

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

In the Matter of)	
)	
Northern Broadcasting Company, Inc.)	Facility ID No. 450
Licensee of Station WNCE-CD)	NAL/Acct. No.: 2014541420018
Glen Falls, New York)	FRN: 0006053771

ORDER

Adopted: November 18, 2015**Released: November 18, 2015**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Northern Broadcasting Company, Inc. (the “Licensee”), the licensee of Station WNCE-CD, Glenn Falls, New York (the “Station”)¹ based on its apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules by failing to file its quarterly Children’s Television Programming Reports in a timely manner.² The NAL proposed a forfeiture of \$15,000 based on the Licensee’s failure to file in a timely manner Children’s Television Programming Reports for thirteen quarters. The Licensee filed a timely response on August 20, 2015 (“NAL Response”) contending that the Video Division had previously investigated the station’s public file and deemed it in compliance.³ Based upon our review of the record we find that, given the unique circumstances present, cancellation of the NAL is warranted. We find, however, that the rule violations identified warrant an admonishment of the Licensee.

II. BACKGROUND

2. The NAL Response referenced previous Division inquiries into the Licensee’s compliance with the Commission’s public file record obligations. On March 28, 2011, the Video Division sent the station a letter requesting that the Licensee provide information concerning missing Children’s Television Programming Reports for the following quarters: all four quarters of 2006, 2007, the second, third and fourth quarters for 2008, and all four quarters 2009 and 2010.⁴ On April 28, 2011, the Licensee filed a response stating that some of the missing reports (those for all four quarters 2006, 2007, fourth quarter 2008, and first quarter 2009) had been filed under the call sign WNCE-FM, instead of the Licensee’s call sign, WNCE-CA and the others had not been filed.⁵ Division staff did not impose a forfeiture or other penalty for these rule violations at that time, but instead notified Licensee’s counsel

¹ *Northern Broadcasting Company, Inc., Licensee of WNCE-CD, Glen Falls, New York*, DA 15-827 (rel. Jul. 21, 2015).

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ Response to Notice of Apparent Liability filed by Northern Broadcasting Company, Inc. (Aug. 20, 2015) available at http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=61808.

⁴ Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Northern Broadcasting Comp., Inc. (Mar. 28, 2011) available at: http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=25163.

⁵ The Licensee correctly filed the missing reports on April 5 and 6, 2011.

that this investigation into the children's Television Programming Reports at issue in the March 2011 Letter had concluded.

3. The Video Division sent another letter on March 12, 2013 inquiring into the station's compliance with the Commission's Class A operating requirements and requesting that the Licensee upload missing issues and programs lists and its main studio address to its public file. After the Licensee provided the missing documents, the Video Division concluded that the Licensee was "in compliance with the public file issues raised" in its March 12, 2013 letter.⁶

III. DISCUSSION

4. Under the circumstances, we find that cancellation of the forfeiture is appropriate. Section 1.80(f)(4) of the Commission's rules states: "If the proposed forfeiture penalty is not paid in full in response to the notice of apparent liability, the Commission, upon considering all relevant information available to it, will issue an order canceling or reducing the proposed forfeiture or requiring that it be paid in full and stating the date by which the forfeiture must be paid."⁷ In this case, the Licensee came into compliance by uploading reports to its public file each time Division staff identified deficiencies. Although our review of the station's electronic public file, which is typically conducted upon submission of a license renewal application, revealed several late-filed Children's Television Programming Reports, we find that the Licensee had reason to believe it was in compliance at the time it submitted its license renewal application because it had filed previously missing reports in 2011 and 2013. Nevertheless, because the Licensee was not in compliance with the Commission's rules concerning the filing of Children's Television Programming Reports, main studio location and issues and programs lists at various times throughout the license period, we admonish the station for its failures to comply with these rules.

5. We reject the Licensee's argument in the NAL Response that it is not liable for any violation prior to the transfer of control consummated on September 24, 2010.⁸ Consistent with section 73.3526(d)(2), "in cases involving applications for consent to transfer of control of a permittee or licensee of a broadcast station," the public inspection file "shall be maintained by the permittee or licensee."⁹ We disagree with the Licensee's argument that Media Bureau guidance regarding the period certification should cover following a "long form" transfer of control absolves the Licensee of liability for rule violations. In this case, the Licensee was assessed a forfeiture because it violated Section 73.3526(e)(11)(iii) of the Rules, not because it failed to identify the violations in its renewal application.¹⁰ Because the Licensee remains the same after a transfer of control, as a legal matter, liability remains with the licensee. Our conclusion is consistent with Commission precedent holding that "[t]ransfer of control

⁶ Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Media Bureau to Northern Broadcasting Company, Inc. (April 30, 2013) available at https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101666134&qnum=5190©num=1&exhnum=2.

⁷ 47 C.F.R. §1.80(f)(4).

⁸ See File No. 20100729AEK, transfer of control of majority control of the Licensee from Michael W. Collins to Mr. Jesse Jackson.

⁹ 47 C.F.R. §73.3526(d)(2).

¹⁰ As the Enforcement Bureau has previously held, "issues of where liability lies for violations that occurred prior to a transfer of control and whether a new owner can certify to actions that took place prior to the transfer of control are entirely different issues." *Hensley Broadcasting, Inc.*, 24 FCC Red at 116 n. 9 (EB 2009) (finding that a transferee cannot as a legal or practical matter "certify that the licensee complied with the Commission's rules during a period of time prior to the transferee obtaining ownership.").

of the licensee's stock subsequent to a violation does *not* excuse the licensee for the violation.”¹¹ Thus, there is no basis for disregarding the public file violations that occurred prior to the transfer of control of equity and voting rights in the Licensee corporation consummated in 2010.

6. While we have determined that under the discretion provided to the Commission under 503(b)(2)(E) of the Act that cancellation of the forfeiture is appropriate, it is not in dispute that thirteen Children's Television Programming Reports at issue in the NAL were not filed in a timely manner. Accordingly, we conclude that an admonishment is warranted. We do not rule out more severe sanctions for similar violations of this nature in the future. We also remind the Licensee that we take very seriously compliance with regards to Class A and full power stations obligations under the Commission's children's television programming rules, including the requirement to prepare and file quarterly Children's Television Programming Reports in a timely manner.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the \$15,000 forfeiture proposed in the Notice of Apparent Liability for Forfeiture issued to Northern Broadcasting Company, Inc. is hereby **CANCELLED**.

8. **IT IS FURTHER ORDERED** that Northern Broadcasting is ADMONISHED for its violations of Section 73.3526(e)(11)(iii) of the Commission's rules, 47 C.F.R. § 73.3526(e)(11)(iii).

9. **IT IS FURTHER ORDERED** that copies of this *Order* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Northern Broadcasting Company, Inc., 63 Putnam Street, Suite 201, Saratoga Springs, New York 12866-3118, and to its counsel, Peter Tannenwald, Esq., Fletcher Heald & Hildreth P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209-3801.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ See *EZ Sacramento, Inc.*, Forfeiture Order, 14 FCC Rcd 13539, 13540 (MMB 1999) (emphasis added) (citing *Winslow Communications, Inc.*, Memorandum Opinion and Order, 45 FCC 2d 662, 663 (1972) (“The transfer of control of stock of the corporation subsequent to the violations does not excuse the licensee of the violations.”)); see also *Mapleton Licensee of San Luis Obispo*, Forfeiture Order, 27 FCC Rcd 4099, 4101 n. 19 (EB 2012); *Hensley Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 115, 116 n. 9 (EB 2009); *Korean American TV Broadcasting Corp.*, Forfeiture Order, 28 FCC Rcd 14515 (Vid. Div. 2013).