

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

In the Matter of )
Northern Broadcasting Company, Inc. ) Facility ID No. 450
Licensee of Station WNCE-CD ) NAL/Acct. No.: 201541420018
Glens Falls, NY ) FRN: 0006053771

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 21, 2015

Released: July 21, 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 Northern Broadcasting Company, Inc. (the "Licensee"), licensee of Station WNCE-CD, Glens Falls, New York, (the "Station"), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file with the Commission in a timely manner its Children's Television Programming Reports for thirteen (13) 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 fifteen thousand dollars (\$15,000).

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, place them in their public file by the tenth day of the succeeding calendar quarter, and publicize the existence and location of the reports.

3. On January 20, 2015, the Licensee filed its license renewal application (FCC Form 303-S) for the Station. A Commission review of the Station's online public file revealed that the Station did not file its Children's Television Programming Reports for thirteen (13) quarters in a timely manner.

1 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

2 47 C.F.R. § 73.3526(e)(11)(iii).

3 See generally, 47 C.F.R. § 73.3526.

4 47 C.F.R. § 73.3526(e)(11)(iii).

5 Application for Renewal of Broadcast Station License, File No. BRDTA-20150120AJE ("WNCE-CD Renewal"). We note that 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 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." In response to

(continued....)

### III. DISCUSSION

4. The Licensee's failure to file electronically the Station's Children's Television Programming Reports in a timely manner for thirteen (13) quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.

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>7</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>8</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>9</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>10</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>11</sup>

6. 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.<sup>12</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>13</sup>

7. Based on our review of the facts and circumstances before us, we find that the Licensee failed to file its Children's Television Programming Reports in a timely manner for thirteen (13) quarters.

(Continued from previous page) \_\_\_\_\_

Section IV, Question 3 the Licensee certified that it did not place documents into its public file at appropriate times. However, in response to Section IV, Question 6 the Licensee stated that it had filed with the Commission the Children's Programming Reports as described in Section 73.3526. In other cases, the Division has found that failure to properly disclose a Station's violation in its license renewal application is a violation of Section 73.3514(a). 47 C.F.R. § 73.3514(a). Although the Licensee should have also certified "No" in response to Section IV, Question 6, we find that given its response to Section IV, Question 3 the Licensee sufficiently disclosed its apparent violation of Section 73.3526(e)(11)(iii), 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>6</sup> According to Commission records, the Licensee filed its Children's Television Programming Reports late for the following thirteen quarters: (1) second quarter 2008 (months late); (2) third quarter 2008 (years late); (3) fourth quarter 2008 (months late); (4) first quarter 2009 (years late); and (5) second quarter 2009 (over a year late); (6) third quarter 2009 (over a year late); (7) fourth quarter 2009 (over a year late); (8) first quarter 2010 (months late); (9) second quarter 2010 (months late); (10) third quarter 2010 (months late); (11) fourth quarter 2010 (months late); (12) third quarter 2011 (months late); (13) fourth quarter 2012 (a day late).

<sup>7</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>10</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>11</sup> 47 U.S.C. § 312(f)(2).

<sup>12</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>13</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); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section II.

Accordingly, we find that the Licensee is liable in the amount of fifteen thousand dollars (\$15,000) for its willful and/or repeated violations of Sections 73.3526(e)(11)(iii) of the Rules.<sup>14</sup>

8. We also find, pursuant to Section 309(k) of the Act,<sup>15</sup> 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

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 Northern Broadcasting Company, Inc., the licensee of Station WNCE-CD, Glens Falls, New York, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of fifteen thousand dollars (\$15,000) 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).

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*, Northern Broadcasting Company, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 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). Below are additional instructions you should follow based on the form of payment you select:<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

<sup>14</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>15</sup> 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).

<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> For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

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.

12. 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.

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.<sup>18</sup>

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.<sup>19</sup>

15. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Northern Broadcasting, Inc., 221 Glen Street, Glens Falls, NY 12801-3506, and to its counsel, Peter Tannenwald, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209-3801.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

---

<sup>18</sup> See *San Jose State Univ.*, 26 FCC 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.