

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

In the Matter of	)	
	)	
Beech Street Communications Corp.	)	Facility I.D. No. 4585
Licensee of Station KLFI-LP	)	NAL/Acct. No. 201341420001
Texarkana, Arkansas	)	FRN: 0004271201

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: April 22, 2013

Released: April 23, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"),¹ we find that Beech Street Communications Corporation (the "Licensee"), licensee of Class A television station KLFI-LP, Texarkana, Arkansas (the "Station"), apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file with the Commission the Station's 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 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.³ As set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.⁴

3. On March 30, 2011, the Deputy Chief, Video Division, Media Bureau, issued a letter to the Licensee ("Letter"), stating that Commission records indicate that the Licensee failed to make the

¹ This NAL is issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"). See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80. The Chief, Video Division, Media Bureau, has delegated authority to issue the NAL under Sections 0.61 and 0.283 of the Rules. See 47 C.F.R. §§ 0.61, 0.283.

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3526.

⁴ See, e.g., *WSOC Television*, 25 FCC Rcd at 6125; *WCVB Hearst Television, Inc.*, 25 FCC Rcd at 6129-30; *WFTV, Inc. (WFTV(TV))*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6140 (2010).

required Form 398 electronic filings for KLFI-LP for all four quarters in 2010. The Letter required the Licensee to provide information, supported by the declaration of a person with personal knowledge,⁵ identifying the quarters in 2010 for which a Children's Television Programming Report was prepared and placed in the Station's public inspection file, as well as the location of the public file. In a May 3, 2011 response, the Licensee admits that it failed to file quarterly Form 398 reports with the Commission during 2010 and attributed the deficiency to miscommunications with its new counsel following the passing of its longtime counsel. The Licensee explains that it has since resolved the confusion and that all Form 398 reports have been filed with the Commission and will be prepared and filed in a timely manner in the future. The Licensee also explains that although it failed to file the quarterly Form 398 reports with the Commission during 2010, it timely maintained in its public inspection file information concerning the broadcasts of children's television programming during each calendar quarter of 2010.

III. DISCUSSION

4. The Licensee's failure to file the Children's Television Programming Reports with the Commission constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(iii). Licensee acknowledges that it did not timely file its Form 398 Children's Television Programming Reports for all four quarters of 2010. Although corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, such actions do not relieve the Licensee of liability for the violations that have occurred.⁶

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission 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.⁷ 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.⁸ 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,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ 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."¹¹

6. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.¹² 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)(D) 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

⁵ 47 C.F.R. § 1.16.

⁶ *Supra* n.4.

⁷ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ *Southern California Broadcasting Co.*, Memorandum Order and Opinion, 6 FCC Rcd 4378, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

¹² *Forfeiture Policy Statement and Amendment of Section 1.80(b) 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 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

offenses, ability to pay, and such other matters as justice may require.”¹³ In this case, the Licensee acknowledged that it failed to file with the Commission Form 398 Children’s Television Programming Reports for all four quarters of 2010. Based on the record before us, we believe that forfeiture in the amount of \$3,000 is appropriate for the Licensee’s apparent willful and repeated violations of Section 73.3526(e)(11)(iii).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that Beech Street Communications Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$3,000) for its apparent willful and repeated violations of Section 73.3526 of the Commission’s Rules.

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this NAL, Beech Street Communications Corporation SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Licensee will also send electronic notification on the date said payment is made to adrienne.denysyk@fcc.gov.

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

11. 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.

12. Requests for full payment of the forfeiture proposed in this NAL under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

¹³ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

¹⁴ 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Beech Street Communications Corporation, P.O. Box 1469, Texarkana, TX 75504-1469.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau