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

In the Matter of	)	
	)	
Abacus Television	)	Facility I.D. No. 4754
Licensee of Station WJKF-CA	)	NAL/Acct. No.: 201341420019
Jacksonville, Florida	)	FRN: 0008390981

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 20, 2013 **Released: June 21, 2013**

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"),[1] we find that Abacus Television (the "Licensee"), licensee of Station WJKF-CA (the "Station"), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file timely with the Commission the Station's Children's Television Programming Reports.[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:

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.[3] 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.

3. On September 28, 2012, the Licensee filed its license renewal application (FCC Form 303-S) for Station WJKF-CA (the "Application").[4] Although the Licensee did not report the late filings in its application, a review of Commission records shows that the Licensee failed to file its Children's Television Programming Reports in a timely manner for 14 of the 17 quarters during the previous license period.[5]

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[1] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

[2] *See* 47 C.F.R. § 73.3526(e)(11)(iii).

[3] 47 C.F.R. § 73.3526.

[4] File No. BRTVA-20121001AID

[5] Two of the reports were filed within ten days after the quarterly deadline. We would be inclined to excuse a limited number of late filings of this kind as de minimis. We will not do so here, however, given the number of late filings (continued....)

III. DISCUSSION

4. The Licensee's failure to file with the Commission in a timely manner its Children's Television Programming Reports for 14 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii).

5. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is 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.[6] 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.[7] 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,[8] and the Commission has so interpreted the term in the Section 503(b) context.[9] 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."[10]

6. 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.[11] 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."[12] In this case, the licensee failed to file its Children's Television Programming Reports in a timely manner for 14 of the 17 quarters during the license period, and we therefore conclude that the Station is apparently liable for a $9,000 forfeiture for these apparent violations.

IV. ORDERING CLAUSES

7. 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 Abacus Television is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand dollars ($12,000) for its apparent willful and repeated violations of Section 73.3526(e)(11)(iii) of the Commission's Rules.

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that,

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combined with the fact that an additional 9 reports filed more than thirty days after the deadline, including one that was filed more than a year late.

[6] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[7] 47 U.S.C. § 312(f)(1).

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

[9] *See Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

[10] 47 U.S.C. § 312(f)(2).

[11] *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.

[12] 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.

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

9. In the event that WJKF-CA wishes revert to low power television status, you need only notify us of this election and request a change in status for the station.[13] Should the station elect to revert to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

10. 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. No. and FRN No. 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 number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

11. 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: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

12. 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.

13. 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.[14]

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Abacus Television, c/o Benjamin Perez, 514 Chautauqua Street, Pittsburgh, Pennsylvania, 15124-3509.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

[13] *See* 47 C.F.R. § 73.6001(d).

[14] *See* 47 C.F.R. § 1.1914.