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

In the Matter of	)	
	)	
ZGS Providence, Inc.	)	Facility ID No. 70184
Licensee of Station WRIW-CD	)	NAL/Acct. No.: 201641420014
Providence, Rhode Island	)	FRN: 0010070522

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 11, 2016 **Released: May 11, 2016**

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, (Act) and Section 1.80 of the Commission's Rules (Rules),[1] we find that ZGS Providence, Inc. (Licensee), licensee of Station WRIW-CD, Providence, Rhode Island (Station), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules[2] by failing to file with the Commission in a timely manner its Children's Television Programming Reports for five (5) quarters. 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 three thousand dollars ($3,000).

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.[4] That subsection also requires licensees to file the reports with the Commission, place them in their public file by the tenth day of the succeeding calendar quarter.[5] That subsection also requires that Licensee's publicize the existence and location of the reports.[6]

3. On November 20, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.[7] On May 21, 2015, the Licensee amended its license renewal application to

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

[2] 47 C.F.R. § 73.3526(e)(11)(iii).

[3] *See generally*, 47 C.F.R. § 73.3526.

[4] 47 C.F.R. § 73.3526(e)(11)(iii).

[5] Starting March 31, 2016, broadcasters were required to file their quarterly Children's Television Programming Reports using the Commission's Licensing and Management System (LMS). *See All Children's Television Programming Reports Must Be Filed Using the Commission's Licensing and Management System*, Public Notice, 31 FCC Rcd 1104 (MB 2016). Prior to that date, all quarterly Children's Television Programming Reports were filed using the Commission's KidVid Online Filing System.

[6] *Id.*

[7] File No. BRDTA-20140815AHZ.

disclose that it failed to file Children's Television Programming Reports for five (5) quarters in a timely manner.[8]

III. DISCUSSION

4. The Licensee's failure to file electronically the Station's Children's Television Programming Reports in a timely manner for five (5) quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules.[9]

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 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.[10] 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.[11] 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,[12] and the Commission has so interpreted the term in the Section 503(b) context.[13] 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."[14]

6. The Commission's *Forfeiture Policy Statement* and the note to Section 1.80(b)(8) of the Rules establishes a base forfeiture amount of $3,000 for failure to file a required form or information.[15] 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)(E) 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."[16]

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[8] According to the Licensee and as verified by Video Division staff Children's Television Programming Reports were filed late for the following five quarters: (1) second quarter of 2007 (approximately three months late); (2) fourth quarter of 2007 (one week late); (3) third quarter of 2008 (four days late); (4) first quarter of 2012 (one day late); and (5) first quarter of 2013 (two days late). The licensee disclosed these late filings in its amended license renewal application while staff review was still ongoing. Section 1.65(a) of the Rules requires applicants to maintain a complete and accurate application. 47 C.F.R. § 1.65(a). Upon discovering the late filed Children's Television Programming Reports the Licensee amended its license application. We want to encourage licensees to proactively amend their application when a licensee discovers an error or omission and not simply wait for staff to discover such deficiencies. Based on these unique facts and circumstances we will not propose a forfeiture against the licensee for failing to properly disclose its violations when it initially filed the Station's license renewal application. *Cf. Dilip Viswanath Licensee of Station KLEG-CD, Dallas, Texas*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11364 (Vid. Div. 2014) (finding that a $3,000 forfeiture was warranted for a licensee's failure to report its violations in its renewal application).

[9] 47 C.F.R. § 73.3526(e)(11)(iii).

[10] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

[11] 47 U.S.C. § 312(f)(1).

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

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

[14] 47 U.S.C. § 312(f)(2).

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

[16] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement,* 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section II.

7. Based on our review of the facts and circumstances before us, we find that a forfeiture in the amount of $3,000 for failing to file its Children's Television Programming Reports in a timely manner for five (5) quarters is appropriate. Accordingly, we find that the Licensee is apparently liable in the amount of $3,000 for its willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules.[17]

8. We also find, pursuant to Section 309(k) of the Act,[18] that the Licensee's apparent violation does not constitute a "serious violation" warranting designation for evidentiary hearing. Moreover, we find no evidence that the violations, when considered together, evidence a pattern of abuse. Further, we find that the Station has served the public interest, convenience, and necessity during the subject license term.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that ZGS Providence, Inc., the licensee of Station WRIW-CD, Providence, Rhode Island, is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars ($3,000) for its apparent willful and/or repeated violations of Sections 73.3526(e)(11)(iii) of the Commission's Rules, 47 C.F.R. §§ 73.3526(e)(11)(iii).

10. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release date of this *NAL* ZGS Providence, 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 the Licensee wishes to revert the Station to low power television status, the Licensee need only notify us of this election and request a change in status for the station.[19] Should the Licensee elect to revert the Station to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

12. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.[20] When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:[21]

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be

[17] 47 C.F.R. §§ 73.3526(e)(11)(iii).

[18] 47 U.S.C. § 309(k). Section 309(k) of the Act provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application. If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act, 47 U.S.C. § 309(e)—or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted." 47 U.S.C. § 309(k)(2).

[19] *See* 47 C.F.R. § 73.6001(d).

[20] Payment may be made at the Commission's online Fee Filer website: https://www.fcc.gov/encyclopedia/fee-filer. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

[21] For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at ARINQUIRIES@fcc.gov.

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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: Evan S. Morris, Attorney-Advisor, Room 2-C827, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. 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.[22]

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.[23]

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to ZGS Providence, Inc. 2000 North 14th Street, Suite 400, Arlington, VA 22201, and to its counsel David M. Silverman, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania, Avenue, NW, Suite 800, Washington DC 20006-3401.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[22] *See San Jose State Univ.*, 26 FCC Rcd 5908 (2011) (noting that, "[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee's ability to pay. Other financial indicators may be considered....").

[23] *See* 47 C.F.R. § 1.1914.