

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

In the Matter of

Dominion Broadcasting, Inc.
Licensee of Station WLMB
Toledo, Ohio

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Facility I.D. No. 17076
NAL/Acct. No.: 201341420060
FRN: 0006291702

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: December 3, 2013

Released: December 4, 2013

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION:

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL") 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"),¹ we find that Dominion Broadcasting, Inc. (the "Licensee"), licensee of Station WLMB (the "Station"), apparently willfully and/or repeatedly violated (i) Section 73.3526(e)(11)(iii) of the Rules by failing to file timely with the Commission the Station's Children's Television Programming Reports² and (ii) Section 73.3514(a) of the Rules by failing to report the violations in its renewal application.³ 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 four thousand five hundred dollars (\$4,500).

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.⁴ 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.

3. Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . ." Section IV, Question 3 of the Form 303-S license renewal application requires licensees to certify "that the documentation, required by 47 C.F.R. Section 73.3526 . . . has been placed in the station's public inspection file at the appropriate times." Section IV, Question 6 of the license renewal application

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3514(a).

⁴ 47 C.F.R. § 73.3526.

requires licensees to certify that all documentation has been placed in the station's public file at the appropriate times as required under Section 73.3526 of the Rules and requires the Licensee to submit an exhibit of explanation if it has failed to do so.

4. On May 31, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for Station WLMB (the "Application").⁵ The Licensee filed an exhibit concerning certain late-filed documentation, including its 2010 biennial ownership report, but failed to report that Children's Television Programming Reports were filed late for four quarters during the license period.

III. DISCUSSION

5. The Licensee's failure to file with the Commission in a timely manner its Children's Television Programming Reports constitutes apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii).⁶ Moreover, the Licensee's failure to report these violations in its renewal application constitutes a violation of Section 73.3514 of the Commission's Rules.⁷

6. 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 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 Sections 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

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.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)(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 offenses, ability to pay, and such other matters as justice may require."¹⁴ In this case, the Licensee failed to file the reports with the Commission in a timely manner for four quarters during the license period, and

⁵ File No. BRC DT-20130531AHC.

⁶ 47 C.F.R. § 73.3526(e)(11)(iii). We hereby admonish the Licensee for its failure to file the biennial ownership in a timely manner.

⁷ 47 C.F.R. § 73.3514.

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

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

¹² 47 U.S.C. § 312(f)(2).

¹³ *See 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), Section I.

¹⁴ 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)(5); 47 C.F.R. § 1.80(b), Section II.

we therefore conclude that the Station is apparently liable for a \$3,000 forfeiture for these apparent violations. We further find that the Licensee omitted information regarding violations from its renewal application and is therefore liable for an additional \$1,500 forfeiture. We thus conclude that the Licensee is liable for a total forfeiture of \$4,500 for these apparent violations.

IV. ORDERING CLAUSES

8. 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 Dominion Broadcasting, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand five hundred dollars (\$4,500) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514 of the Commission's Rules.

9. 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*, that Dominion Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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).

11. 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: Peter Saharko, Attorney Adviser, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above. We further request that an electronic copy of any response be sent via email to peter.saharko@fcc.gov.

12. 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.

13. 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. 20554.¹⁵

¹⁵ See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Dominion Broadcasting, Inc., 825 Capital Commons Drive, Toledo, Ohio, and to its counsel, Eve Klindera Reed, Wiley Rein LLP, 1776 K Street NW, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau