

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

In the Matter of	)	
	)	
Killeen Christian Broadcasting Corporation	)	Facility I.D. No. 168452
Licensee of Station KPLE-CD	)	NAL/Acct. No.: 201441420024
Killeen, Texas	)	FRN: 0020256129

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: July 18, 2014**

**Released: July 18, 2014**

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"),<sup>1</sup> we find that Killeen Christian Broadcasting Corporation (the "Licensee"), licensee of Station KPLE-CD, Killeen, Texas (the "Station"), willfully and repeatedly violated: (1) Section 73.3526(e)(11)(iii) of the Rules<sup>2</sup> by failing to file with the Commission in a timely manner Children's Television Programming Reports (FCC Form 398) for the Station and (2) Section 73.3615(a) of the Rules for failing to file in a timely manner its 2008 and 2009 biennial ownership reports. 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 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. 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 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.<sup>3</sup>

3. Pursuant to Section 73.673 of the Rules, licensees are required to provide to publishers of program guides information identifying programming specifically designed to educate and inform children, including an indication of the age group for which the program is intended. Section 73.673 further requires that licensees identify each CORE Program with an E/I symbol at the beginning of the program's airing.

4. Section 73.3615(a) of the Rules requires that every two years all Class A stations are required

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> 47 C.F.R. § 73.3526.

<sup>3</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

to file an ownership report.<sup>4</sup> A copy of a station's biennial ownership report is required to be kept in the station's public file pursuant to Section 73.3526(e)(5) of the Rules.<sup>5</sup>

5. On April 1, 2014, the Licensee filed its license renewal application for the Station.<sup>6</sup> In various exhibits to the license renewal application, the Licensee reported that it: (i) failed to file its Children's Television Programming Reports in a timely manner for numerous quarters; (ii) failed to file an ownership report with the Commission in 2008 or 2009; and (iii) failed to air the required E/I symbol at the start of certain CORE programs during one quarter.<sup>7</sup>

### III. DISCUSSION

6. The Licensee willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to file numerous Children's Television Programming Reports in a timely manner. The Licensee willfully and repeatedly violated Section 73.3615(a) of the Rules by failing to file its Biennial Ownership Report in a timely manner.<sup>8</sup>

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 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."<sup>9</sup> 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.<sup>10</sup> Furthermore, the Commission has held that any inadvertent errors, oversights or failures to become familiar with Commission requirements are willful violations.<sup>11</sup> 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,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> Section 312(f)(2) of the Act also provides that "[t]he term 'repeated,' when used with reference to the commission or

<sup>4</sup> 47 C.F.R. § 73.3615(a).

<sup>5</sup> 47 U.S.C. § 73.3526(e)(5).

<sup>6</sup> File No. BRDTA-20140401ALD.

<sup>7</sup> The Licensee also reported that the Station was not in compliance with the rule requiring that non-discrimination clauses be included in advertising agreements until recently. We will excuse this delay in compliance as a de minimis violation on this one occasion but caution the Licensee of the importance of continued full compliance with this requirement.

<sup>8</sup> With respect to the failure to air the E/I icon, the Licensee notes that, even if none of the programs that failed to include the E/I symbol were included in the Station's CORE hours for the quarter in question, the Station would still have broadcast an average of 6.5 hours of CORE programming during the quarter. For this reason, we will dismiss the violation as de minimis but urge the Licensee to comply with this requirement in full in the future.

<sup>9</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>10</sup> 47 U.S.C. § 312(f)(1); See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), recons. denied, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "Commission interpretations of 'willful' do not require licensee intent to engage in a violation").

<sup>11</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order 7 FCC Rcd 2088 (1992) (asserting that "[t]he fact that a licensee's violation occurred through inadvertence does not prevent it from being willful. It is not necessary that the violation be intentional"); see also *Southern California*, 6 FCC Rcd at 4387 (finding that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>12</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> See *Southern California*, 6 FCC Rcd at 4388.

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.”<sup>14</sup>

8. 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 or information.<sup>15</sup> 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.”<sup>16</sup>

9. In this case, the Licensee failed to file numerous Children’s Television Programming Reports in a timely manner, and we conclude a \$3,000 forfeiture is appropriate for this violation. We further conclude a \$3,000 forfeiture is appropriate for the Licensee’s failure to file its Biennial Ownership Report. Accordingly, we propose a total forfeiture in the amount of \$6,000 for the Licensee’s apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.3615 of the Commission’s Rules.

#### IV. ORDERING CLAUSES

10. 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 Killeen Christian Broadcasting Corporation 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(e)(11)(iii) and 73.3615(a) of the Commission’s Rules and Section 301 of the Communications Act of 1934, as amended.

11. **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* Killeen Christian Broadcasting Corporation. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. In the event that Killeen Christian Broadcasting Corporation wishes to revert KPLE-CD to low power television status, the Licensee need only notify us of this election and request a change in status for the station.<sup>17</sup> Should the Licensee elect to revert the Station to low power status, it would no longer be apparently liable for the forfeiture amount described herein.

13. 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.

<sup>14</sup> 47 U.S.C. § 312(f)(2); *see also Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

<sup>15</sup> *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.

<sup>16</sup> 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); 47 C.F.R. § 1.80(b), note to paragraph (b)(8), Section II.

<sup>17</sup> *See* 47 C.F.R. § 73.6001(d).

If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORP" in block number 24A (payment type code).

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Peter Saharko, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above.

15. 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 principles ("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.<sup>18</sup>

16. 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.<sup>19</sup>

17. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Killeen Christian Broadcasting Corporation, 502 E. Elms Road, Killeen, Texas, 76542 and to its counsel, Elizabeth Spainhour, Brooks Pierce et al., P.O. Box 1800, Raleigh, North Carolina, 27602.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

<sup>18</sup> 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....").

<sup>19</sup> See 47 C.F.R. § 1.1914.