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MEMBER, DISTRICT OF COLUMBIA BAR
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January 15, 2016

BY EXPRESS MAIL

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12 Street, S.W.
Washington, D.C. 20554

ATTN: Adrienne Denysyk, Attorney Advisor
Video Division, Media Bureau, Room 2-A820

RE: Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID No. 51233

SUBJECT: Response to Notice of Apparent Liability, NAL/Acct. No.: 201541420036

Dear Ms. Dortch:

On behalf of Pacific Telestations, LLC, I transmit herewith in triplicate its response to the referenced notice of apparent liability, released December 23, 2015.

Kindly communicate any questions directly to the undersigned.

Respectfully submitted,



John Wells King

JWK/

Received & Inspected

JAN 19 2016

FCC Mailroom

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Pacific Telestations, LLC ¹)	Facility I.D. No. 51233
Licensee of Station KUAM-TV)	NAL/Acct. No.: 201541420036
Hagatna, Guam)	FRN: 0022452825

TO: Media Bureau, Video Division

**RESPONSE TO
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Pacific Telestations, LLC (the "*Licensee*" or "*Pacific*"), by its counsel, hereby responds to the above-captioned Notice of Apparent Liability for Forfeiture (the "*NAL*"), released December 23, 2015, and for its response, states as follows:

The NAL proposes the assessment of a \$16,000 forfeiture for:

- failure to file the KUAM-TV Children's Television Programming Reports in a timely manner for five quarters;
- failure to file the KUAM-TV quarterly TV issues/programs lists for fifteen quarters; and
- failure to report violations in the KUAM-TV license renewal application.

For the following reasons, Pacific requests that the Commission eliminate the proposed forfeiture.

¹ Please note that the correct licensee name is Pacific Telestations, LLC.

Children's Television Programming Reports

The Notice claims that five Reports were filed late: 2012 Quarters 3 and 4, 2014 Quarter 3, and 2014 Quarters 1 and 2.² This is inaccurate.

The Reports for 2014 Quarters 1 and 2 were timely filed. See the Submission Confirmations, attached as Exhibits 1 and 2, bearing filing dates of April 10, 2014, and July 9, 2014, respectively. After the timely filing of these reports, the Licensee discovered that the response to one question had been inadvertently changed and was wrong. Pacific filed amendments to the reports on September 21, 2014 (Quarter 1 of 2014), and August 4, 2014 (Quarter 2 of 2014). See Exhibits 3 and 4. The amended reports state at Item 17:

This amended report is filed in order to change the response to Item 9.a. from "No" to "Yes." KUAM-TV has always provided information identifying each Core Program aired on its station, including an indication of the target child audience, to publishers of program guides as required by 47 C.F.R Section 73.673.

The Report for 2014 Quarter 3 was timely filed. See the Submission Confirmation, attached as Exhibit 5, bearing a filing date of October 10, 2014.

The Reports for 2012 Quarters 3 and 4 would have been timely filed, but technical issues with the Commission's server caused problems and delayed the filings by three business days.³

With the 3d Quarter report, counsel brought the problems with the filing system to the attention of the Commission staff in an email on October 5, 2012. Commission staff member Ron Graser responded four days later, on October 9, 2012, by forwarding a copy of the Commission's July 2, 2012, Public Notice (DA 12-1029) titled "Technical Support for Filing

² Notice at 3, note 11.

³ These reports were filed by the predecessor licensee, Pacific Telestations, Inc., so in any event, regardless of the justification for the late filings, Pacific Telestations, LLC, is not liable for the actions of the prior licensee.

Children's Television Programming Reports (FCC Form 398)."⁴ See Exhibit 6, a copy of the email thread and enclosure.

On October 10, 2012, counsel, assisting Pacific in the filing, advised:

I sent the file to the FCC staff this afternoon, after attempting to upload it in their e-support system did not work, and after I faxed it to them . . . [T]he staff told me many others were having similar problems. I asked them to give us an extension of time to file, which they will do.

On Saturday, October 13, 2012, counsel advised that "The FCC staff sent me a fixed file, which I was able to open and review. The information looks good. . . . I shall file the report on my Monday, Oct 15." The report was thus filed at the earliest possible time after the Commission staff assisted in resolving the problem with the filing system, albeit three business days after the deadline.

An explanation for the lateness of the report was added at Item 17 of Form 398:

This report was unable to be filed by October 10, 2012, due to technical issues with the local saved data and the Commission's server. The Commission staff assisted in resolving the issues and indicated an extension of time to file the report would be granted.

With the 4th Quarter report, technical issues with the Commission's server corrupted the data and the report was unable to be filed on time. On January 8, 2013, counsel sent a tech support inquiry to the FCC staff, ULS Help Case HD0000001986427. On January 14, 2013, counsel reported to Pacific, "the staff has advised that they initiated a notation of an extension of time to file the report, as they did for 3Q." The technical support staff responded by email, advising:

Response from developer:

As in Q3 2012 , I had to modify the .htm file to change the action so that it would point to FCC production server and not to the user's hard disk.

I have attached the corrected file as saved_kuan_q4_2012.

⁴ The fact that the Commission issued a public notice about technical support for filing Form 398 is a relevant indication that filers were having problems with the server. The Commission replaced the filing system software.

To avoid these errors in future, we highly recommend that the user should use the new version of the program which can be access using this link <http://licensing.fcc.gov/KidVidNew/public/>
Please use the new version from next quarter onwards.

Should you have any further questions or need additional information, please submit a request for help at <http://esupport.fcc.gov/index.htm> , or call the FCC Licensing Support Center at 1-877-480-3201, selecting option 2 after the main menu recording.

Sincerely,

FCC Licensing Support Center

After reviewing the corrected file, counsel filed the report on January 15, 2013, which was three business days late, but as soon as possible after the Commission staff assisted with resolving the problem with the filing system.

An explanation for the lateness of the report was added at Item 17 of Form 398:

This report was unable to be filed by January 10, 2013, due to technical issues with the local saved data and the Commission's server. The Commission staff assisted in resolving the issues and indicated an extension of time to file the report would be granted.

KUAM-TV has always taken very seriously its reporting obligations for children's television programming. On two occasions, the station missed the deadline by only three business days. The reports were late for reasons clearly beyond the Licensee's control. The late-filings occurred in two consecutive quarters, during a sustained period when the station (and apparently many others) had technical issues with the Commission's server. KUAM-TV asked for permission to file late, and was given assurances by the FCC staff on both occasions that the informal requests for an extension of time to file the reports would be granted.

Under the circumstances, the proposed forfeiture of \$3,000 for failure to file the KUAM-TV Children's Television Programming Reports in a timely manner for five quarters should be eliminated.

Quarterly Television Issues-Programs Lists

The Notice claims that the station's failure to timely place hard copies of its quarterly television issues/programs lists in the KUAM-TV physical public file for fifteen quarters prior to August 2, 2012 (the date the Commission's electronic public inspection file became effective) constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i) of the Rules.⁵ This is not so.

Pacific Telestations, LLC, acquired the KUAM-TV license on February 12, 2013. It is not responsible for the condition of the public inspection file prior to that time, or for any act of omission or commission by the prior licensee.

The failures of which the NAL takes notice were neither willful nor repeated failures of the current licensee. Section 312(f)(1) of the Communications Act of 1934, as amended, defines "willful" as "the conscious and deliberate commission or omission of [an] act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission". Pacific Telestations, LLC, cannot be charged with the conscious and deliberate commission or omission of an act by another corporate entity.⁶ And if Pacific Telestations, LLC, did not commit or omit an act, it obviously cannot be said to have acted repeatedly, as defined by Section 312(f)(2) of the Act.

⁵ Notice at 3.

⁶ The Commission has explained that "willful" means "the violator *knew* it was taking or failing to take the action in question, irrespective of any intent to violate the Commission's rules." *Saga Communications of New England, LLC*, 25 FCC Rcd 3289, 3292 (Enf. Bur. 2010) (Emphasis added). Here, the Licensee was not the violator; it did not take or fail to take the action in question; it had no knowledge.

The NAL relies upon Commission precedent that a transfer of control of a licensee's stock subsequent to a violation does not excuse the licensee for the violation.⁷ But that is not the whole story, and that is not the case here.

Station ownership changed in February 2013, after the Commission approved not only a long-form transfer of control application in BTCCDT-20121121AAL, but also follow-on pro forma license assignment application to the current licensee, in BALCDT-20130131AAX. The change in beneficial ownership of the Licensee occurred with the new assignee entity, not with a transfer of interests in the former licensee entity. The consummation notice was filed pursuant only to the application for assignment of license. Thus in this case, the filing of a long form transfer of control and the filing of a short-form assignment of license, taken together, comprise an effective long form assignment of license.⁸

Accordingly, the proposed forfeiture of \$10,000 for failure to timely place hard copies of the KUAM-TV quarterly television issues/programs lists in the station's physical public file for fifteen quarters prior to August 2, 2012, should be eliminated.

⁷ Notice at 4.

⁸ Citing *P.D. Communications, LLC*, 20 FCC Rcd 16557 (Media Bur. 2005), the Commission contends that a short form assignment subsequent to a long form transfer of control does not relieve liability for violations during the license term. NAL at 4. But that case is inapposite. There, a new shareholder acquired the stock of the licensee and continued to operate the station under his ownership. Not until nearly a year later did he file a short form license assignment application. Here, the long form transfer of control was not consummated, but instead, the new ownership acquired the license into a new entity.

License Renewal Reporting

The Notice claims that the Licensee's failure to report in its license renewal application that five Children's Television Programming Reports were untimely filed, constitutes an apparent violation of Section 73.3514(a) of the Rules.⁹

As shown above, three of the five allegedly late reports were in fact timely filed, for Quarters 1 and 2 of 2014 and for Quarter 3 of 2014. The remaining two reports, Quarters 3 and 4 of 2012, would have been timely filed, but technical issues with the Commission's server caused problems and delayed the filings. KUAM-TV informally requested an extension of time to file the reports and received the assurances of the Commission staff that extensions would be granted. The station relied upon such assurances to excuse the three-day late filings.

Regardless of the lateness of the filings, they were effected by the prior licensee, Pacific Telestations, Inc. Its successor, Pacific Telestations, LLC, cannot certify its predecessor's compliance with the Commission's rules, and its certification may not be faulted as a result.¹⁰

Accordingly, the proposed forfeiture of \$3,000 for failure to report in the KUAM-TV license renewal application that five Children's Television Programming Reports were untimely filed, should be eliminated.

⁹ Notice at 3.

¹⁰ This is true regardless whether a change in ownership is pursuant to a license assignment or transfer of control. The Commission has recognized that in the context of a license renewal application, "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." *Mapleton License of San Luis Obispo, LLC*, 27 FCC Rcd 4099, 4101 n. 19 (Enf. Bur. 2012), citing *Hensley Broadcasting, Inc.*, 24 FCC Rcd 115, 116 n.9 (Enf. Bur. 2009).

Conclusion

The proposed forfeitures are unwarranted and should be eliminated altogether. The allegedly late-filed Children's Television Programming Reports were either timely filed, or were excusably tardy. Pacific is not responsible for failures in the filing of quarterly television issues-programs lists by the prior licensee. The Licensee did not falsely certify compliance with the Commission's rules in the KUAM-TV license renewal application.

Respectfully submitted,

PACIFIC TELESTATIONS, LLC

By:



Its Counsel

LAW OFFICE OF JOHN WELLS KING, PLLC

4051 Shoal Creek Lane East
Jacksonville FL 32225-4792
Tel: 904.647.9610
Email: John@JWKingLaw.com

January 15, 2016

Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID 51233
Hagatna, Guam
Response to Notice of Apparent Liability

EXHIBIT NO. 1

Submission Confirmation

Form 398
Children's Television Programming Report

2014 Quarter 1
Filed April 10, 2014



Children's Television Online Filing System

[FCC](#) > [Media Bureau](#) > KidVid

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Submission Confirmation

Confirmation Number 153901
Call Sign KUAM-TV
Filing Quarter Date 03/31/2014
Filing Date 04/10/2014

Exhibit Details

File Name KUAM-TV Exhibit to 398 Item
7c.pdf
Size (bytes) 6288
Exhibit ID [1539010](#)

Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

Federal Communications Commission
445 12th Street SW
Washington, DC 20554
[More FCC Contact Information...](#)

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TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
E-mail: fccinfo@fcc.gov

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Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID 51233
Hagatna, Guam
Response to Notice of Apparent Liability

EXHIBIT NO. 2

Submission Confirmation

Form 398
Children's Television Programming Report

2014 Quarter 2
Filed July 9, 2014



Children's Television Online Filing System

[FCC](#) > [Media Bureau](#) > KidVid

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Submission Confirmation

Confirmation Number 157183
Call Sign KUAM-TV
Filing Quarter Date 06/30/2014
Filing Date 07/09/2014

Exhibit Details

File Name KUAM-TV Exhibit to 398 Item
7c.pdf
Size (bytes) 6288
Exhibit ID [1571830](#)

Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

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Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID 51233
Hagatna, Guam
Response to Notice of Apparent Liability

EXHIBIT NO. 3

Submission Confirmation

Form 398
Children's Television Programming Report

2014 Quarter 1, amended
Filed September 21, 2014

Note: JavaScript is used to prevent this page from being displayed in a frame.



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Submission Confirmation

Confirmation Number 153901

Call Sign KUAM-TV

Filing Quarter Date 03/31/2014

Filing Date 09/21/2014

Exhibit Details

File Name KUAM-TV Exhibit to
398 Item 7c.pdf

Size (bytes) 6288

Exhibit ID [1539010](#)

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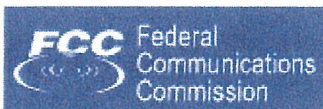
Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID 51233
Hagatna, Guam
Response to Notice of Apparent Liability

EXHIBIT NO. 4

Submission Confirmation

Form 398
Children's Television Programming Report

2014 Quarter 2, amended
Filed August 4, 2014



Children's Television Online Filing System

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Submission Confirmation

Confirmation Number 157183
Call Sign KUAM-TV
Filing Quarter Date 06/30/2014
Filing Date 08/04/2014

Exhibit Details

File Name KUAM-TV Exhibit to 398
Item 7c.pdf
Size (bytes) 6288
Exhibit ID [1571830](#)

Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

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Pacific Telestations, LLC
Television Station KUAM-TV, Facility ID 51233
Hagatna, Guam
Response to Notice of Apparent Liability

EXHIBIT NO. 5

Submission Confirmation

Form 398
Children's Television Programming Report

2014 Quarter 3
Filed October 10, 2014



Children's Television Online Filing System

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Submission Confirmation

Confirmation Number 160948
Call Sign KUAM-TV
Filing Quarter Date 09/30/2014
Filing Date 10/10/2014

Exhibit Details

File Name KUAM-TV Exhibit to 398
Item 7c.pdf
Size (bytes) 6288
Exhibit ID [1609480](#)

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John King

From: Ron Graser <Ron.Graser@fcc.gov>
Sent: Tuesday, October 09, 2012 8:11 AM
To: john@jwkinglaw.com
Cc: Hossein Hashemzadeh
Subject: RE: 3Q Kidvid
Attachments: KidVid Support PN Effective 7-2-2012.doc

Please see attached

From: john@jwkinglaw.com [mailto:john@jwkinglaw.com]
Sent: Monday, October 08, 2012 9:28 AM
To: Ron Graser
Cc: Hossein Hashemzadeh
Subject: FW: 3Q Kidvid

Ron,

Have you been able to take a look at my Friday message below?

Thanks, and best wishes.

John

From: john@jwkinglaw.com
Sent: Friday, October 05, 2012 10:47 AM
To: 'Ron Graser'
Cc: Hossein Hashemzadeh
Subject: 3Q Kidvid

Ron,

I'm having issues with the attached file. When I load it into Firefox and select Update Local, I get this error message:

File not found

Firefox can't find the file at /C:/Users/John/Documents/Client Files/Pacific Telestations, Inc/KidVid/kuam 3q12_files/kuam 3q12_files/kuam 3q12.htm.

Check the file name for capitalization or other typing errors.

Check to see if the file was moved, renamed or deleted.

I originally had copied the .htm file into the subfolder KidVid and when I opened in Firefox and attempted Update Local, the error message referred to the location "KidVid/kuam 3q12_files", which was nonexistent. I then created the subfolder "kuam 3q12_files" and placed a copy of the .htm file in there. Then the above error message appeared, when I attempted Update Local again.

I appreciate your assistance.

Thanks and best wishes.

John

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LAW OFFICE OF JOHN WELLS KING, PLLC

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9016 Tropical Bend Circle

Jacksonville FL 32256-9192

Member, District of Columbia Bar.

Not admitted in Florida.

Practice limited to Federal agencies



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-1029

Released: July 2, 2012

TECHNICAL SUPPORT FOR FILING CHILDREN'S TELEVISION PROGRAMMING REPORTS (FCC FORM 398)

The required quarterly filing of the Children's Television Programming Reports (FCC Form 398) by commercial television station licensees may be filed electronically via the [Children's Educational Television Reporting – Form 398 information page](#) commencing today, July 2. The form must be filed by July 10th, 2012.

To support stations' timely and accurate filing, the Commission has included KidVid Support within the [Children's Educational Television Reporting – Form 398 information page](#) to provide troubleshooting guidance and FAQs.

If stations require further assistance, support is available via Internet and phone.

Via the Internet, contact FCC eSupport at <http://esupport.fcc.gov/request.htm>. Filers must select "Children's Television Reporting System (CDBS – KidVid)" from the "FCC System" dropdown menu.

Via phone, contact FCC eSupport Monday through Friday, 8:00 a.m. – 6:00 p.m. ET (except Federal holidays), at 1-877-480-3201 (TTY: 1-717-338-2824) and select Option 2.

The Children's Television Programming Reports identify the programming that a commercial television station has aired to serve the educational and informational needs of children.