CBS

CBS
51 WEST 52 STREET
NEW YORK, NEW YORK 10019-6188

(212) 975-3779
FAX: (212) 975-0117
mpmessinger@cbs.com

MARTIN P. MESSINGER
SENIOR VICE PRESIDENT
DEPUTY GENERAL COUNSEL

April 11, 2008

Via Overnight Courier

Federal Communications Commission
U.S. Bank – Government Lockbox #979088
SL-MO-C2-GL
1005 Convention Plaza
St. Louis, MO 63101

Re: KYW-TV, Philadelphia, Pennsylvania
Facility I.D. No. 25453
NAL/Acct. No. 0841420036
FRN: 0003482189

Dear Sir or Madam:

Enclosed please find a check for Ten Thousand Dollars ($10,000) in connection with the above-captioned Notice of Apparent Liability.

If you have any questions, please contact the undersigned. Thank you.

Very truly yours,

M.P. Messinger

M.P. Messinger

MPM:iag
Enclosure
#68291

cc: Anne Lucey
Howard Jaeckel, Esq.
Michael Colleran
KYW-TV Public File (Joanne Calabria)

CBS Televison Stations
524 West 57th Street
New York, NY 10019

FEDERAL COMMUNICATION COMMISSION
PO. BOX 979088
ST. LOUIS, MO 63197

PAYMENT SUMMARY

Check Date: April 09, 2008
Check No.: 1901002902
Vendor Name: FEDERAL COMMUNICATION COMMISSI
Vendor No.: 57669

Invoice No.	Invoice Date	Description	Discount	Net Amount
0841420036	08-APR-08	Acct.0841420036/Fm.0003482189	0.00	10,000.00

TOTAL: $10,000.00

DOCUMENT CONTAINS ANTI-COPY VOID PANTOGRAPH, MICRO PRINT BORDER, VERIFICATION BOX (TO RIGHT OF ARROW. HOLD BETWEEN THUMB AND FOREFINGER. OR BREATHE ON IT. COLOR WILL DISAPPEAR, THEN REAPPEAR), AND A SIMULATED WATERMARK ON THE BACK

60-160/433

CBS Televison Stations
524 West 57th Street
New York, NY 10019

Check Date	Check Number
April 09, 2008	1901002902

PAY *Ten thousand and 00/100 Dollars*

VALID FOR 90 DAYS

*******$10,000.00**

TO THE ORDER OF

FEDERAL COMMUNICATION COMMISSION
PO. BOX 979088
ST. LOUIS, MO 63197

Vice President & Treasurer 035

Mellon Bank
Pittsburgh, PA

⑈190100290 2⑈ ⑆043301601⑆ 005⑈658 1⑈

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

In the Matter of	)	
	)	
CBS Broadcasting Inc.	)	Facility I.D. No. 25453
Licensee of Station KYW-TV	)	NAL/Acct. No. 0841420036
Philadelphia, Pennsylvania	)	FRN: 0003482189

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 7, 2008 **Released: April 8, 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"),[1] by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,[2] we find that CBS Broadcasting Inc. (the "Licensee"), licensee of Station KYW-TV, Philadelphia, Pennsylvania (the "Station"), apparently willfully and repeatedly violated Section 73.3526(e)(11)(i)-(iii) of the Rules, by failing to place in the Station's public inspection file all required TV issues/programs lists, records concerning its compliance with the children's programming commercial limits, and Children's Television Programming Reports.[3] 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 ten thousand dollars ($10,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.[4] Subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee's certification, in its renewal application, of its compliance with the children's television commercial limits imposed by Section 73.670 of the Rules.[5] Moreover, 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

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

[2] See 47 C.F.R. § 0.283.

[3] *See* 47 C.F.R. §§ 73.3526(e)(11)(i)-(iii).

[4] *See* 47 C.F.R. § 73.3526.

[5] 47 C.F.R. § 73.670. This rule limits the amount of commercial matter that a commercial television station may air during children's programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.

efforts that it has made during the quarter to serve the educational and informational needs of children. These subsections of Section 73.3526 require licensees to place TV issues/programs lists, records concerning commercial limits and Children's Television Programming Reports for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.[6]

3. On April 2, 2007, the Licensee filed its license renewal application (FCC Form 303-S) for Station KYW-TV (the "Application") (File No. BRCT-20070402KQO). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee indicated that in November 2004, it discovered that several documents were missing from the Station's public inspection file. Specifically, it reported that its records concerning its compliance with the children's programming commercial limits for the first and second quarters of 1999, the second and third quarters of 2000, the third and fourth quarters of 2002, the first and fourth quarters of 2003, and the first quarter of 2004 were missing from the public inspection file. In addition, the Licensee stated that its TV issues/programs lists for the first and fourth quarters of 1999, the second quarter of 2001, the fourth quarter of 2002, and the first and second quarters of 2003 were missing from the public inspection file. Further, the Licensee reported that its Children's Television Programming Reports for the first quarter of 1999 and the second quarter of 2000 were missing from the public inspection file. **The Licensee indicated that the Station employee responsible for maintaining the Station's public inspection file failed to place all required documents in the public file.** The Licensee stated that all missing documents were located or prepared based on other Station records and placed in the public inspection file by the end of April 2005.

III. DISCUSSION

4. The Licensee's failure to place in its Station KYW-TV public inspection file all of the required documentation constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(ii), and 73.3526(e)(11)(iii) of the Rules. 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.[7] 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.[8] 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,[9] and the Commission has so interpreted the term in the Section 503(b) context.[10] 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

[6] *See Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (*citing Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

[7] 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

[8] 47 U.S.C. § 312(f)(1).

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

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

continuous, for more than one day."[11]

5. 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.[12] 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."[13]

6. In this case, the Licensee acknowledged that several required documents were missing from the public file. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of $10,000 for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii).

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 CBS Broadcasting Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars ($10,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(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*, CBS Broadcasting Inc. 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: Barbara A. Kreisman, Chief, Video Division, Media Bureau, 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

[11] 47 U.S.C. § 312(f)(2).

[12] *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.

[13] 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.

the claim by reference to the financial documentation submitted.

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.[14]

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to CBS Broadcasting Inc., 2175 K Street, N.W., Suite 350, Washington, D.C. 20037, and to its counsel, Howard F. Jaeckel, Esquire, CBS Law Department, 1515 Broadway, 49th Floor, New York, New York 10036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[14] *See* 47 C.F.R. § 1.1914.