

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

In the Matter of)	
)	
Withers Broadcasting Company of Clarksburg, LLC)	Facility I.D. No. 10976
Licensee of Station WVFX)	NAL/Acct. 201441420011
Clarksburg, West Virginia)	FRN: 0017741521

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: March 31, 2014

Released: March 31, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")*¹ we find that Withers Broadcasting Company of Clarksburg, LLC (the "Licensee"), licensee of television station WVFX, Clarksburg, West Virginia (the "Station"), apparently willfully and/or repeatedly violated the Commission's Rules by: (1) failing to file electronically the Station's quarterly TV issues/programs lists, in violation of Sections 73.3526 (b)(2) & (e)(11)(i)² and (2) failing to report these violations in the renewal application, in violation of Section 73.3514(a).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 Thirteen Thousand Dollars (\$13,000).

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.⁴ As set forth in subsection 73.3526(e)(11)(i), each commercial television licensee must prepare and place in its public inspection file a TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three month period.⁵ Under subsection (b)(2), the licensee must electronically file the issues/programs lists to the Commission's website.⁶

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

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 Section 0.283 of the Rules. See 47 C.F.R. § 0.283.

² 47 C.F.R. § 73.3526 (b)(2) & (e)(11)(i).

³ 47 C.F.R. § 73.3514(a).

⁴ 47 C.F.R. § 73.3526.

⁵ 47 C.F.R. § 73.3526(e)(11)(i).

⁶ 47 C.F.R. § 73.3526(b)(2).

documentation, required by 47 C.F.R. Section 73.3526 . . . has been placed in the station's public inspection file at the appropriate times."

4. On July 30, 2013, the Licensee filed its license renewal application (FCC Form 303-S) for Station WVFX (the "Application").⁷ The Licensee failed to report that it did not file issues/programs lists for the Station for 17 quarters.

III. DISCUSSION

5. The Licensee's failure to file electronically the Station's quarterly TV issues/programs lists for 17 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i). The Licensee's failure to report these violations in its renewal application constitutes an apparent willful and/or repeated violation of Section 73.3514(a).⁸

6. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person 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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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."¹³

7. 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 and a base forfeiture amount of \$10,000 for public file violations.¹⁴ 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."¹⁵

8. In this case, the Licensee has not filed the quarterly issues/programs lists for the Station for 17 quarters, and we conclude that the Licensee is apparently liable for a \$10,000 forfeiture for this public file violation. The Licensee further failed to report the violations in its renewal application and we therefore conclude that the Licensee is liable for a \$3,000 forfeiture for this violation. Based on the

⁷ File No. BRC DT-20120601ABQ

⁸ 47 C.F.R. § 73.3514(a).

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

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ *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)(4), note to paragraph (b)(4), Section I.

¹⁵ 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.

record before us, we therefore conclude that a total forfeiture in the amount of \$13,000 for the Station is appropriate for the Licensee's apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i) and Section 73.3514(a).

IV. ORDERING CLAUSES

9. 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 Withers Broadcasting Company of Clarksburg, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Thirteen Thousand Dollars (\$13,000) for its apparent willful and/or repeated violations of Sections 73.3526 and 73.3514 of the Commission's Rules.

10. 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*, Withers Broadcasting Company of Clarksburg, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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. Nos. and FRN Nos. 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 numbers 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 Peter.Saharko@fcc.gov.

12. 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 D. Saharko, Attorney Adviser, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. Nos. referenced above. If possible, an electronic copy should also be sent via email to peter.saharko@fcc.gov.

13. 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.

14. 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. 20554.¹⁶

¹⁶ See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Withers Broadcasting Company of Clarksburg, LLC, Post Office Box 1508, Mount Vernon, Illinois, 62864, and to its counsel, Dennis J. Kelly, Esq., P.O. Box 41177, Washington, D.C. 20018.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau