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

In the Matter of	)	
	)	
Paging Associates, Inc.	)	Facility I.D. No. 51284
Licensee of Station W28AJ,	)	NAL/Acct. 201341420010
Allingtown, Connecticut	)	FRN: 0003581584

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 30, 2013 **Released: May 2, 2013**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")*[1] we find that Paging Associates, Inc. (the "Licensee"), licensee of Class A television station W28AJ, Allingtown, Connecticut (the "Station"), apparently willfully and/or repeatedly violated the Commission's Rules by: failing to file with the Commission, and prepare and place in its public inspection files, the Station's Children's Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)[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 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.[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 April 10, 2012, the staff issued a letter requesting information regarding, among other things, compliance with the requirements of Section 73.3526 of the Commission's Rules.[4] Specifically, the letter informed the Licensee that it had not completed the electronic filings of its Form 398 reports for the second, third, and fourth quarters in 2010 and all four quarters in 2011.[5] The Licensee failed to

[1] 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.

[2] 47 C.F.R. § 73.3526(e)(11)(iii).

[3] 47 C.F.R. § 73.3526.

[4] *See* Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, to Paging Associates, Inc., dated April 10, 2012.

[5] *Id.*

address this deficiency or respond to this letter and also did not respond to a follow-up letter sent September 18, 2012.[6]

4. On November 6, 2012, the Video Division issued an "Order to Show Cause" to Paging Associates, Inc. ("Paging Associates"), licensee of Class A television station W28AJ, Allingtown, Connecticut, after Paging Associates failed to respond to the two letters.[7] On December 6, 2012, the Licensee filed a "Response and Opposition to Order to Show Cause" ("Response"). In its Response, the Licensee admitted that it failed to respond to the Commission's letters and further admitted "various lapses in [the Licensee's] attention to regulatory requirements."[8]

III. DISCUSSION

5. The Licensee's failure to (i) prepare, place in its public inspection file, and electronically file with the Commission its Children's Television Programming Reports for the past 11 quarters and (ii) prepare, place in its public inspection file, and electronically file the reports in a timely manner for the previous 34 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii).

6. 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.[9] 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.[10] 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,[11] and the Commission has so interpreted the term in the Section 503(b) context.[12] 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."[13]

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 and a base forfeiture amount of $10,000 for public file violations.[14] 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

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[6] *See* Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, Paging Associates, Inc., dated September 18, 2012.

[7] *Reclassification of License of Class A Television Station W28AJ*, Order to Show Cause, 27 FCC Rcd 13548 (Vid. Div. 2012). The Licensee's 2006 renewal application for the Station, File No. BRTTA - 20061129ARC, remains pending due to deficiencies with Children's Television Programming Reports.

[8] Response and Opposition to Order to Show Cause at 3.

[9] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[10] 47 U.S.C. § 312(f)(1).

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

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

[13] 47 U.S.C. § 312(f)(2).

[14] *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.

justice may require."[15]

8. In this case, the Licensee failed to prepare and place in its public file the Children's Television Programming Reports for the past 11 quarters and the reports for the previous 34 quarters were prepared and placed in the public file late, in many cases years late, and we conclude that the Station is apparently liable for a $14,000 forfeiture for these public file violations that stretched through two license cycles. The Licensee also failed to file with the Commission the Children's Television Programming Reports for the past 11 quarters and the reports for the previous 34 quarters were filed late, again in many cases years late, and we conclude that the Station is apparently liable for a $6,000 forfeiture for its failure to file the required forms through two license cycles. 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 Section 73.3526(e)(11)(iii).[16]

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 Paging Associates, Inc. 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 Section 73.3526 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*, Paging Associates, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. In the event that W28AJ wishes revert to low power television status, you need only notify us of this election and request a change in status for the station.[17] Should the station elect to revert to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

12. 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.

13. 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,

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[15] 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.

[16] The Licensee also failed to place the required certification of the Station's compliance with the requirements of 47 C.F.R. § 73.6001 in its public file in a timely manner. We will exercise our discretion pursuant to Section 503(b) of the Act and admonish the Licensee for its apparent violation of Section 73.3526(c)(17) of the Commission's Rules.

[17] *See* 47 C.F.R. § 73.6001(d).

Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. Nos. referenced above.

14. 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.

15. 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.[18]

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Paging Associates, Inc., 24 Rockdale Road, West Haven, Connecticut, 06516 and to its counsel, Timothy E. Welch, Esq., Hill & Welch, 1025 Connecticut Avenue N.W. #1000, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[18] *See* 47 C.F.R. § 1.1914.