

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

In the Matter of
NBC Telemundo License LLC
Licensee of Station KHRR(TV)
Tucson, Arizona
Facility ID No. 30601
NAL/Acct. No. 201641420009
FRN: 0019509470

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 11, 2016

Released: April 11, 2016

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 (Act), and Section 1.80 of the Commission's Rules (Rules), we find that NBC Telemundo License LLC (Licensee), licensee of Station KHRR(TV), Tucson, AZ (Station), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to publicize the existence and location of the Station's Children's Television Programming Reports. 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 two thousand dollars (\$2,000).

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. On June 2, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station. In response to Section IV, Question 10 of the Application, the Licensee stated that announcements concerning the existence and location of Children's Television Programming Reports were "inadvertently dropped" from the broadcast schedule and not aired in first quarter 2010 and for all of

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. § 73.3526, generally.

4 47 C.F.R. § 73.3526(e)(11)(iii)

5 File No. BRC DT-20140602AZB (KHRR Renewal).

2012. The Station resumed broadcasting the announcements at the start of 2013<sup>6</sup> and a process has been implanted to ensure the announcements occur in the future.<sup>7</sup>

### III. DISCUSSION

4. The Licensee apparently failed to publicize the existence and location of the Station's Children's Television Programming Reports for five (5) quarters. This constitutes apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules.<sup>8</sup> The Licensee may have since taken corrective actions to prevent subsequent violations of the children's television rules and policies; however, the Commission has found that the fact that a broadcast station may have implemented a plan to prevent future violations does not relieve the licensee of liability for prior violations.<sup>9</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 and/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>10</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>11</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>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</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>14</sup>

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$8,000 for violations of the Commission's children's requirements.<sup>15</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>16</sup> Based on our review of the facts and circumstances, including the duration of the violation, we find that

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<sup>6</sup> See e.g., Children's Television Programming Report of KHRR, Tucson, AZ, first quarter 2013 at Question 15 (filed Apr. 9, 2013) available at [http://data.fcc.gov/mediabureau/v01/tv/application/KidVid\\_141084.html](http://data.fcc.gov/mediabureau/v01/tv/application/KidVid_141084.html).

<sup>7</sup> KHRR Renewal, Exhibit 27.

<sup>8</sup> 47 C.F.R. § 73.3526(e)(11)(iii); see e.g., *Barrington Peoria License LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15478 (Vid. Div. 2013).

<sup>9</sup> See e.g., *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>10</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 47 U.S.C. § 312(f)(2); see also *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

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

<sup>16</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.

the Licensee is liable for a forfeiture in the amount of \$2,000 for its failure to publicize the existence and location of the Station's Children's Television Programming Reports for five quarters. Accordingly, we find that the Licensee is liable for a forfeiture in the amount of \$2,000 for its apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules.<sup>17</sup>

#### IV. ORDERING CLAUSES

7. 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 NBC Telemundo License LLC, licensee of Station KHRR(TV), Tucson, Arizona, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of two thousand dollars (\$2,000) 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).

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within thirty (30) days of the release date of this NAL, NBC Telemundo License LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.<sup>18</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>19</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.

10. 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, Video Division, Media Bureau, Room 2-C827 and MUST INCLUDE the NAL/Acct. No. referenced above.

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<sup>17</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>18</sup> Payment may be made at the Commission's online Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>19</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).

11. 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>20</sup>

12. 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>21</sup>

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to NBC Telemundo License LLC, 300 New Jersey Avenue, NW, Suite 700, Washington DC 20001, Attention: Margaret L. Tobey.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>20</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>21</sup> See 47 C.F.R. § 1.1914.