

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

In the Matter of )
)
Townsquare Media of El Paso, Inc. ) File No.: EB-IHD-17-00024336
) NAL/Acct. No.: 202032080030
Licensee of Station KSII (FM), El Paso, TX ) FRN: 0010632628

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 8, 2020

Released: July 8, 2020

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Broadcast stations conduct on-air contests to engage and entertain their listeners and/or viewers, and to promote the stations and their sponsors. When broadcast stations fail to conduct contests as announced, however, their audiences are misled. The Federal Communications Commission (FCC or Commission) has long enforced rules to prohibit stations from deceiving their audiences by failing to fully describe the material terms of contests, or by not conducting contests in accordance with the announced contest rules. Here, we find that Townsquare Media of El Paso, Inc. (Townsquare), licensee of KSII(FM) (KSII or Station), El Paso, Texas, apparently violated the Commission’s rules when it failed to timely award a contest prize, thereby not conducting the contest substantially as announced or advertised.1 Therefore, we propose a penalty of \$6,000 against Townsquare for its apparent violation of the Commission’s rules. Our action today advances the Commission’s longstanding goal of protecting the public from being deceived by broadcast contests.

II. BACKGROUND

2. Legal Background. Section 73.1216 of the Commission’s rules (the Contest Rule) requires a licensee to “fully and accurately disclose the material terms” of a contest it broadcasts or advertises, and conduct the contest “substantially as announced and advertised.”2 Although the Commission in 2015 updated the Contest Rule to permit broadcast licensees to disclose material contest terms either by broadcasting those terms or making them available in writing on a publicly accessible Internet website, it at the same time affirmed the core principles of the Contest Rule, including the requirement that contests be conducted substantially as announced or advertised.3 Contest prizes must be

1 Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, 72 Stat. 384 (codified as amended at 15 U.S.C. §§ 631 et seq. (2010))) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

2 47 CFR § 73.1216(a); 2015 Section 73.1216 Report and Order, at 10468-69, para. 3 (updating rule to permit broadcasters to comply with contest disclosure requirements by either broadcasting material contest terms or making them available in writing on a publicly available Internet website but also affirming the Rule’s core principles).

3 47 CFR § 73.1216; 2015 Contest Rule Report and Order, 30 FCC Rcd at 10468-69, paras. 1, 3.

awarded promptly, and an “[u]nreasonable delay in awarding prizes, . . . , is a failure to conduct the contest substantially as announced.”<sup>4</sup>

3. *Factual Background.* KSII is licensed to Townsquare. Townsquare is an indirect subsidiary of Townsquare Media, Inc., the third largest owner of radio stations in the U.S. with 321 radio stations principally focused on small and mid-sized markets.<sup>5</sup> On March 24, 2017, the Commission received a complaint alleging that Townsquare failed to timely award a prize of concert tickets to the winner of a contest broadcast on KSII.<sup>6</sup> Specifically, the Complainant alleged that on November 22, 2016, he was the winning caller during a contest aired on KSII for Elton John concert tickets (Contest), but despite repeatedly calling the Station to attempt to claim the prize, Townsquare failed to award him the tickets.<sup>7</sup> The Complainant states that when he won the contest, a Station employee took his information but informed him that the tickets were not yet available and instructed him to call back “after the new year.”<sup>8</sup> The Complainant states that he again called the Station in January and February, but was told that the tickets still were not available and that the Station would contact him when they were.<sup>9</sup> The Complainant reports that he called about the tickets on March 6, 2017, and a Station employee told him that the Station would contact him about the matter on March 7, 2017. As of March 24, 2017, the Complainant had not been contacted about the prize, and therefore filed the Complaint.<sup>10</sup> The Complainant stated that he “feel[s] . . . played and deceived.”<sup>11</sup>

4. On July 6, 2017, the Enforcement Bureau’s Investigations and Hearings Division issued a Letter of Inquiry (LOI) to Townsquare directing it to submit information and documents related to the contest.<sup>12</sup> In its LOI Response, Townsquare acknowledged it aired the Contest on KSII on November 22, 2016.<sup>13</sup> According to Townsquare, its standard contest rules applied to the Contest, and those rules were

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<sup>4</sup> *Saga Communications of New England, L.L.C.*, Forfeiture Order, 24 FCC Rcd 11934, 11937, para. 7 (EB 2009) quoting *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Docket No. 20500, Notice of Proposed Rule Making, 53 FCC 2d 934, 942, Answer to Question 27, Contest Prizes (1975) (*Saga Forfeiture Order*), *recons. denied*, Memorandum Opinion and Order, 25 FCC Rcd 3289, 3290-91, para. 5 (EB 2010), *review denied*, Order on Review, 26 FCC Rcd 11678, 11681, para. 8 (2011) (denying review, affirming a \$4,000 forfeiture, and concluding that requirement to award prizes in a timely manner is implicit to the conduct of a fair contest), *settled sub nom. United States v. Saga Communications of New England, LLC*, Settlement and Dismissal Agreement and Stipulated Order of Dismissal with Prejudice, Civil Action No. 10-12407 (E.D. Mich. Apr. 4, 2012). The Commission’s pronouncement concerning the prompt award of contest prizes was left unchanged in the recent update of section 73.1216. *Saga Forfeiture Order*, 24 FCC Rcd at 11937, para. 6 & n.28. See *Amendment of Part 73 of the Commission’s Rules Relating to Licensee-Conducted Contests*, Report and Order, 60 FCC 2d 1072, 1073-74 (1976).

<sup>5</sup> Townsquare Media, Inc., <https://www.townsquaremedia.com/local-media/overview> (last visited July 7, 2020); Townsquare Media, Inc., Annual Report at Part I, 1 (Form 10-K)(Mar. 12, 2019).

<sup>6</sup> Complaint, No. 1523744-1 (Mar. 24, 2017) (on file in EB-IHD-17-00024366) (Complaint).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Letter of Inquiry from Matthew L. Conaty, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Steven Price, CEO & President, Townsquare Media of El Paso, Inc. (July 6, 2017) (on file in EB-IHD-17-00024336) (LOI).

<sup>13</sup> Letter of Inquiry Response from Howard M. Liberman, Esq. and Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, counsel to Townsquare Media of El Paso, Inc., to Guy Benson, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Aug. 14, 2017) (on file in EB-IHD-17-00024336). Townsquare requested confidential treatment of certain information and documents submitted in its LOI Response, and

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announced in a recorded promotion aired on the Station three times per day during the Contest and were available on KSII's website.<sup>14</sup> Townsquare also states that the Complainant, as the ninth caller on November 22, 2016, won a pair of tickets to a March 23, 2017 Elton John concert.<sup>15</sup> Townsquare admits that "it has no record that it provided the concert tickets to the [C]omplainant and does not otherwise dispute the factual allegations [in the Complaint]."<sup>16</sup> Townsquare also asserts that the failure to award the tickets to the Complainant was due to a breakdown in communications and procedure at the Station.<sup>17</sup> Specifically, although Station personnel do not recall the Complainant's inquiries about the availability of the prize, Townsquare acknowledges that "in any event no one from the [S]tation followed up" with the Complainant concerning his prize.<sup>18</sup>

5. Townsquare asserts that the failure to award the tickets was due to "human error," but not a willful intent to defraud or deceive, "as evidenced by the fact that the four other...winners received their prizes."<sup>19</sup> Townsquare further asserts that it was unaware of any issue with the Contest until it received our LOI, and that thereafter, it contacted the Complainant "with offers to make amends for the Station's inadvertent error in the form of free tickets to a performance of Elton John in Las Vegas, along with complimentary airline and hotel accommodations."<sup>20</sup> Townsquare also states that on August 10, 2017, it distributed to all employees an e-mail summarizing the Station's contest execution and fulfillment guidelines to ensure that its contests are conducted according to the announced contest rules.<sup>21</sup>

### III. DISCUSSION

#### A. Townsquare Apparently Violated the Contest Rule

6. We find that Townsquare's failure to award the Elton John tickets to the Complainant apparently violated section 73.1216. Although the Station's Contest rules do not identify a deadline by which a contestant must claim a prize or specify a time by which the Station must deliver a promised prize, there was an implicit deadline established because the prize was a pair of tickets for a concert on an announced date. Thus, Townsquare's admitted failure to award the tickets to Complainant prior to the concert constitutes an unreasonable delay in awarding the prize, which is a failure to conduct the Contest substantially as announced, in apparent violation of the Contest Rule.<sup>22</sup>

7. Moreover, the Licensee's actions, taken after receiving our LOI, to provide the Complainant tickets to a different Elton John concert in Las Vegas, as well as airfare and hotel

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subsequently amended its request. E-mail from Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, counsel to Townsquare Media of El Paso, Inc. to Christopher Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, *et al* (June 12, 2019, 17:34 EDT) (the LOI Response and amended LOI Response, collectively, LOI Response). This NAL does not disclose material identified as confidential under Townsquare's amended request; we defer ruling on the amended request unless and until necessary. *See* 47 CFR § 0.459(d)(3).

<sup>14</sup> LOI Response at 4-3, Response to Questions 4-5, Exhs. 4(a) & (b). Specifically, the Station broadcast the Contest rules on November 21, 22, and 23, 2016, the days that the Contest was conducted. In addition, the Contest rules remained online on the Station's website for at least 30 days after the Contest ended and the Station made multiple on air mentions of the relevant website address for those rules. *Id.* at 2-3, Response to Question 5.

<sup>15</sup> *Id.* at 1, 3-4, Response to Questions 2, 6.

<sup>16</sup> *Id.* at 9, Response to Question 21.

<sup>17</sup> *Id.* at 4, Response to Question 6(c).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* *See id.* at 9, Response to Question 20.

<sup>20</sup> *Id.* at 8, Response to Question 18.

<sup>21</sup> *Id.* at 5, Response to Question 10.

<sup>22</sup> *Saga Forfeiture Order*, 24 FCC Rcd at 11937, para. 7.

accommodations, do not negate its liability for failing to comply with the Contest Rule. Commission precedent is clear that “neither the improper actions of a licensee’s employees nor subsequent remedial actions undertaken by a licensee can excuse or nullify a licensee’s rule violation.”<sup>23</sup> In addition, we have found that “[s]imilarly, the award of additional prizes . . . does not excuse the apparent rule violation.”<sup>24</sup>

## B. Proposed Forfeiture

8. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”<sup>25</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>26</sup> Townsquare’s omission, which resulted in the failure to award Complainant the announced Contest prize of Elton John tickets for the March 23, 2017, concert, was willful regardless of whether the omission was inadvertent, unintentional, or the result of human error or a miscommunication.<sup>27</sup> Based upon the record before us, Townsquare’s apparent violation of the Contest Rule, section 73.1216 was willful.

9. Section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture against Townsquare of up to \$51,222 per violation or for each day of a continuing violation, up to a statutory maximum of \$512,228 for a single act or failure to act.<sup>28</sup> In exercising our forfeiture authority, we

<sup>23</sup> *Entercom Wichita License, LLC*, Forfeiture Order, 24 FCC Rcd 1270, 1272, para. 6 (EB 2009) (*Entercom Wichita*); *Capstar TX Limited Partnership (WKSS(FM))*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 10636, 10640, para. 9 (EB/IHD 2009) (forfeiture paid) (finding that remedial actions do not absolve licensee of liability for violation of section 73.1216).

<sup>24</sup> *Boonville Broad. Co.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2845, 2850-51, para. 13 (EB/IHD 2014), citing *e.g.*, *Saga Forfeiture Order*, 24 FCC Rcd at 11937, para. 8 (additional prizes awarded as recompense not mitigating).

<sup>25</sup> 47 U.S.C. § 503(b).

<sup>26</sup> 47 U.S.C. § 312(f)(1). 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, and the Commission has so interpreted the term in the section 503(b) context. H.R. Rep. No. 97-765, at 51 (1982), as reprinted in 1982 U.S.C.C.A.N. 2261, 2294-95 (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . . .”); *see, e.g.*, *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

<sup>27</sup> *CBS Radio Holdings, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 10099, 10103, para. 9 (EB/IHD 2012) (finding that inadvertence does not prevent a section 73.1216 violation from being willful or preclude liability) (forfeiture paid); *Saga Forfeiture Order*, 24 FCC Rcd at 11937-38, para. 9. *See Farnell O’Quinn, Memorandum Opinion and Order*, 19 FCC Rcd 17428, 17429-30, para. 6 (EB 2004) (the term “willful” in section 503(b) of the Act does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation).

<sup>28</sup> 47 U.S.C. § 503(b)(2)(A); 47 CFR § 1.80(b)(1). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(A). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (Inflation Adjustment Act). The Bureau released the order making the 2020 annual adjustment on December 27, 2019. *See Amendment of section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB

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consider 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, substantial economic gain, and such other matters as justice may require.<sup>29</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>30</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>31</sup>

10. Section 1.80 of the Commission's rules sets a base forfeiture of \$4,000 for a violation of the Contest Rule, section 73.1216.<sup>32</sup> We apply this \$4,000 base forfeiture to Townsquare's apparent violation of section 73.1216 based on its failure to conduct the November 22, 2016, Contest over KSII substantially as announced because it admits that it did not award the winner of the Contest the announced prize of a pair of tickets for the March 23, 2017, Elton John concert. We have discretion, however, to make adjustments to the base forfeiture, taking into account the particular facts of each individual case.<sup>33</sup>

11. In this case, given the totality of the circumstances, and consistent with the *1997 Forfeiture Policy Statement*, we conclude that an upward adjustment is warranted. This adjustment is based upon the statutory factors, including the nature and circumstances of the violation. Townsquare does not dispute the Complainant's factual allegations concerning his repeated efforts to claim the tickets over a period of several months prior to the Elton John concert, based on Station personnel's instructions.<sup>34</sup> In addition, although Townsquare has no history of prior violations with respect to KSII, it is appropriate to consider the compliance history of all stations controlled by Townsquare Media, Inc., Licensee's parent, when determining whether there is any history of prior violations.<sup>35</sup> Because the Commission previously assessed a forfeiture against a Townsquare affiliate for operating an AM station at times other than those authorized in its license, in violation of section 73.1745(a), Townsquare is

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2019); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 85 Fed. Reg. 2318 (Jan. 15, 2020) (setting January 15, 2020, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." *See* 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended, § 6.

<sup>29</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>30</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

<sup>31</sup> *Id.*

<sup>32</sup> 47 CFR § 1.80(b).

<sup>33</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*1997 Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>34</sup> LOI Response at 9, Response to Question 21.

<sup>35</sup> *See 1997 Forfeiture Policy Statement*, 12 FCC Rcd at 17116, Appx. A (including "[p]rior violations of any FCC requirements" as an upward adjustment factor). *See, e.g. Adrian Abramovitch, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678, para. 43 (2018) ("The upward adjustment contemplated by Section 1.80 and Section 503 regarding prior violations requires us to consider *any* history of prior offenses, regardless of the Commission's involvement or when the violation took place.") (internal quotation marks omitted).

deemed to have a history of prior violations.<sup>36</sup> Thus, the nature, circumstances, and extent of the violation and the degree of Townsquare's culpability and history of prior offenses warrant an upward adjustment.

12. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. The purported fact that Townsquare's actions were inadvertent or the result of human error does not support a downward adjustment. Well-settled precedent is to the contrary.<sup>37</sup> Although we acknowledge that Townsquare took certain corrective measures, we note that it took such action only after receiving our LOI.<sup>38</sup> Under the circumstances of this case, Commission precedent does not support a downward adjustment for such corrective action.<sup>39</sup>

13. Therefore, after applying the *1997 Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$6,000, for which Townsquare is apparently liable.

#### IV. CONCLUSION

14. We have determined that Townsquare apparently willfully violated the Contest Rule, section 73.1216. Upon consideration of the facts of the case, and the factors specified in the *1997 Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we find that Townsquare is apparently liable for a forfeiture of \$6,000.

#### V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>40</sup> and sections 0.111, 0.311 and 1.80 of the Commission's rules,<sup>41</sup> Townsquare Media of El Paso, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Six Thousand Dollars (\$6,000) for willful violation of section 73.1216 of the Commission's rules.<sup>42</sup>

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<sup>36</sup> *Townsquare Media of Flint, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6005 (EB 2012) (forfeiture paid).

<sup>37</sup> See *Unipoint Technologies, Inc. d/b/a Comfi.com d/b/a Masterbell.com d/b/a Pushline.com a/k/a Communications Fidelity*, Forfeiture Order, 29 FCC Rcd 1633, 1640, para. 21 (2014) ("It is immaterial whether [the licensee's] violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight."), *default judgment entered, United States v. Unipoint Technologies, Inc.*, No. 14-12020-LTS, 2016 WL 8902575, at \*1-2 (D. Mass. Apr. 27, 2016); *Texas Soaring Association, Inc. Midlothian, Texas*, Forfeiture Order, 28 FCC Rcd 10740, 10743-44, para. 7 (EB 2013) (forfeiture paid) ("Even if administrative oversight, inadvertence, or a lack of familiarity with the Rules may have contributed to the violation, they do not . . . mitigate liability arising therefrom") (footnotes omitted); *Cascade Access, L.L.C.*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (EB 2013) (forfeiture paid) (rejecting argument that the unintentional nature of the violation justifies mitigation of the forfeiture amount), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015); *América Móvil, S.A.B. de C.V. Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672, 8676, para. 11 (EB 2011) (forfeiture paid) ("While América Móvil claimed that the violation was a result of an inadvertent oversight, it is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.").

<sup>38</sup> LOI Response at 8, Response to Question 18.

<sup>39</sup> *Saga Forfeiture Order*, 24 FCC Rcd at 11937, para. 8 (ruling that licensee's subsequent remedial steps to correct its internal procedures to avoid recurrence of its failure to promptly award all components of a contest prize are not mitigating); *Entercom Wichita*, 24 FCC Rcd at 1272, para. 6 (ruling that licensee's corrective measure, taken after commencement of the investigation, to award the prize does not justify cancellation or reduction of the forfeiture).

<sup>40</sup> 47 U.S.C. § 503(b).

<sup>41</sup> 47 CFR §§ 0.111, 0.311, 1.80.

<sup>42</sup> 47 CFR § 73.1216.

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>43</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Townsquare Media of El Paso, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 19 and 20 below.

17. Townsquare Media of El Paso, Inc. shall send electronic notification of payment to Melanie Godschall, Enforcement Bureau, Federal Communications Commission, at [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov) on the date that said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>44</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>45</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554. Questions regarding payment procedures should be directed to the

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<sup>43</sup> 47 CFR § 1.80.

<sup>44</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>45</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

19. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Commission's rules.<sup>46</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Christopher J. Sova at [Christopher.Sova@fcc.gov](mailto:Christopher.Sova@fcc.gov), Frederick W. Giroux, at [Frederick.Giroux@fcc.gov](mailto:Frederick.Giroux@fcc.gov) and Melanie A. Godschall at [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov). The electronic copy shall be produced in a format that allows the Commission to access and use it, together with instructions and all other materials necessary to use or interpret the data, including record layouts, data dictionaries, and a description of the data's source. All responses, accompanying documentation, affidavits, and attachments, including recordings, exceeding 5MB must be sent to the Commission's secure online file system by e-mailing such documents as attachments to: [KSII.zmj2xf0b9c3xbwk7@u.box.com](mailto:KSII.zmj2xf0b9c3xbwk7@u.box.com), consistent with the following parameters:

- Upload documents and supporting documentation as e-mail attachments only. Only the attachments will be uploaded to the secure folder. **E-mails and any accompanying text used for the purpose of uploading attachments, will NOT be uploaded to the secure folder.**
- Each e-mail upload of documents and supporting documentation must not exceed 50MB. Multiple e-mails may be necessary to upload attached files that exceed a total of 50MB.
- Copies of e-mails containing text that are responsive to this Notice of Apparent Liability for Forfeiture must be uploaded separately as .PDF or .ZIP file attachments.
- Both designated Commission staff and the sender will receive a notification e-mail that files were uploaded successfully.
- If you need help or have questions about how to provide electronic copies of the response or any accompanying documents or recordings, please contact Melanie Godschall at [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov) or 202-418-7259 **no later than two business days prior to the response due date to ensure timely transmission of the response.**

20. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

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<sup>46</sup> 47 CFR §§ 1.80(f)(3), 1.16.



21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to Christopher Kitchen, Executive Vice President and General Counsel, Townsquare Media of El Paso, Inc., 240 Greenwich Avenue, Greenwich, CT 06830 and to Howard M. Liberman, Esq., and Timothy J. Cooney, Esq., Counsel for Townsquare Media of El Paso, Inc., Wilkinson Barker Knauer LLP, 1800 M St., NW, Suite 800 N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau