

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

In the Matter of	)	
	)	
Lilly Broadcasting, L.L.C.	)	Facility I.D. No. 71508
Licensee of Station WENY-TV	)	NAL/Acct. No.: 201541420030
Elmira, New York	)	FRN: 0003761855

### NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 8, 2015

Released: December 8, 2015

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"),<sup>1</sup> we find that Lilly Broadcasting, L.L.C. (the "Licensee"), licensee of Station WENY-TV, Elmira, New York ("WENY"), willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules<sup>2</sup> by failing to file with the Commission in a timely manner Children's Television Programming Reports (FCC Form 398) for ten quarters.

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 Nine Thousand Dollars (\$9,000).

#### II. BACKGROUND

3. 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. 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 for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. Those reports must be prepared and placed in the public file by the 10th day after the close of the reporting quarter. That subsection also requires licensees to file the reports with the Commission and to publicize the existence and location of the reports.<sup>3</sup> A staff review of the Station's electronic public file has revealed that the station failed to file ten Children's Television Programming Reports in a timely manner—in many cases well over a year late.<sup>4</sup>

#### III. DISCUSSION

4. This NAL is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision,

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>4</sup> Licensee filed its Children's Television Programming Reports late for the second quarter of 2009, the second through fourth quarters of 2010, all four quarters of 2011, and the first two quarters of 2012.

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.”<sup>5</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>6</sup> Furthermore, the Commission has held that any inadvertent errors, oversights or failures to become familiar with Commission requirements are willful violations.<sup>7</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>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> Section 312(f)(2) of the Act also 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>10</sup>

5. 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.<sup>11</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>12</sup> In this case, the Licensee willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file in a timely manner ten Children’s Television Programming Reports. We hereby propose a forfeiture in the amount of \$9,000.

#### IV. ORDERING CLAUSES

6. 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 Lilly Broadcasting, L.L.C. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Nine Thousand Dollars (\$9,000) for its apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.

7. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission’s Rules, that

<sup>5</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>6</sup> 47 U.S.C. § 312(f)(1); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992) (“*Southern California*”) (stating that “Commission interpretations of “willful” do not require licensee intent to engage in a violation”).

<sup>7</sup> *See PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that “[t]he fact that a licensee’s violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional”); *see also Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that “employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations”).

<sup>8</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> *See Southern California*, 6 FCC Rcd at 4388.

<sup>10</sup> 47 U.S.C. § 312(f)(2); *see also Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

<sup>11</sup> *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), note to paragraph (b)(8), Section I.

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8) and note to paragraph (b)(8), Section II.

within thirty (30) days of the release date of this *NAL*, Lilly Broadcasting, L.L.C. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Electronic notification of payments should also be sent to Alison Nemeth at [Alison.Nemeth@fcc.gov](mailto:Alison.Nemeth@fcc.gov) on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>13</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code).<sup>14</sup>

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Any request for full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>15</sup> If there are questions regarding payment procedures, the respective Company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Alison L. Nemeth, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. In addition, to the extent practicable, a copy of the response, if any, should be sent via e-mail to [Alison.Nemeth@fcc.gov](mailto:Alison.Nemeth@fcc.gov).

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.<sup>16</sup>

<sup>13</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

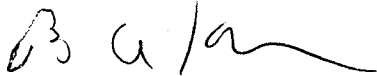
<sup>14</sup> Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>15</sup> See 47 C.F.R. § 1.1914.

<sup>16</sup> See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that "[t]ypically, the Commission uses gross

12. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Lilly Broadcasting, L.L.C., 2 Eastleigh Lane, Natick, MA 01760, and to its counsel, David D. Burns, Esq., Latham & Watkins, 555 Eleventh Street, NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").