

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

In the Matter of
Pollack/Belz Broadcasting Company, LLC
Licensee of Station KIEM-TV
Eureka, California
File No. BRC DT-20140801AKA
NAL Acct. No.: 201741420005
Facility ID No.: 53382
FRN: 0005416649

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 24, 2017

Released: May 24, 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 Pollack/Belz Broadcasting Company, LLC (Licensee), licensee of Station KIEM-TV, Eureka, California, apparently willfully and/or repeatedly violated (1) Section 73.3526 of the Rules by failing to place in the Station’s electronic public file (e-pif) in a timely manner required public file documents and (2) Section 73.3514(a) of the Rules for failing to fully disclose its violations in its license renewal 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 Six Thousand Dollars (\$6,000).

II. BACKGROUND

2. On August 1, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.2 Staff conducted an initial evaluation of the license renewal application shortly after it was filed, however it was unable to proceed with processing because the Station was red lighted as the result of outstanding regulatory fees. On February 17, 2017, staff received notice that the red light hold had been lifted and it could proceed with processing the application. A staff review of the Station’s e-pif has revealed that the Licensee failed to place required public file documents in the Station’s e-pif in a timely manner, including: (1) TV issues/programs lists for all of 2013 and second, third, and fourth quarters of 2016 and (2) commercial limit certifications for all of 2013, third and fourth quarters of 2015, and second, third, fourth quarters of 2016. On April 25, 2017, the Licensee amended its license renewal application disclosing its failure to timely place in the Station’s e-pif copies of its TV issues/programs lists and commercial limit certifications for the last three quarters of 2016. The Licensee states that its failure to timely upload copies of its public file documents in the final three quarter of 2016 was the result of a “software glitch in the station’s scanner.”3 It did not provide any explanation regarding its other late filed public file documents in 2013 and 2015.

3. Section 73.3526 of the Rules requires each commercial television licensee to maintain a public file containing information related to a station’s operations. Section 73.3526(e)(11)(i) requires every commercial television licensee to place in its public file, on a quarterly basis, a TV issues/programs

1 47 U.S.C. § 503(b); 47 CFR § 1.80.

2 File No. BRC DT-20140801AKA (KIEM-TV Renewal).

3 Id. at Exhibit 24

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.⁴ Section 73.3526(e)(11)(ii) requires each such licensee to prepare and place in its public inspection file, on a quarterly basis, records sufficient to substantiate the Station's certification, in its license renewal application, of compliance with the commercial limits on children's programming.⁵ Copies of these public file documents must be retained until final action on the station's next license renewal application.

4. In 2012, the Commission adopted section 73.3526(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).⁶ 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...."⁷ 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. Under section 73.3526(b)(2) of the Rules, copies of a Station's TV issues/programs lists is required to be 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"⁸ 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 73.3526... has been placed in the station's public inspection file at the appropriate times."⁹ Although the Station's amended license renewal application disclosed and provided explanation for its failure to file required public file documents in the last three quarter of 2016, as previously noted it failed to provide any explanation for its other late filed public file documents in 2013 and 2015.

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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with

⁴ 47 CFR § 73.3526(e)(11)(i).

⁵ 47 CFR § 73.3526(e)(11)(ii).

⁶ 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).

⁷ *Second R&O*, 27 FCC Rcd at 4536.

⁸ 47 CFR § 73.3514(a).

⁹ FCC Form 303-S available at: <https://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

¹⁰ 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

¹¹ 47 U.S.C. § 312(f)(1).

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

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

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.”¹⁴

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 file required information.¹⁵ 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.”¹⁶

8. Based on our review of the facts and circumstances, we find that a forfeiture in the amount of \$3,000 is appropriate for the licensee’s failure to timely upload required public file documents to the Station’s e-pif. The Licensee admits that its failure to upload required public file documents was the result of its own “software glitch,” and not the Commission’s e-pif system. It is a licensee’s responsibility to confirm that all public file documents uploaded to a Station’s e-pif are properly uploaded. Furthermore, we do not find the Licensee’s claim that it has “consistently submitted all quarterly filings to the FCC and uploaded all required items to the Station’s on-line public file on the FCC’s website for many years” to be persuasive given the facts. While it is true that the Licensee has prepared and uploaded to the Station’s e-pif all required public file documents, the Licensee’s statement ignores that the Commission’s public file rules also require that documents be placed in a station’s e-pif in a timely manner. In addition, we find that a forfeiture in the amount of \$3,000 is appropriate for the Licensee’s failure to fully disclose its violations on its license renewal application. While the Licensee amended its license renewal application to reflect that it failed to place in the Station’s e-pif certain public file documents during the last three quarters of 2016, it still has failed to disclose and address its other late filings in 2013 and 2015. Accordingly, we propose a total forfeiture in the amount of \$6,000 for the Licensee’s apparent willful and/or repeated violations of Sections 73.3526(b)(2), 73.3526(e)(11)(i),(ii), and 73.3514(a) of the Rules.¹⁷

9. We also find, pursuant to Section 309(k) of the Act,¹⁸ that the Licensee’s apparent violations do not constitute “serious violation[s]” or when considered together, demonstrate a pattern of abuse warranting designation of the license renewal application for evidentiary hearing. During the subject license term we conclude that the Station has served the public interest, convenience, and necessity.

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ 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 CFR § 1.80(b)(8), note to paragraph (b)(8), Section I.

¹⁶ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(8); 47 CFR § 1.80(b)(8), note to paragraph (b)(8), Section II.

¹⁷ 47 CFR §§ 73.3526(b)(2), 73.3526(e)(11)(i),(ii), and 73.3526(b)(2).

¹⁸ 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).

IV. ORDERING CLAUSES

10. 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 CFR § 1.80, that Cranston Acquisition, LLC, licensee of Station KIEM-TV, Eureka, CA, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Six Thousand Dollars (\$6,000) for its apparent willful and repeated violations of Sections 73.3526(b)(2), 73.3526(e)(11)(i),(ii), and 73.3514(a) of the Rules, 47 CFR §§ 73.3526(b)(2), 73.3526(e)(11)(i),(ii), and 73.3526(b)(2).

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Rules, 47 CFR § 1.80, that within thirty (30) days of the release date of this *NAL*, Pollack/Belz Broadcasting Company, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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.¹⁹ 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).²⁰

- 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.

13. 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.

14. 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

¹⁹ 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>.

²⁰ 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.

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.²¹

15. 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. 20554.²²

16. **IT IS FURTHER ORDERED THAT** copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Pollack/Belz Broadcasting Company, LLC, 5500 Poplar Avenue, Suite 1, Memphis, TN, 38119, and to its counsel, Barry D. Wood, Wood, Martin & Hardy, P.C., 3300 Fairfax Drive, Suite 202, Arlington, VA 22201-4400.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²¹ 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....”).

²² See 47 CFR § 1.1914.