

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

In the Matter of
KVUE Television, Inc.
Licensee of Station KVUE(TV),
Austin, Texas
Facility ID No. 35867
NAL/Acct. No. 202341420038
FRN: 0001545581
LMS File No. 0000188281

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 22, 2023

Released: September 22, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)1 of KVUE Television, Inc. (Licensee), for renewal of its license for full power television station KVUE(TV), Austin, Texas (Station). In this Notice of Apparent Liability for Forfeiture (NAL), we find the Licensee apparently willfully and repeatedly violated the Commission’s rules (Rules) by failing to timely file the Station’s TV quarterly issues/programs lists (IP Lists) in violation of section 73.3526(e)(11)(i) of the Rules.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).

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, an IP 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 IP 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 March 31, 2022, the Licensee filed its Application. A staff inspection of the Station’s OPIF revealed that the Licensee failed to upload copies of its IP Lists for a total of 12 quarters by the deadline established in section 73.3526(e)(11)(i) of the Rules.5 Specifically, it uploaded two lists more than one year late, six lists between one month and one year late, and four lists between one day and one month late. In the Application, the Licensee states that its failure to timely file its IP Lists was

1 LMS File No. 0000188281 (filed Mar. 31, 2023).

2 47 CFR § 73.3526(e)(11)(i).

3 Id.

4 Id.

5 Id. The Bureau staff inspection was consistent with the Licensee’s disclosures in its Application.

inadvertent and due to “[t]he responsible person” being “new to the position and [] unfamiliar with the requirements at the time they were due.”<sup>6</sup>

### III. DISCUSSION

4. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), a person who is found to have willfully 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.<sup>7</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>8</sup> 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,<sup>9</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>10</sup> 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.”<sup>11</sup>

5. *Apparent Violation.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$6,000. The Licensee failed to upload in a timely manner to the Station’s OPIF copies of the Station’s IP Lists for 12 quarters. These late filings constitute an apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Rules.<sup>12</sup>

6. *Proposed Forfeiture Amount.* 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.<sup>13</sup> 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.”<sup>14</sup>

7. In this case, the Licensee failed to timely upload to its OPIF copies of its IP Lists for 12 quarters in violation of section 73.3526(e)(11)(i) of the Rules.<sup>15</sup> These late filings included two lists that were filed over one year late, six lists that were filed between one month and one year late, and four lists that were filed between one day and one month late. While the Licensee indicates that its repeated failure to timely upload its issue/programs lists was in advertent and the result of an error of a new employee due to their lack of familiarity with the requirement,<sup>16</sup> we note that “employee acts or omissions, such as

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<sup>6</sup> LMS File No. 0000188281, attach. KVUE Renewal Application - PIF Exhibit.pdf, 1.

<sup>7</sup> See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

<sup>10</sup> 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).

<sup>11</sup> 47 U.S.C. § 312(f)(2).

<sup>12</sup> See 47 CFR § 73.3526(e)(11)(i).

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> See 47 CFR § 73.3526(e)(11)(i).

<sup>16</sup> See *supra* para. 3.

clerical errors in failing to file required forms, do not excuse violations.”<sup>17</sup> Further, it is well established precedent that inadvertence is, “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”<sup>18</sup> 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, including the number of late filings and the extent by which they were late, a forfeiture in the amount of \$6,000 is appropriate for the Licensee’s apparent failure to timely upload its IP 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.<sup>19</sup> 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.<sup>20</sup> 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.”<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup>

#### 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 KVUE Television, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars (\$6,000) for its apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Commission’s rules, 47 CFR §

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<sup>17</sup> *Southern California*, 6 FCC Rcd at 4387, para. 3 (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Comm’cns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358, para. 4 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>18</sup> *Southern California*, 6 FCC Rcd at 4387, para. 3.

<sup>19</sup> 47 U.S.C. § 309(k).

<sup>20</sup> 47 U.S.C. § 309(k)(1).

<sup>21</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>22</sup> 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).

<sup>23</sup> 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.

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*, KVUE Television, 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 CORES (the Commission's online payment system),<sup>24</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made by e-mail to [VideoRenewals@fcc.gov](mailto:VideoRenewals@fcc.gov).** Below are instructions that payors should follow based on the form of payment selected:<sup>25</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).<sup>26</sup> 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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. 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 "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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

<sup>24</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>25</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).

<sup>26</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

to sections 1.16 and 1.80(g)(3) of the Rules.<sup>27</sup> 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 copy must also be sent by e-mail to [VideoRenewals@fcc.gov](mailto: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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup> 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](mailto: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 KVUE Television, Inc., Denise Branson, TEGNA, Inc., 8350 Broad Street, Suite 2000, Tysons, Virginia 22102, and by e-mail to [dbranson@TEGNA.com](mailto:dbranson@TEGNA.com). A copy will also be sent to the Station's counsel, Michael Beder, Associate General Counsel, TEGNA Inc., by e-mail to [mbeder@TEGNA.com](mailto:mbeder@TEGNA.com).

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>27</sup> 47 CFR §§ 1.16 and 1.80(g)(3).

<sup>28</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

<sup>29</sup> See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

<sup>30</sup> See 47 CFR § 1.1914.