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

In the Matter of	)	
	)	
Kailua Television, LLC	)	Facility ID No. 83180
Licensee of Station KKAI	)	NAL/Acct. No.: 201541420012
Kailua, Hawaii	)	FRN: 0010900827

NOTICE OF APPARENT LIABLITY FOR FORFEITURE

Adopted: May 14, 2015 **Released: May 14, 2015**

By the Chief, Video Division:

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 Kailua Television, LLC (the "Licensee"), licensee of Station KKAI, Kailua, Hawaii (the "Station"), apparently willfully and/or repeatedly violated Sections 73.3526(b)(2) and 73.3526(e)(11)(i) of the Rules by failing to upload (i.e., place) in a timely manner TV issues/programs lists into the Station's local public inspection file ("public file").[2] The Licensee also apparently willfully and/or repeatedly violated Section 73.3514(a) of the Rules by failing to report these 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 six thousand dollars ($6,000).

II. BACKGROUND

2. Section 73.3526(e)(11)(i) of the Commission's rules requires every commercial television licensee to place in its public file, on a quarterly basis, a TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issue addressed, the time, date, duration, and title of each program in which the issue was treated. TV issues/programs lists must be placed in the Station's public file by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.[3]

3. In 2012 the Commission adopted Section 73.3526(b) of the Rules, which requires licensees to upload elements of stations' public files to an on-line Commission hosted website (*i.e.*, a Station's "e-pif"). This requirement includes uploading copies of a station's quarterly TV issues/programs lists to its e-pif.[4] Broadcasters' e-pif requirements were phased in between August 2012

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

[2] 47 C.F.R. § 73.3526(b)(2); 47 C.F.R. § 73.3526(e)(11)(i).

[3] *Id.*

[4] 47 C.F.R. § 73.3526(b)(2); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report,* Second Report and Order, 27 FCC Rcd 4535 (2012) ("*Second Report and Order*") (requiring broadcast

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and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station's public file, with limited exception, to their e-pif on a moving forward basis. By February 4, 2013, stations were required to upload to their e-pif those public file documents, with limited exceptions, that were already in their physical public file prior to August 2, 2012.[5]

4. Additionally, 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...."[6] Section IV, Question 3 of the license renewal application requires the licensee to certify that during the license term it has placed all documents required by Section 73.3526 of the Commission's rules into the Station's public file at appropriate times.[7] The Licensee did in fact certify that it had placed all required documents in its public file at the appropriate times.

5. On September 30, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.[8] A staff inspection of the Station's public file revealed that the Licensee did not upload copies of its TV issues/programs lists to its e-pif for all quarters of 2007 and all quarters of 2008 until February 17, 2015 after Commission staff called station counsel to request that the documents be uploaded. The Licensee did not provide any explanation for its failure to upload these TV issues/programs lists to its e-pif in a timely manner and did not disclose these violations in its license renewal application.

III. DISCUSSION

6. The Licensee failed to upload in a timely manner to the Station's e-pif copies of the Station's TV issue/programs lists for all four quarters of 2007 and 2008.[9] While all of the required TV issues/programs lists have now been uploaded to the Station's e-pif, these late filings constitute apparent willful and/or repeated violations of Sections 73.3526(b)(2) and 73.3526(e)(11)(i) of the Rules.[10] Moreover, the Licensee's failure to report these violations in its license renewal application constitutes an apparent violation of Section 73.3514(a) of the Rules.[11]

7. 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

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television stations to post their public inspection files, with limited exception, to an online Commission-hosted database).

[5] See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012)(announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding station's to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013)(providing a final remainder to broadcasters to upload copies of existing public file documents to their electronic public file); *see also* Second Report and Order, 27 FCC Rcd at 4580, para. 97 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

[6] 47 C.F.R. § 73.3514(a).

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

[8] File No. BRCDT - 20140930AFN.

[9] Our action today addresses apparent violations from the date the prior license renewal application was granted through the adoption date of this item. Any violations that may occur following the adoption date of this item and prior to the grant of the current license renewal application would be separate violations and potentially subject to additional Commission action.

[10] 47 C.F.R. § 73.3526(b)(2); 47 C.F.R. § 73.3526(e)(11)(i).

[11] 47 C.F.R. § 73.3514.

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.[12] 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.[13] 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,[14] and the Commission has so interpreted the term in the Section 503(b) context.[15] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. 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."[16]

8. The Commission's *Forfeiture Policy Statement* and the notes to Section 1.80(b)(8) of the Rules establish a base forfeiture amount of three thousand ($3,000) for failing to file required forms or information.[17] 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 and Section 1.80 of the Rules, 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."[18]

9. Beginning August 2, 2012, the Station should have uploaded on a quarterly basis its TV issues/programs lists directly to its e-pif. By February 4, 2013, the Station should have uploaded to its e-pif those TV issues/programs lists that were already in its physical public file. The Licensee failed to meet the February 4, 2013 deadline with regard to its 2007 and 2008 issues/programs lists by more than two years. Furthermore, the Station's TV issues/programs lists were not uploaded until over four months after the Station's license renewal application was filed. This delay deprived the public the opportunity to fully review the station's TV issues/programs lists prior to the deadline for submitting a petition to deny, which under Section 73.3516(e) must be filed "by the first day of the last full calendar month of the expiring license term."[19]

10. Upon review of the facts, circumstances, and nature of the violations, we find that forfeiture in the amount of $3,000 is appropriate for the Licensee's apparent failure to upload to its e-pif by February 4, 2013 copies of the Station's 2007-2008 TV issues/programs lists that were in the Station's physical public file prior to August 2, 2012. We also find that a forfeiture of $3,000 is warranted for the Licensee's apparent failure to disclose these violations in its license renewal application. Accordingly, the Licensee is liable for a total forfeiture in the amount of $6,000 for its apparent willful and/or repeated violations of Sections 73.3526(b)(2), 73.3526(e)(11)(i), and 73.3514(a) of the Rules.

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[12] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

[13] 47 U.S.C. § 312(f)(1); *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California*") *recons. denied*, 7 FCC Rcd 3454 (1992).

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

[15] *See Southern California,* 6 FCC Rcd at 4388.

[16] 47 U.S.C. § 312(f)(2); *see Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

[17] *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); *see also* 47 C.F.R. § 1.80(b), note to paragraph (b)(8), Section I.

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

[19] 47 C.F.R. § 73.3516(e). In this case, a timely-filed petition to deny would have had to be submitted to the Commission by January 2, 2015.

IV. ORDERING CLAUSES

11. 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 Kailua Television, LLC, licensee of Station KKAI, Kailua, Hawaii is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars ($6,000) for its apparent willful and repeated violations of Sections 73.3526(b)(2), 73.3526(e)(11)(i) and 73.3514(a) of the Commission's Rules, 47 C.F.R. §§ 73.3562(b)(2); 73.3526(e)(11)(i) and 73.3514(a).

12. **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,* Kailua Television, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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. Electronic notification of payments should also be sent to Alison Nemeth at Alison.Nemeth@fcc.gov on the date payments are made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.[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).[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 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.

14. Any request for full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[22] If there are questions regarding payment procedures, the respective Company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. 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: Alison Nemeth, Room 2-A629, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. In addition, to the extent practicable, a copy of the response, if any, should be sent via e-mail to Alison.Nemeth@fcc.gov.

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[20] An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

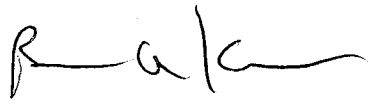
[21] Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

[22] *See* 47 C.F.R. § 1.1914.

16. 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.[23]

17. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Kailua Television, LLC, P.O. Box 8969, Honolulu, Hawaii 96810, and to its counsel Harry F. Cole, Esq., Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau

[23] *See* San Jose State Univ., 26 F.C.C. 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....").