

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

In the Matter of
WGBH Educational Foundation
Licensee of Station WFXZ-CD
Boston, Massachusetts
Facility ID No. 64833
NAL/Acct. No. 202441420006
FRN: 0003764560
LMS File No. 0000204578

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 26, 2024

Released: April 26, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application of WGBH Educational Foundation (Licensee or WGBH), for renewal of its license for WFXZ-CD, Boston, Massachusetts (Station).1 In this Notice of Apparent Liability for Forfeiture (NAL), we find that the Licensee apparently willfully and repeatedly violated section 73.3526(e)(11)(i) and (iii) of the Commission’s rules (Rules) by failing to timely file required online public file documents, including quarterly issues/programs lists and children’s television programming reports.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 OPIF, on a quarterly basis, an 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 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. Section 73.3526(e)(11)(iii) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF) a Children’s Television Programming Report that details “the licensee’s educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children” during the preceding period.5 Copies must be retained until final action on the station’s next license renewal

1 Application of WGBH Educational Foundation for Renewal of License, LMS File No. 0000204578 (filed Nov. 30, 2022) (Application).

2 47 CFR §§ 73.3526(e)(11)(i), (iii).

3 47 CFR § 73.3526(e)(11)(i).

4 Id.

5 47 CFR § 73.3526(e)(11)(iii). Full power (commercial and noncommercial) and Class A television broadcasters have been required to upload various public file documents to their OPIF, including Children’s Television Programming Reports, since 2012 and have been required to utilize the OPIF for the entirety of the license term.

application.⁶ Until third quarter 2019, Children’s Television Programming Reports were required to be placed in the station’s OPIF by the tenth day of the succeeding calendar quarter.⁷ Beginning with the fourth quarter of 2019, Children’s Television Programming Reports were required to be filed on an annual rather than quarterly basis, within 30 days after the end of the calendar year.⁸

4. On November 30, 2022, the Licensee filed the Application. In the Application, the Licensee disclosed it uploaded one issues/programs list over four years late. The Licensee stated that its failure to timely file the list was due to the prior licensee providing only limited information about this list during the transition pursuant to a station ownership change, but that the Licensee was later able to receive more information from the prior licensee’s counsel.⁹ The Licensee stated that it “uploaded a disclosure explaining the delay and providing the information that was provided to the transferee, including the full list of programs that aired on the Station during the quarter.”¹⁰ The Licensee also disclosed that it filed six Children’s Television Programming reports late, specifically three quarterly reports over one year late, two quarterly reports between one month and one year late, and one quarterly report that was filed one day late.¹¹ The Licensee states its failure to timely file the list was due to a “misunderstanding and belief that these filings were not required.”¹²

5. On December 7, 2022, the Licensee amended the Application.¹³ In the Amended Application, the Licensee stated that it had supplemented the late filed issues/programs list with information it received from the Station’s previous licensee.¹⁴ A Bureau staff inspection of the Station’s OPIF revealed late filings consistent with the Licensee’s disclosures made in the Application and Amended Application.

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 Children’s Television Programming Reports to their OPIF).

⁶ 47 CFR § 73.3526(e)(11)(iii).

⁷ *Children’s Television Programming Rules; Modernization of Media Regulation Initiative*, MB Docket Nos. 18-202 and 17-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 5822 (2019) (Report and Order). The revised children’s programming report filing rule took effect on September 16, 2019. *Media Bureau Announces Effective Date and Provides Guidance for KidVid Reporting and Compliance with Revised Safe Harbor Processing Guidelines*, MB Docket Nos. 18-202 and 17-105, Public Notice, 34 FCC Rcd 7878 (MB 2019) (KidVid Transition PN).

⁸ 47 CFR § 73.3526(e)(11)(iii); *Report and Order* at 5860, para. 63; *KidVid Transition PN*, 34 FCC Rcd at 7879; *Media Bureau Announces Effective Date of Remaining Kidvid Rules, Availability and Extension of Time to File the Revised Children’s Television Programming Report in LMS, and Guidance Concerning the Filing of Final Quarterly Commercial Limits Certifications*, MB Docket Nos. 18-202 and 17-105, Public Notice, 4 FCC Rcd 12517 (MB 2019).

⁹ Application at Attach., WFXZ-CD Online Public Inspection File Certification Exhibit. The Station was acquired by WGBH on December 17, 2017. The consummation date was December 21, 2017. LMS File No. BAL-20171026AAI (filed Oct. 26, 2017).

¹⁰ *Id.*

¹¹ Application at Attach., WFXZ-CD Childrens Television Programming Reports.

¹² *Id.*

¹³ Application of WGBH Educational Foundation for Renewal of License Amendment, LMS File No. 0000204578 (filed Dec. 7, 2022) (Amended Application).

¹⁴ Amended Application at Attach., WFXZ-CD Renewal Amendment Exhibit Regarding Issues and Programming.

III. DISCUSSION

6. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act), which states 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so interpreted the term in the section 503(b) context.¹⁸ 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.”¹⁹

7. *Apparent Violation.* In total, the Licensee failed to upload in a timely manner to the Station’s OPIF a copy of the Station’s issue/programs lists for one quarter and copies of the Station’s children’s programming reports for six quarters. These lists were between one day and over one year late. We therefore find that the Licensee has apparently willfully and repeatedly violated sections 73.3526(e)(11)(i) and (iii) of the Rules.²⁰

8. *Proposed Forfeiture.* 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.²¹ 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.”²²

9. In this case, the Licensee failed to timely upload to its OPIF an issue/programs list for one quarter and six quarterly children’s programming reports, in violation of sections 73.3526(e)(11)(i) and (iii) of the Rules.²³ In its Application, the Licensee acknowledges its repeated failure to timely upload these items. The Licensee states its failure to timely file the list was due to its “misunderstanding and belief that these filings were not required.”²⁴ We note that “employee acts or omissions, such as

¹⁵ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹⁸ 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).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ See 47 CFR § 73.3526(e)(11)(i), (iii).

²¹ 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)(11), Table 1.

²² 47 U.S.C. § 503(b)(2)(E). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(11); 47 CFR § 1.80(b), paragraph (b)(11), Table 3.

²³ See 47 CFR §§ 73.3526(e)(11)(i), (iii).

²⁴ Application at Attach., WFXZ-CD Online Public Inspection File Certification Exhibit (explaining, “The Station has reviewed the filing requirements for Children’s Reports with outside counsel, has reinforced those requirements with staff, and has developed procedures to ensure Children’s Reports are consistently filed by the relevant deadline.”).

clerical errors in failing to file required forms, do not excuse violations.”²⁵ It is also well settled Commission precedent that licensees are responsible for compliance with the Commission’s rules and that inadvertence or administrative oversight do not excuse failure to comply with the Commission’s rules nor are they mitigating circumstances.²⁶ Furthermore, applicants and licensees are responsible for the errors or oversights of their employees.²⁷

10. As to its late-filed issues/programs list the Licensee stated that because it did not acquire the station until December 21, 2017, it was reliant on the prior licensee of the Station to complete its fourth quarter 2017 issues/programs list and disclosed this delay in an exhibit to its renewal application.²⁸ The Station’s fourth quarter 2017 issues/programs list was uploaded over four years late in December 2022. Given the circumstances we may have found a reasonable delay to have been a *de minimis* violation, however uploading its list over four years late is not a reasonable delay. Ultimately, failure by the prior licensee to provide WGBH with the necessary information so it could file a timely and complete issues/programs list after WGBH became the Licensee is a private matter between WGBH and the prior licensee, and is not an excuse for WGBH’s failure to timely file its fourth quarter 2017 issues/programs list. Setting aside what programming may have been aired prior to WGBH becoming the licensee, it is unclear why WGBH did not, at minimum file a timely issues/programs list containing programming it aired between December 21, 2017 and December 31, 2017.

11. 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 \$3,000 is appropriate for the Licensee’s apparent failure to timely upload its children’s programming reports and issues/programs list.

12. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.²⁹ 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.³⁰ 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.”³¹

13. We find that the Licensee’s apparent violation of sections 73.3526(e)(11)(i) and (iii) of the Rules does not constitute a “serious violation” warranting designation of the Application for

²⁵ *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”).

²⁶ See e.g., *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB, rel. July 8, 2020) (paid July 24, 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *G.I.G., Inc.*, Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 308, 310, para. 9 & n. 29-30 (MB, rel. Jan. 19, 2023), *recon.*, Forfeiture Order, DA-23-462, para. 10 (MB, rel. May 31, 2023) (reducing but not eliminating the forfeiture amount because of licensee’s inability to pay) (paid June 22, 2023).

²⁷ See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations).

²⁸ Application at Attach., WFXZ-CD Online Public Inspection File Certification Exhibit.

²⁹ 47 U.S.C. § 309(k).

³⁰ 47 U.S.C. § 309(k)(1).

³¹ 47 U.S.C. §§ 309(k)(2), (k)(3).

evidentiary hearing.³² Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.³³ 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.³⁴

IV. ORDERING CLAUSES

14. 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 0.61, 0.204, 0.283, and 1.80 of the Commission's rules, 47 CFR §§ 0.61, 0.204, 0.283, and 1.80, that **WGBH Educational Foundation**, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful and repeated violation of sections 73.3526(e)(11)(i) and 73.3526(e)(11)(iii) of the Commission's rules, 47 CFR § 73.3526(e)(11)(i), (iii).

15. **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*, **WGBH Educational Foundation**, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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),³⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, the must send notice that payment has been made to VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:³⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed FCC 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).³⁷ For

³² Review by Bureau staff of the Station's children's television programming reports has found that despite the late-filed reports, the Station complied with its children programming obligations under section 73.671 of the Rules, 47 CFR § 73.671, and as required by section 303b of the Act, 47 U.S.C. § 303b.

³³ 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).

³⁴ 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.

³⁵ Payments made using CORES do not require the submission of an FCC Form 159.

³⁶ 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.

³⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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.

17. 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, 47 CFR §§ 1.16 and 1.80(g)(3). 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 emailed to VideoNAL@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-19.³⁸

18. 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

³⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

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.³⁹

19. 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 20554.⁴⁰ 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.

20. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Eric A. Brass, Corporate Counsel and Clerk, WGBH Educational Foundation, 1 Guest Street, Boston, MA 02135 and be e-mail to eric.brass@wgbh.org. A copy will also be sent to Station's counsel, Matthew S. DelNero, Legal Counsel, Covington & Burling LP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001 and by e-mail to mdelnero@cov.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁹ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

⁴⁰ See 47 CFR § 1.1914.