

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

In the Matter of	)	
	)	
Blue Mountain Broadcasting Association	)	Facility I.D. No. 5906
Licensee of Station K36EW	)	NAL/Acct. No. 0941420005
College Place, Washington	)	FRN: 0001571546

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: December 17, 2008**

**Released: December 19, 2008**

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> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Blue Mountain Broadcasting Association (the “Licensee”), licensee of Station K36EW, College Place, Washington (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to publicize the existence and location of its Children’s Television Programming Reports.<sup>3</sup> We also find that the Licensee apparently willfully and repeatedly violated Section 73.673 by failing to identify for publishers of program guides the age group for which its children’s programming is targeted. 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 four thousand dollars (\$4,000) for its violations of Sections 73.3526(e)(11)(iii) and 73.673 of the Rules.

**II. BACKGROUND**

2. Under the Commission’s rules implementing the Children’s Television Act of 1990 (CTA),<sup>4</sup> each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee’s overall programming and programming “specifically designed” to educate and inform children (core programming).<sup>5</sup> The Commission’s rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Subsection 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station 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 it has made during the quarter to serve the educational needs of children. As set forth in

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

<sup>2</sup> See 47 C.F.R. § 0.283.

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

<sup>4</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

<sup>5</sup> 47 C.F.R. § 73.671.

Subsection 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports. In addition, 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.<sup>6</sup>

3. On September 29, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station K36EW (the “Application”) (File No. BRTTA-20060929BJK). In Exhibit 24 and in a November 16, 2007 amendment to its Application, the Licensee indicated that, due to a misunderstanding, it did not publicize the existence and location of the Station’s Children’s Television Programming Reports during its license term.<sup>7</sup> The Licensee reported that it is now in compliance with the requirement to publicize the existence and location of its Children’s Television Programming Reports.

4. In Exhibit 23, the Licensee stated that although the Station provided information identifying each core program aired on its station, it mistakenly did not include an indication of the target child audience in its submissions to program guide publishers.<sup>8</sup> The Licensee indicated that its station managers were unaware of the requirement to identify for program guide publishers the age group for which its core programming is targeted. The Licensee claimed that it has begun providing this information to program guide publishers.

### III. DISCUSSION

5. The Licensee’s failure to publicize the existence and location of the Children’s Television Programming Reports and to provide to publishers of program guides information identifying the age group for which its core programming is intended constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.673. 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> 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>11</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>12</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>13</sup>

6. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526 and a base forfeiture

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<sup>6</sup> See 47 C.F.R. § 73.673.

<sup>7</sup> The Licensee’s application to convert its licensed LPTV facilities to Class A facilities was granted on November 19, 2001. (BLTTA-20010711AAH).

<sup>8</sup> 47 C.F.R. § 73.673.

<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).

<sup>11</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>12</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>13</sup> 47 U.S.C. § 312(f)(2).

amount of \$8,000 for violation of Section 73.673.<sup>14</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>15</sup>

7. In this case, the Licensee acknowledged that it failed to publicize the existence and location of the Station’s Children’s Television Programming Reports and that it failed to provide to publishers of program guides information identifying the age group for which its core programming is intended. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.673.

#### 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 Blue Mountain Broadcasting Association is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 73.673 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*, Blue Mountain Broadcasting Association 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. 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. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).

11. 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: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. 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.

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<sup>14</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.

<sup>15</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)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

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>16</sup>

14. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Blue Mountain Broadcasting Association, P.O. Box 205, College Place, Washington 99324, and to Jim Forsyth, Walla Walla University, Technical Support Services, 215 SW Bade Avenue, College Place, Washington 99324.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>16</sup> See 47 C.F.R. § 1.1914.