

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

In the Matter of)	
)	
WYDC, Inc.)	Facility ID No. 62219
Licensee of Station WYDC(TV))	NAL/Acct. No.: 201641420011
Corning, New York)	FRN: 0003778511

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 11, 2016

Released: May 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),¹ we find that WYDC, Inc. (Licensee), licensee of Station WYDC(TV), Corning, New York (Station), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules² by failing to file with the Commission in a timely manner its Children's Television Programming Reports for three (3) quarters. Based upon our review of the facts and circumstances, 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.³ 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. Licensees must file the reports with the Commission and place them in their public file by the tenth day of the succeeding calendar quarter.⁴ That subsection also requires that Licensee's publicize the existence and location of the reports.⁵

3. On January 30, 2015, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.⁶ The Station disclosed in its application that it failed to file 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 Starting March 31, 2016, broadcasters were required to file their quarterly Children's Television Programming Reports using the Commission's Licensing and Management System (LMS). See *All Children's Television Programming Reports Must Be Filed Using the Commission's Licensing and Management System*, Public Notice, 31 FCC Rcd 1104 (MB 2016). Prior to that date, all quarterly Children's Television Programming Reports were filed using the Commission's KidVid Online Filing System.

⁵ 47 C.F.R. § 73.3526(e)(11)(iii).

⁶ File No. BRCDDT-20150130ABA (WYCD Renewal).

Children's Television Programming Reports for three (3) quarters.⁷ The Licensee argues that the late filings were all caused by "technical difficulties in uploading the reports to the Commission's website, which [] were solely the fault of the Commission's server."⁸ The Licensee goes on the state that it has implemented new processes to ensure that all reports are posted to the Station's public file in a timely manner.⁹

III. DISCUSSION

4. The Licensee's failure to electronically file with the Commission in a timely manner the Station's Children's Television Programming Reports for three (3) quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.¹⁰ The Licensee contends that the reports were filed late as the result of difficulties involving the Commission's computer servers. The Division is unaware of any server issues during the quarters at issue that would have prevented the Licensee from timely filing the reports. Furthermore, the Licensee does not provide any evidence in support of its claim. Although the Licensee has taken steps to prevent future violations of a similar nature, this does not relieve the Station from liability for violations that have already occurred.¹¹

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.¹² 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section 503(b) context.¹⁵ 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."¹⁶

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.¹⁷ 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,

⁷ According to the Licensee and as verified by staff, the Children's Television Programming Reports for the following three quarters were filed late: (1) first quarter 2012 (months late); (2) first quarter 2013 (months late); (3) third quarter 2013 (months late). WYCD Renewal, Exhibit 20.

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

¹¹ *See 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").

¹² 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁶ 47 U.S.C. § 312(f)(2).

¹⁷ *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.

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.’’¹⁸ 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 three (3) quarters. Accordingly, we find that the Licensee is apparently liable in the amount of three thousand dollars (\$3,000) for its apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules.¹⁹

7. We also find, pursuant to Section 309(k) of the Act,²⁰ 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. Further, we find that the Station has served the public interest, convenience, and necessity during the subject license term.

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 WYDC, Inc., the licensee of Station WYDC(TV), Corning, New York, 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 violations of Section 73.3526(e)(11)(iii) of the Commission’s Rules, 47 C.F.R. § 73.3526(e)(11)(iii).

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* WYDC, Inc., 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. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission’s Fee Filer website.²¹ 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:²²

- 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,

¹⁸ 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.

¹⁹ 47 C.F.R. § 73.3526(e)(11)(iii).

²⁰ 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).

²¹ 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>.

²² 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.

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 12th 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.

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 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.²³

13. 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. 20554.²⁴

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to WYDC, Inc. 33 East Market Street, Corning, NY 14830 and to its counsel, Mark Denbo, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, NW, Suite 301, Washington, DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²³ 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....”).

²⁴ See 47 C.F.R. § 1.1914.