

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

In the Matter of)	
)	
KRBK LLC)	Facility I.D. No. 166319
Licensee of Station KRBK(TV))	NAL/Acct. No.: 201441420009
Osage Beach, Missouri)	FRN: 0020888723

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 18, 2014

Released: March 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”),¹ the Commission finds that KRBK LLC (the “Licensee”), licensee of Station KRBK(TV), Osage Beach, Missouri (the “Station”), apparently willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules² by failing to file with the Commission in a timely manner Children’s Television Programming Reports (FCC Form 398) for three quarters. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is 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 reports with the Commission and place them in their public file by the tenth day of the succeeding calendar quarter, and to publicize the existence and location of the reports.⁴

3. On September 26, 2013, the Licensee filed its license renewal application for the Station.⁵ In Exhibits 20 of the license’s renewal application, the Licensee stated that during the previous license

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

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3526.

⁴ 47 C.F.R. § 73.3526(e)(11)(iii).

⁵ *Application for Renewal of Broadcast Station License*, File No. BRC DT-20130926AZF.

term it failed to comply with the reporting deadlines for filing Children's Television Programming Reports as required in Section 73.3526(e)(11)(iii) of the Rules.⁶ The Licensee reported that three Children's Television Programming Reports for the Station in the preceding license term were filed late.⁷

III. DISCUSSION

4. The Licensee failed to file with the Commission in a timely manner its Children's Television Programming Reports for three quarters. These late filings constitute apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii) of the Rules.

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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ 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."¹²

6. 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.¹³ 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."¹⁴ In this case, the licensee failed to file its Children's Television Programming Reports in a timely manner for 3 quarters, ranging from twenty-three days late to just under six months late. Based on our review of the facts and circumstances here, we find

⁶ The Licensee also admits in Exhibit 20 of its license renewal application that it failed to prepare in a timely manner its issues and programs lists and commercial limit certifications for fourth quarter 2009 and first quarter 2010, as well as upload to its electronic public file its commercial limit certification for fourth quarter 2012. The Licensee has subsequently prepared and uploaded all of relevant documents. In light of the circumstances and licensee's forthrightness we find these apparent violations to be *de minimis*. However, we do not rule out more severe sanctions for violations of this nature in the future.

⁷ During the preceding license term, the Licensee self-reported the late filing of Children's Programming Reports for: first quarter 2010; third quarter 2010; and fourth quarter 2010.

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

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 312(f)(2).

¹³ *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.

¹⁴ 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); and note to paragraph (b)(8), Section II.

that the Licensee is liable for a forfeiture in the amount of \$3,000 for its apparent willful and repeated violations of Section 73.3526 (e)(11)(iii) of the Rules.

IV. ORDERING CLAUSES

7. 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 KRBK LLC, licensee of Station KRBK(TV), Osage Beach, Missouri, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful and repeated violations of Section 73.3526(e)(11)(iii) of the Commission's Rules.

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

9. 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).

10. 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: Evan Morris, Attorney-Advisor, Video Division, Media Bureau, Room 2-C827, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above.

11. 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

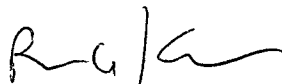
12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶

¹⁵ 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....").

¹⁶ See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KRBK LLC, 50 Maryland Plaza, Suite 300, St. Louis, MO 63108, and to its counsel, David A. O'Connor, 2300 N. Street, N.W., Suite 700, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION



Barbara A. Kreisman
Chief, Video Division
Media Bureau