

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

In the Matter of	)	
	)	
KM LPTV of Chicago-28, L.L.C.	)	Facility I.D. No. 35101
Licensee of Station WOCH-CA,	)	NAL/Acct. 2013414
Chicago, Illinois	)	FRN: 0005014758

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: April 17, 2013**

**Released: April 18, 2013**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL")<sup>1</sup> we find that KM LPTV of Chicago-28, L.L.C. (the "Licensee"), licensee of Class A television station WOCH-CA, Chicago, Illinois (the "Station"), apparently willfully and/or repeatedly violated the Commission's Rules by: (1) failing to prepare and place timely in its public inspection files the Station's quarterly TV issues/programs lists, in violation of Section 73.3526(e)(11)(i)<sup>2</sup> and (2) failing to file timely with the Commission the Station's Children's Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)<sup>3</sup>. 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 Thirteen Thousand Dollars (\$13,000).

**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.<sup>4</sup> As set forth in subsection 73.3526(e)(11)(i), each commercial television licensee must prepare and place in its public inspection file 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. 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. On March 13, 2012, the staff issued a letter requesting information regarding, among other

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<sup>1</sup> 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.

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(i).

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

<sup>4</sup> 47 C.F.R. § 73.3526.

things, compliance with the requirements of Section 73.3526 of the Commission's Rules.<sup>5</sup> In response, KM LPTV acknowledged that it had failed to place in its public inspection file issues/programs lists for all four quarters of 2010 and 2011 until May 22, 2012.<sup>6</sup> Video Division staff followed up by telephone with KM LPTV regarding deficiencies with the filings of the Station's Children's Television Programming Reports. A staff review demonstrated that the reports for the fourth quarter of 2009, all four quarters of 2010, all four quarters of 2011, and the first quarter of 2012, were filed late. KM LPTV confirmed these telephone conversations regarding the reports in January 14, 2013 and February 5, 2013 letters to the Commission.

### III. DISCUSSION

4. The Licensee's failure to place in its public inspection file the Station's quarterly TV issues/programs lists in a timely manner for eight quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i). Moreover, the Licensee's failure to file with the Commission in a timely manner its Children's Television Programming Reports for 10 quarters constitutes an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii).

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 and/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>7</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>8</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>9</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>10</sup> 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."<sup>11</sup>

6. 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 and a base forfeiture amount of \$10,000 for public file violations.<sup>12</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

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<sup>5</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, to KM LPTV of Chicago-28, LLC, dated March 13, 2012.

<sup>6</sup> See Letter from Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, counsel to KM LPTV of Chicago-28, LLC, to Barbara A. Kreisman, Chief, Video Division, Media Bureau, dated June 13, 2012.

<sup>7</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

<sup>9</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>10</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388.

<sup>11</sup> 47 U.S.C. § 312(f)(2).

<sup>12</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)(4), note to paragraph (b)(4), Section I.

justice may require.”<sup>13</sup>

7. In this case, the licensee admits that it failed to place in the public inspection file in a timely manner the quarterly issues/programs lists for eight quarters, and we conclude that the Station is apparently liable for a \$10,000 forfeiture for this public file violation. The Licensee also failed to file its Children’s Television Programming Reports in a timely manner for ten quarters, and we therefore conclude that the Station is apparently liable for a \$3,000 forfeiture for this apparent violation. Based on the record before us, we therefore conclude that a total forfeiture in the amount of \$13,000 for the Station is appropriate for the Licensee’s apparent willful and/or repeated violations of Sections 73.3526(e)(11)(i) and (iii).<sup>14</sup>

#### 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 KM LPTV of Chicago-28, L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of Thirteen Thousand Dollars (\$13,000) for its apparent willful and/or repeated violations of Section 73.3526 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, KM LPTV of Chicago-28, L.L.C. 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. 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.

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: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. Nos. referenced above.

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.

<sup>13</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Red at 17100-01; 47 C.F.R. § 1.80(b)(4) and note to paragraph (b)(4), Section II.

<sup>14</sup> The Licensee also failed to place the required certification of the Station’s compliance with the requirements of 47 C.F.R. § 73.6001 in its public file in a timely manner. We will exercise our discretion pursuant to Section 503(b) of the Act and admonish the Licensee for its apparent violation of Section 73.3526(c)(17) of the Commission’s Rules.

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.<sup>15</sup>

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KM LPTV of Chicago-28, L.L.C., 3654 West Jarvis Avenue, Skokie, Illinois, 60076 and to its counsel, Aaron P. Shainis, Esq., Shainis & Peltzman, Chartered, 1850 M Street, N.W., Suite 240, Washington, D.C. 20036-5840.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.