Licensee apparently failed to publicize the existence and location of the Station's Children's Television Programming Reports for approximately three years, from December 2008 to December 2011. This constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii). While the Licensee has since taken corrective actions to prevent subsequent violations of the children's television rules and policies, the fact that a broadcast station may have implemented a plan to prevent future violations of the Commission's children's television rules and policies does not relieve the licensee of liability for prior violations.<sup>8</sup>

5. 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>9</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>10</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>11</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>12</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>13</sup>

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations.<sup>14</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)(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>15</sup>

7. In this case, the Licensee failed to publicize the Station's Children's Television Programming Reports for approximately three years and based on the facts and circumstances a forfeiture in the amount of \$3,000 is appropriate for this violation. Accordingly, we find that the Licensee is liable for a forfeiture in the amount of \$3,000 for its apparent willful and/or repeated violations of Sections 73.3526(e)(11)(iii) of the Rules.

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<sup>8</sup> See, e.g., *WFTV, Inc. (WFTV-TV)*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6140, 6142 (MB 2010); *WHP Television, L.P. (WHP-TV)*, Letter, 10 FCC Rcd 4979, 4980 (MMB 1995); *International Broadcasting Corp.*, Memorandum Opinion and Order, 19 FCC 2d 793, 794 (1969) (permitting mitigation as an excuse based upon corrective action following a violation would "tend to encourage remedial rather than preventive action").

<sup>9</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

<sup>10</sup> 47 U.S.C. § 312(f)(1); See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California*") *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>11</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>12</sup> See *Southern California*, 6 FCC Rcd at 4388.

<sup>13</sup> 47 U.S.C. § 312(f)(2); see *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

<sup>14</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) and note to paragraph (b)(8), Section I.

<sup>15</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) and note to paragraph (b)(8), Section II.

#### IV. ORDERING CLAUSES

8. 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 Univision Salt Lake City LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful and/or repeated violation of Sections 73.3526(e)(11)(iii) of the Commission's Rules.

9. **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*, Univision Salt Lake City LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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>16</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).<sup>17</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.

11. 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 Morris, Attorney-Adviser, Room 2-C827, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A copy should also be sent by email to [evan.morris@fcc.gov](mailto:evan.morris@fcc.gov)

12. 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

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<sup>16</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>17</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).

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>18</sup>

13. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Chief, Financial Officer—Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>19</sup> 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](mailto:ARINQUIRIES@fcc.gov).

**14. IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Univision Salt Lake City LLC, 5999 Center Drive, Los Angeles, CA 90045, and to its counsel, Even R. Pogoriler, Covington & Burling LLP, 1201 Pennsylvania Avenue NW, Washington, D.C. 20004-2401.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>18</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>19</sup> See 47 C.F.R. § 1.1914.