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

In the Matter of:	)	
	)	
Convergence Entertainment	)	Facility I.D. No. 48413
and Communications, LLC	)	NAL/Acct. No. 201341420034
Licensee of Station W17CI	)	FRN: 0018934174
Claremont, New Hampshire	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 17, 2013 **Released: July 18, 2013**

By the Deputy Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")*[1] we find that Convergence Entertainment and Communications, LLC (the "Licensee"), licensee of Class A television station W17CI (the "Station"), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file electronically with the Commission certain of the Station's Children's Television Programming Reports in a timely manner (Form 398).[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 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. That subsection also requires licensees to file the reports with the Commission and to publicize for the public the existence and location of the reports.

3. On April 2, 2012, the Deputy Chief, Video Division, Media Bureau, issued a letter to the Licensee ("Letter") regarding the Station, stating that Commission records indicated that Licensee failed to make the required Form 398 electronic filings for all four quarters in 2009, 2010, and 2011. The Letters required the Licensee to provide information identifying the quarters in 2009, 2010, and 2011 for which a Children's Television Programming Report was prepared and placed in the Stations' public inspection files, and the location of the files. The Licensee failed to respond to this Letter and a follow-up

[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.

letter sent August 8, 2012 also received no response. As a result, on October 24, 2012, the Video Division issued an Order to Show Cause regarding the station's continued Class A license status.[4]

4. The Licensee timely responded to the Order to Show Cause and admitted that the reports for 2009 through 2011 were not timely filed with the Commission.[5] In a follow-up communication with Division staff, the Licensee stated that the reports were however prepared and placed in the public file in a timely manner.

III. DISCUSSION

5. The Licensee's admitted failure to file electronically with the Commission the Children's Television Programming Reports for the Station 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 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]

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.[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]

8. In this case, the Licensee failed to file electronically with the Commission the Station's Children's Television Programming Reports in a timely manner for 12 quarters. Based on the record before us, we believe that a forfeiture in the amount of $3,000 is appropriate for the Licensee's apparent

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[4] *Reclassification of License of Class A Television Station W17CI*, Order to Show Cause, DA 12-1710 (Oct. 24, 2012).

[5] Response to Order to Show Cause (Dec. 13, 2012).

[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.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

[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.

willful and/or repeated violations of Section 73.3526(e)(11)(iii).

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 Convergence Entertainment and Communications, LLC is hereby NOTIFIED of the Licensee's APPARENT LIABILITY FOR FORFEITURE in the amount of Three Thousand Dollars ($3,000) for the apparent willful and 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*, Convergence Entertainment and Communications, LLC 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 revert to W17CI to low power television status, the Licensee need only notify the Commission of this election and request a change in status for the station.[13] Should the Licensee elect to revert W17CI 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, 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.

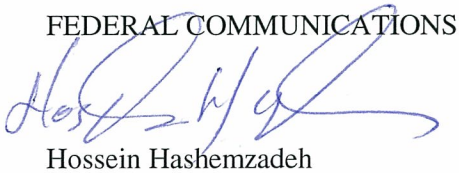
15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[14]

[13] *See* 47 C.F.R. § 73.6001(d).

[14] *See* 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Convergence Entertainment and Communications, LLC, 68 Grigware Road, Plattsburgh, New York, 12901.

FEDERAL COMMUNICATIONS COMMISSION



Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau