

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

In the Matter of	)	
	)	
Aerco Broadcasting Corporation	)	Facility I.D. No. 4077
Licensee of Station WSJU-TV	)	NAL/Acct. 201441420003
San Juan, Puerto Rico	)	FRN: 0003759560

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: February 5, 2014**

**Released: February 5, 2014**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL")<sup>1</sup>, we find Aerco Broadcasting Corporation (the "Licensee"), licensee of full power television station WSJU-TV, San Juan, Puerto Rico (the "Station"), apparently willfully and/or repeatedly violated the Commission's Rules by: (1) failing to file the Station's quarterly TV issues/programs lists, in violation of Section 73.3526(e)(11)(i)<sup>2</sup>; (2) failing to file timely with the Commission the Station's Children's Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)<sup>3</sup>; and (3) failing to report the violations in its renewal application, in violation of Section 73.3514(a).<sup>4</sup> 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 Twenty Thousand Dollars (\$20,000).

**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.<sup>5</sup> 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. 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.

<sup>1</sup> 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.

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

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

<sup>4</sup> 47 C.F.R. § 73.3514(a).

<sup>5</sup> 47 C.F.R. § 73.3526.

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 requires licensees to certify that it has filed with the Commission its Children’s Television Programming Reports according to the requirements of Section 73.3526 of the Commission’s rules and requires the Licensee to submit a statement of explanation as an exhibit if the Licensee has failed to do so.

4. On September 11, 2012, the Licensee filed its license renewal application (FCC Form 303-S) for Station WSJU-TV (the “Application”).<sup>6</sup> A review of Commission records reveals that the Licensee did not file issues/programs lists for the Station for 28 quarters and that the Licensee failed to file Children’s Television Programming Reports for the Station in a timely manner for 20 quarters.

### III. DISCUSSION

5. The Licensee’s failure to place in its public inspection file the Station’s quarterly TV issues/programs lists for 28 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i). The Licensee’s failure to file with the Commission in a timely manner its Children’s Television Programming Reports for 20 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii). 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).<sup>7</sup>

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.<sup>8</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>9</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>10</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>11</sup> 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.”<sup>12</sup>

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 or information and a base forfeiture amount of \$10,000 for public file violations.<sup>13</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)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation,

<sup>6</sup> File No. BRCDD-20120928ACZ.

<sup>7</sup> 47 C.F.R. § 73.3514(a).

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

<sup>9</sup> 47 U.S.C. § 312(f)(1).

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

<sup>11</sup> *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

<sup>12</sup> 47 U.S.C. § 312(f)(2).

<sup>13</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)(4), note to paragraph (b)(4), Section I.

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>14</sup>

8. In this case, the Licensee has not filed the quarterly issues/programs lists for the Station for 28 quarters, and we conclude that the Licensee is apparently liable for a \$9,000 forfeiture for this public file violation. The Licensee further failed to file its Children’s Television Programming Reports in a timely manner for 20 quarters, and we therefore conclude that the Licensee is apparently liable for a \$8,000 forfeiture for this apparent violation. The Licensee also failed to report the violations in its renewal application, and conclude the Licensee is apparently liable for a \$3,000 forfeiture for this violation. Based on the record before us, we therefore conclude that a total forfeiture in the amount of \$20,000 for the Station is appropriate for the Licensee’s apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i) and (iii) and 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 Aerco Broadcasting Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Twenty Thousand Dollars (\$20,000) 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*, Aerco Corporation 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 Saharko, Attorney Advisor, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. Nos. referenced above.

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

<sup>14</sup> 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.

plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>15</sup>

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Aerco Broadcasting Corporation, 1508 Calle Bori, Urb Antonsanti, San Juan, Puerto Rico, 00927, and to its counsel, John A. Borsari, Esq., Borsari & Associates, PLLC, 2111 Wilson Boulevard, Suite 700, Arlington, Virginia, 22201.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.