

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

In the Matter of
Minority Television Project
Licensee of Station KMTP-TV
San Francisco, CA
File No. BREDT-20140731AAG
NAL Acct. No.: 201741420004
Facility ID No.: 43095
FRN: 0008886293

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 11, 2017

Released: April 11, 2017

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 Federal Communications Commission’s rules (Rules),1 we find that Minority Television Project (Licensee), licensee of noncommercial educational (NCE) television station KMTP-TV, San Francisco, California (Station), apparently willfully and/or repeatedly violated: (1) Section 73.3527 of the Rules by failing to place in the Station’s electronic public file (e-pif) in a timely manner required public file documents; (2) Section 73.3514(a) of the Rules for failing to disclose its failure in its license renewal application; and (3) Section 1.65 of the Rules, which requires an applicant to maintain the accuracy of a pending application. 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 Twenty Thousand Dollars (\$20,000).

II. BACKGROUND

2. On January 31, 2014, the Licensee filed the station’s license renewal application. Shortly after filing, a staff review of the Station’s e-pif revealed that the Licensee had failed to timely place in its e-pif copies of its donor lists for the entire prior license term and TV issues/programs lists from first quarter of 2007 through first quarter of 2016. After being contacted by Division staff, the Licensee uploaded all missing TV issues/programs lists in December of 2015. In May 2016, Division staff discovered that the Licensee had failed to upload its TV issues/program list for the first quarter of 2016 and also not placed a copy of copies of its most recent donor lists into the Station’s e-pif. Staff again requested that all missing public file documents be uploaded to the Station’s e-pif and an amendment to its license renewal application be filed disclosing its public file violations. The Licensee complied with these staff requests by uploading missing public file documents in May 2016. On June 6, 2016, the Licensee amended its license renewal application, stating that while copies of its TV issues/programs lists were not uploaded to its e-pif in a timely manner “all lists were prepared and placed in the stations physical public file in a timely manner and were available for inspection by the public as required.”2 The licensee again failed to timely upload copies of its quarterly TV issues/programs lists for second, third

1 47 U.S.C. § 503(b); 47 CFR § 1.80.

2 KMTP-TV Renewal at Exhibit 20.

and fourth quarters of 2016.³ It has not provided any explanation in its pending license renewal application for these continued violations.

3. Section 73.3527 of the Rules requires each NCE licensee to maintain a public file containing information related to its station's operations.⁴ Section 73.3527(e)(8) 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, as well as the time, date, duration, and title of each program that addressed the issue. A licensee must place a copy of the Station's quarterly TV/issue programs list in its public file by the tenth day of the succeeding calendar quarter. Copies of these public file documents must be retained until final action on the station's next license renewal application.⁵ In addition, Section 73.3527(e)(9) requires NCE stations to place a list of donors supporting specific programs into their public file. Donor lists must be retained for two years from the date of broadcast of the specific program supported.⁶

4. In 2012, the Commission adopted section 73.3527(b) of the Rules, which requires licensees to upload elements of Stations' physical public file to an on-line Commission hosted website (*i.e.*, a Station's e-pif).⁷ The Commission's e-pif requirement was implemented as a means to modernize the way that television broadcasters "inform the public about how they are serving their communities...."⁸ 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 going-forward basis. By February 4, 2013, stations were required with limited exception to upload to their e-pif those documents that were already in their physical public file prior to August 2, 2012.⁹ Under section 73.3527(b)(2) of the Rules, copies of a Station's TV issues/programs lists, among other items, were required to have been placed in the Station's e-pif.

5. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed"¹⁰ Section IV, Question 3 of the Form 303-S license renewal application requires licensees to certify "that the documentation, required by 47 C.F.R. Section 73.3527... has been placed in the station's public inspection

³ The Licensee filed its second, third and fourth quarter of 2016 TV issues/programs lists three months and six days, six days, and ten days late, respectively.

⁴ 47 CFR § 73.3527.

⁵ 47 CFR § 73.3527(e)(8).

⁶ 47 CFR § 73.3527(e)(9).

⁷ 47 CFR 47 CFR § 73.3527(b); *see 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 R&O*") (requiring broadcast television stations to post their public inspection files, with limited exceptions, to an online Commission-hosted database).

⁸ *Second R&O*, 27 FCC Rcd at 4536.

⁹ *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 remainder to broadcasters to upload copies of existing public file documents to their electronic public file); *see Second R&O*, 27 FCC Rcd at 4580 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

¹⁰ 47 CFR § 73.3514(a).

file at the appropriate times.”¹¹ Furthermore, Section 1.65(a) of the Rules requires every applicant to maintain the accuracy and completeness of a pending application and absent good cause, amend such applications within 30-days.¹² As noted above, the Licensee failed to not only disclose that it did not properly place in the Station’s e-pif copies of its TV issues/programs lists and donor lists until requested to do so by Division staff, but after amending its application it failed to report subsequent violations.

III. DISCUSSION

6. 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.¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ 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.”¹⁷

7. The Commission’s *Forfeiture Policy Statement* and the note to Section 1.80(b)(8) of the Rules establishes a base forfeiture amount of \$10,000 for failure to maintain a station’s public file and \$3,000 for failing to provide required information.¹⁸ 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.”¹⁹ Based on our review of the facts and circumstances, we find that a proposed forfeiture in the amount of \$14,000 for the Station’s apparent public file violations is warranted, especially in light of the continued nature of the Licensee’s violations by failing to upload copies of its TV issues/program lists for all of 2016 even after having been required to correct the exact same public file violation.

8. We also find a proposed forfeiture in the amount of \$3,000 is warranted for the Licensee’s failure to disclose its violations in its license renewal application until requested by staff to do so and an additional \$3,000 for the Licensee’s failure to subsequently maintain the accuracy of its license renewal application. Accordingly, we propose a total forfeiture in the amount of \$20,000 for the

¹¹ FCC Form 303-S available at: <https://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

¹² 47 CFR § 1.65(a).

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

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ *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.

¹⁹ 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.

Licensee's apparent willful and/or repeated violations of Sections 73.3527(b)(2), (e)(8), (e)(9), 73.3514(a) and 1.65(a) of the Rules.²⁰

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 Minority Television Project, licensee of Station KMTP-TV, San Francisco, California, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Twenty Thousand Dollars (\$20,000) for its apparent willful and/or repeated violations of Sections 73.3527(b)(2), (e)(8), (e)(9), 73.3514(a) and 1.65(a) of the Rules, 47 C.F.R. §§ 73.3527(b)(2), (e)(8), (e)(9), 73.3514(a) and 1.65(a).

10. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release date of this *NAL*, Minority Television Project, **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. 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).²² The Licensee shall send electronic notification of payment to Evan Morris, Attorney-Advisor, Video Division, Media Bureau at evan.morris@fcc.gov on the date said payment is made.

- 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.

12. 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 Morris, Attorney-Advisor, Video Division, Media Bureau, Room 2-C827, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above.

²⁰ 47 C.F.R. §§ 73.3527(b)(2), (e)(8), (e)(9), 73.3514(a) and 1.65(a).

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 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.

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.²³

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. 20554.²⁴

15. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested to, Minority Television Project, C/O RWDHC, 1201 Connecticut Avenue, NW, Suite 200, Washington, DC, Attention: James L. Winston, and to its counsel James L. Winston via electronic mail at jwinston@rwdhc.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²³ 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....”).

²⁴ See 47 C.F.R. § 1.1914.