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

In the Matter of	)	
	)	
La Cadena Del Milagro, Inc.	)	Facility I.D. No. 67190
Licensee of Station WVSN(TV)	)	NAL/Acct. No.: 201341420063
Humacao, Puerto Rico	)	FRN: 0006610976

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 3, 2013 **Released: December 4, 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] the Commission finds that La Cadena Del Milagro, Inc. (the "Licensee"), licensee of Station WVSN(TV), Humacao, Puerto Rico (the "Station"), apparently willfully and repeatedly violated: (i) Section 73.3526(e)(11)(iii) of the Rules[2] by failing to file with the Commission in a timely manner Children's Television Programming Reports for 12 quarters and (ii) Section 73.3514(a) of the Rules[3] by failing to report six of the violations in its license renewal application (FCC Form 303-S). 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.[4] 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. 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...."[5] Section

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

[2] 47 C.F.R. § 73.3526.

[3] 47 C.F.R. § 73.3514(a).

[4] 47 C.F.R. § 73.3526(e)(11)(iii).

[5] 47 C.F.R. § 73.3514(a).

IV, Question 3 of license renewal application requires a licensee to certify that required documentation "has been placed in the public file at the appropriate times."[6]

4. On October 1, 2012, the Licensee filed its license renewal application for the Station.[7] In Exhibit 23 of the license renewal application,[8] the Licensee stated that during the previous license term it failed to comply with the reporting deadlines for Children's Television Programming Reports as required in Section 73.3526(e)(11)(iii) of the Rules.[9] The Licensee reported that six Children's Television Programming Reports for the Station in the preceding license term were filed late.[10] A Commission review of the Station's online public file showed that an additional six Children's Television Programming Reports were filed late and not reported as such by the Licensee in its license renewal application.[11]

III. DISCUSSION

5. The Licensee failed to file with the Commission the Children's Television Programming Reports for the Station in a timely manner for 12 quarters. These late filings constitute apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules. Moreover, the Licensee's failure to report six of these violations in its license renewal application constitutes an apparent violation of Section 73.3514(a) of the Rules.[12]

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 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.[13] 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.[14] The

[6] *FCC Form 303-S*, Section IV, Question 3.

[7] File No. BRCDT-20121001ASX (*as amended* Oct.24, 2013).

[8] *Id.* at Exhibit 23. License also notes that a total of 12 Children's Programming Reports were re-filed because the reports "contained a number of errors and inaccurately reflected the broadcast of fewer than three hours of core programming, although the station did in fact broadcast at least three hours of core programming during each quarter." *Id.* The Licensee also provided evidence of when the reports were originally filed. *Id.* at Attachment 23. Those reports that were re-filed, but originally submitted on-time have not been included in our forfeiture calculation.

[9] "The Report for each quarter is to be placed in the public inspection file by the tenth day of the succeeding calendar quarter. By this date, a copy of the Report for each quarter is also t be filed electrically with the FCC." 47 C.F.R. § 73.3256(e)(11)(iii).

[10] During the preceding license term, the Licensee self-reported the late filing of Children's Programming Reports for: 4th quarter 2005, all quarters 2006 and 1st quarter 2007. Licensee also self-reported the late filing of 2nd and 3rd quarters 2005, however, these quarters are not a part of the preceding license term under review and therefore does not impact our forfeiture calculation.

[11] Licensee filed the Children's Programming Reports for: 2nd quarter 2007 (two days late); 3rd quarter 2007 (seven days late); 4th quarter 2007 (13 days late); 3rd quarter 2008 (3 days late); 1st quarter 2009 (5 days late) and 4th quarter 2011 (one day late). In other cases we may be included to excuse a limited number of late filings of similar kind as *de minimis*. We will not do so here in light of the number of late filed reports, which evidences a clear history of willful and repeated violations by the licensee. *See ZGS Broadcasting of Orlando, Inc.*, Notice of Apparent Liability for Forfeiture, DA 13-1587, ¶ 5, fn. 5 (Jul. 18, 2013).

[12] 47 C.F.R. § 73.3514.

[13] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[14] 47 U.S.C. § 312(f)(1).

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,[15] and the Commission has so interpreted the term in the Section 503(b) context.[16] 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."[17]

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form.[18] 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."[19] Based on our review of the facts and circumstances here, we find that the Licensee is liable for a forfeiture in the amount of $9,000 for its apparent willful and repeated violations of Sections 73.3526 (e)(11)(iii) and 73.3514(a) of the Rules.

IV. ORDERING CLAUSES

8. 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 La Cadena Del Milagro, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of nine thousand dollars ($9,000) for its apparent willful and repeated violations of Section 73.3526(e)(11)(iii) and 73.3514(a) of the Commission's Rules.

9. 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,* La Cadena Del Milagro, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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: Evan Morris, Attorney-Advisor, Video Division, Media Bureau, Room 2-C827, and MUST INCLUDE the NAL/Acct. No. referenced above.

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

[16] *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[17] 47 U.S.C. § 312(f)(2).

[18] *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), note to paragraph (b)(8), Section I.

[19] 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)(8); and note to paragraph (b)(8), Section II.

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.[20]

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to La Cadena Del Milagro, Inc., P.O. Box 949, Camuy, Puerto Rico, 00627, and to its counsel, Francisco R. Montero, Esq., Fletcher Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, Virginia, 22209.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

[20] *See* 47 C.F.R. § 1.1914.