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

In the Matter of	)	
	)	
Nexstar Media Inc.	)	Facility ID No.: 70149
	)	NAL/Acct. No.: 202141420018
Licensee of Station WYCW	)	FRN: 0009961889
Asheville, North Carolina	)	LMS File No.: 0000120040

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 27, 2021 **Released: September 27, 2021**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)[1] of Nexstar Media Inc. (Licensee), for renewal of its license for WYCW, Asheville, North Carolina (Station). In this *Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully and/or repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's quarterly TV issues/programs lists in violation of section 73.3526(e)(11)(i).[2] 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 three thousand dollars ($3,000).

II. BACKGROUND

2. Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF), on a quarterly basis, a list (TV issues/programs list) that 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 issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.[3] TV issues/programs lists must be placed in the station's OPIF by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.[4]

3. On August 3, 2020, the Licensee filed its Application. A staff inspection of the Station's OPIF revealed that the Licensee failed to upload some copies of its TV issues/programs lists by the deadline established in section 73.3526(e)(11)(i) of the Rules.[5] Specifically, it uploaded four lists more

[1] LMS File No. 0000120040. WYCW is a full power television station. At the time the Application was filed the licensee's name was Nexstar Broadcasting, Inc. but it has since changed to Nexstar Media Inc.

[2] 47 CFR § 73.3526(e)(11)(i).

[3] *Id.* Full power (commercial and noncommercial) and Class A television broadcasters have been required to upload various public file documents to their OPIF, including TV issues/programs lists, since 2012 and have been required to utilize the OPIF for the entirety of the current license term. *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); *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing an effective date of August 2, 2012, for, *inter alia*, the requirement that television stations begin to post new TV issues/programs lists to their OPIF).

[4] *Id*.

[5] *Id.* The staff inspection was consistent with the Licensee's disclosures in its Application.

than one year late and three lists between one month and one year late. In the Application, the Licensee acknowledges that the lists were late filed and indicates that "[u]pon discovery, the materials were immediately uploaded into the station's public file and additional training was undertaken by various station personnel to avoid future issues."

III. DISCUSSION

4. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of $3,000.[6] The Licensee failed to upload in a timely manner to the Station's OPIF copies of the Station's TV issue/programs lists for seven quarters. These late filings constitute an apparent willful and/or repeated violation of section 73.3526(e)(11)(i) of the Rules.[7]

5. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found 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.[8] 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.[9] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act,[10] and the Commission has so interpreted the term in the section 503(b) context.[11] 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."[12]

6. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $10,000 for public file violations.[13] 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."[14]

7. In this case, the Licensee failed to timely upload to its OPIF TV issue/programs lists for seven quarters, including filing four reports over one year late, in violation of section 73.3526(e)(11)(i) of the Rules.[15] The Licensee did not provide an explanation for its repeated failure to timely upload its TV issue/programs lists. Taking into consideration all of the factors required by section 503(b)(2)(E) of the

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[6] Our action today addresses known apparent violations from the date the prior license renewal application was granted through the adoption date of this item. Any violations that are discovered or may occur following the adoption date of this item and prior to the grant of the current Application would be separate violations and potentially subject to additional Commission action.

[7] *See* 47 CFR § 73.3526(e)(11)(i).

[8] *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

[9] 47 U.S.C. § 312(f)(1).

[10] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

[11] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*).

[12] 47 U.S.C. § 312(f)(2).

[13] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, 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), paragraph (b)(10), Table 1.

[14] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[15] *See* 47 CFR § 73.3526(e)(11)(i).

Act and the *Forfeiture Policy Statement*, we find that under the facts of this case a forfeiture in the amount of $3,000 is appropriate for the Licensee's apparent failure to timely upload its TV issues/programs lists.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[16] That section 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.[17] 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—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[18]

9. We find that the Licensee's apparent violation of section 73.3526(e)(11)(i) of the Rules does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[19] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

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 sections 1.80 and 0.283(d) of the Commission's rules, 47 CFR §§ 1.80 and 0.283, that Nexstar Media Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars ($3,000) for its apparent and/or willful violation of section 73.3526(e)(11)(i) of the Commission's rules, 47 CFR § 73.3526(e)(11)(i).

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) days of the release date of this *NAL*, Nexstar Media Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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),[20] 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:[21]

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[16] 47 U.S.C. § 309(k).

[17] 47 U.S.C. § 309(k)(1).

[18] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[19] For example, we do not find here that the Licensee's Station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Id.* at 200, paras. 10-11. *See also Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

[20] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[21] 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.

- 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 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).[22] 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 dollar limitation on credit card transactions, which cannot exceed $24,999.
- 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.

13. The written response 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 1.16 and 1.80(g)(3) of the Rules.[23] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to Andrew.Kennedy@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help

[22] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

[23] 47 CFR §§ 1.16 and 1.80(g)(3).

protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[24]

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 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[25]

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, 45 L Street, NE, Washington, DC 20554.[26] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Nexstar Media Inc., Elizabeth Ryder, General Counsel, 545 E. John Carpenter Freeway, Suite 700, Irving, Texas 75062.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[24] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

[25] *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

[26] *See* 47 CFR § 1.1914.