

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

In the Matter of)	
)	
Gray Television Licensee, LLC, dba WJHG-TV)	Facility ID No.: 73136
)	NAL/Acct. No.: 202141420028
Licensee of Station WJHG-TV)	FRN: 0018223693
Panama City, Florida)	LMS File No.: 0000123387

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ADMONISHMENT

Adopted: November 30, 2021

Released: December 1, 2021

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of Gray Television Licensee, LLC, dba WJHG-TV (Licensee), for renewal of its license for WJHG-TV, Panama City, Florida (Station). In this *Notice of Apparent Liability for Forfeiture and Admonishment (NAL and Admonishment)*, 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 six thousand dollars (\$6,000). We also find that the Licensee apparently willfully violated section 73.670(b) of the Rules by failing to comply with the limits on commercial matter in Children's programming and we hereby admonish the Licensee for this violation.³

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.⁴ 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.⁵

¹ LMS File No. 0000123387 (amended on December 7, 2020). WJHG-TV is a full-power television station.

² 47 CFR § 73.3526(e)(11)(i).

³ 47 CFR § 73.670(b).

⁴ 47 CFR § 73.3526(e)(11)(i). 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).

⁵ *Id.*

3. In addition, Congress directed the Commission in 1990 to create rules that, *inter alia*, limit the amount of commercial matter that commercial television stations may air during children's programming.⁶ Pursuant to this mandate, the Commission adopted section 73.670 of the Rules, which limits the amount of commercial matter that may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.⁷ In furtherance of the CTA's underlying purpose to protect children from excessive and inappropriate commercial messages, section 73.670(b) of the Rules restricts the display of Internet web addresses during programming directed at children ages 12 and under.⁸

4. Specifically, section 73.670(b) permits the display of Internet website addresses during program material or promotional material not counted as commercial time *only* if it meets the following four prong test: (1) the website offers a substantial amount of bona fide program-related or other noncommercial content; (2) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (3) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (4) the page of the website to which viewers are directed by the website address is not used for e-commerce, advertising, or other commercial purposes (e.g., contains no links labeled "store" and no links to another page with commercial material).⁹

5. On October 1, 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.¹⁰ Specifically, it uploaded two lists more than one year late, and seven lists between one month and one year late. The Licensee did not provide any explanation for its failure to upload these TV issues/programs lists in a timely manner. In addition, the Licensee disclosed in its Application that the Station broadcast the URL address for the website "www.lazytown.com" during the closing credits of an episode of the children's program "LazyTown" that aired on October 12, 2013, which is a violation of section 73.670(b) of the Rules.¹¹ The Licensee states the program was part of the educational and informational programming block supplied to it and other NBC affiliates by Sprout.¹² NBC notified its affiliates that the website address was "inadvertently included" and "fleeting." The Licensee notes that NBC stated it was working with Sprout to prevent future incidents.¹³

III. DISCUSSION

6. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$6,000.¹⁴ The Licensee failed to upload in a timely manner to the Station's OPIF copies of the

⁶ Children's Television Act of 1990 (CTA), Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b, and 394.

⁷ 47 CFR § 73.670(a).

⁸ See *Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 22961-62, paras. 50-52 (2004); *aff'd in part, amended in part*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065, 11077-78, paras. 29-32 (2006) (*2006 Order on Reconsideration*); see also 47 CFR § 73.670(b), (c), and (d).

⁹ See 47 CFR § 73.670(b).

¹⁰ *Id.* The staff inspection was generally consistent with the Licensee's disclosures in its Application.

¹¹ See Application at Amended Exh., Commercial Limits Disclosure (Disclosure); 47 CFR § 73.670(b).

¹² *Id.*

¹³ *Id.*

¹⁴ 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.

Station's TV issue/programs lists for nine quarters. These late filings constitute an apparent willful and/or repeated violation of section 73.3526(e)(11)(i) of the Rules.¹⁵ In addition, the Licensee's display of a URL for a website during its children's programming constitutes a violation of section 73.670(b) of the Rules.¹⁶

7. 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.¹⁷ 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.¹⁸ 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,¹⁹ and the Commission has so interpreted the term in the section 503(b) context.²⁰ 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."²¹

8. 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.²² 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."²³

9. In this case, the Licensee failed to timely upload to its OPIF TV issue/programs lists for nine quarters, including filing two reports over one year late, in violation of section 73.3526(e)(11)(i) of the Rules.²⁴ 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 Act and the *Forfeiture Policy Statement*, we find that under the facts of this case a forfeiture in the amount of \$6,000 is appropriate for the Licensee's apparent failure to timely upload its TV issues/programs lists.

10. *Admonishment.* With respect to the Licensee's display of commercial matter during the program "LazyTown," even though the website address was displayed for only a short duration (estimated at one-half of one second), the display of a website address during program material that does

¹⁵ See 47 CFR § 73.3526(e)(11)(i).

¹⁶ 47 CFR § 73.670(b).

¹⁷ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

¹⁸ 47 U.S.C. § 312(f)(1).

¹⁹ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

²⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

²¹ 47 U.S.C. § 312(f)(2).

²² See *Forfeiture Policy Statement and Amendment of Section 1.80 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), paragraph (b)(10), Table 1.

²³ 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.

²⁴ See 47 CFR § 73.3526(e)(11)(i).

not comply with the four-prong test – for any period of time – is a violation of section 73.670(b).²⁵ In particular, the website did not meet the fourth prong of the test because the top of the homepage of the website contained content of a commercial nature in the form of a link labeled “shop.”²⁶ Furthermore, although the website address was only displayed during the closing credits, the Commission has specifically stated that closing credits are considered to be part of television programming material and are subject to the website address rule.²⁷ Licensee has provided no evidence demonstrating that the website complies with the four-prong test set forth in section 73.670(b) and, upon our prior examination of the website, we have concluded that it does not comply.²⁸

11. We note that while the commercial matter may have been inserted into the program by the Station’s television network or program supplier (i.e., NBC Network and/or Sprout), this does not relieve the Station of responsibility for material it broadcasts. In this regard, the Commission has consistently held that reliance on a program’s source or producer for compliance with our Rules and policies will not excuse or mitigate violations which do occur.²⁹ Although corrective actions may have been taken to prevent future violations, this does not relieve the Station from liability for violations that have already occurred.³⁰ Licensee in fact acknowledges that it is responsible for airing this material.³¹

12. While we do not rule out more severe sanctions for similar violations of this nature in the future, we have determined that an admonition for the Station’s violation of the section 73.670(b) of the Rules is appropriate at this time. Therefore, based upon the facts and circumstances before us, we admonish the Station for its violation of section 73.670(b) of the Rules.³² We remind the Licensee that the Commission expects all commercial television licensees to comply with the limits on commercial matter, including the display of website addresses, during children’s programming.

13. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.³³ 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.³⁴ 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

²⁵ See, e.g., *Tribune Broadcasting Oklahoma City License, LLC*, Admonishment Letter, 30 FCC Rcd 14512 (MB 2015) (*Tribune*) (admonishing station for broadcasting this same “www.lazytown.com” material on October 12, 2013).

²⁶ See e.g., *Orlando Hearst Television, Inc.*, Admonishment Letter, 29 FCC Rcd 9634, 9635 (MB 2014).

²⁷ *2006 Order on Reconsideration*, 21 FCC Rcd at 11080, para. 36.

²⁸ See *Tribune*, 30 FCC at 14513 (noting that the website did not meet the test’s fourth prong because the top of the website’s homepage contained content of a commercial nature in the form of a link labeled “shop”).

²⁹ See, e.g., *Max Television of Syracuse, L.P.*, Memorandum Opinion and Order, 13 FCC Rcd 10105, 10108, para.7 (MMB 1997) (imposing forfeiture for violations of 73.670 and rejecting argument that licensee was not liable for excessive commercial material that had been inserted into children’s programming by program producer or distributor).

³⁰ See *International Broadcasting Corp.*, Memorandum Opinion and Order, 19 FCC 2d 793, 794, para. 5 (1969) (imposing forfeiture and declining to credit as mitigation corrective action following a violation because doing so would “tend to encourage remedial rather than preventive action”).

³¹ Application at Disclosure.

³² This admonishment is issued pursuant sections 1.80 and 0.283(d) of the Rules, 47 CFR §§ 1.80 and 0.283.

³³ 47 U.S.C. § 309(k).

³⁴ 47 U.S.C. § 309(k)(1).

application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”³⁵

14. We find that the Licensee’s apparent violation of sections 73.3526(e)(11)(i) and 73.670(b) of the Rules do not constitute “serious violation[s]” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.³⁶ 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 and Admonishment* that would preclude grant of the Application.

IV. ORDERING CLAUSES

15. 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 Gray Television Licensee, LLC, dba WJHG-TV, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars (\$6,000) 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).

16. **IT IS FURTHER ORDERED** that Gray Television Licensee, LLC, dba WJHG-TV, **IS ADMONISHED** for apparent willful of section 73.670(b) of the Commission’s rules, 47 CFR 73.670(b).

17. **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 and Admonishment*, Gray Television Licensee, LLC, dba WJHG-TV, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. 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),³⁷ 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:³⁸

- 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

³⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³⁶ 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 Economic Development*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

³⁷ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

³⁸ 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.

type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁹ 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.

19. 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.⁴⁰ 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 VideoRenewals@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 protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁴¹

20. 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

³⁹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

⁴⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

⁴¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

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.⁴²

21. Requests for full payment of the forfeiture proposed in this *NAL and Admonishment* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.⁴³ 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.

22. **IT IS FURTHER ORDERED**, that copies of this *NAL and Admonishment* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Gray Television Licensee, LLC, dba WJHG-TV, 4370 Peachtree Road NE, Atlanta, GA 30319, and to its counsel, Joan Stewart, Esq., Wiley Rein LLP, 1776 K Street, NW, Washington, DC, 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴² See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

⁴³ See 47 CFR § 1.1914.