

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

In the Matter of	)	
	)	
Billy Ray Locklear Evangelical Association	)	Facility I.D. No. 167158
Licensee of Station WLPS-CD	)	NAL/Acct. No.: 201241420042
Lumberton-Pembroke, North Carolina	)	FRN: 0008231706

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: August 12, 2013**

**Released: August 13, 2013**

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 Billy Ray Locklear Evangelical Association<sup>2</sup> (the “Licensee”), licensee of Station WLPS-CD (the “Station”), apparently willfully and/or repeatedly violated (i) Section 73.3526(e)(11)(iii) of the Rules by failing to file timely with the Commission the Station’s Children’s Television Programming Reports<sup>3</sup> and (ii) Section 1.17 of the Rules by failing to provide accurate information to the Commission.<sup>4</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 nine thousand dollars (\$9,000).

**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 (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. Section 1.17 of the Rules precludes any applicant for a Commission authorization from providing “material factual information that is incorrect or omit[ting] material information that is

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

<sup>2</sup> There are conflicting references to the Licensee’s name in the materials provided to the Commission. The Station’s records in the Consolidated Database System and online public file refer to the Licensee as the Billy Ray Evangelistic Association, Inc. The renewal application refers to the Licensee as Billy Ray Evangelical Association, so we will refer to the Licensee by that name throughout this Notice.

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

<sup>4</sup> 47 C.F.R. § 1.17.

necessary to prevent any material factual statement that is made from being incorrect or misleading. . . .”<sup>5</sup>

4. On August 1, 2012, the Licensee filed its license renewal application (FCC Form 303-S) for Station WLPS-CD (the “Application”).<sup>6</sup> The Licensee reported certain potential violations of the Commission’s rules in the renewal application.<sup>7</sup> A review of Commission records showed that the Licensee failed to report that it filed its Children’s Television Programming Reports late during seven quarters in the license period.

5. Moreover, the Licensee filed certifications of continuing compliance with the operating requirements for Class A status for each quarter of the license period. However, the Licensee incorrectly stated that it complied with the requirement to broadcast 18 hours per day during the first through third quarters of 2011 despite filing requests for special temporary authority to remain silent with the Commission for those quarters.<sup>8</sup> The certifications were apparently made in error, as the Licensee’s Class A certifications accurately reported its operating status for the fourth quarter of 2011 and the first quarter of 2012.

### III. DISCUSSION

6. The Licensee’s failure to file with the Commission in a timely manner its Children’s Television Programming Reports constitutes apparent willful and/or repeated violations of Section 73.3526(e)(11)(iii). Moreover, the Licensee’s provision of incorrect factual information to the Commission represents a violation of Section 1.17 of the Commission’s Rules.

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 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>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>

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<sup>5</sup> 47 C.F.R. § 1.17.

<sup>6</sup> File No. BRDTA-20120801AMP. The Licensee filed an amendment to the application on June 4, 2013.

<sup>7</sup> The Licensee reported in its renewal application that, although it does not sell traditional advertising time on the station in the form of spot commercials, it does offer certain sponsored text crawls. The Licensee further reported that the station was not in compliance with the rule requiring that non-discrimination clauses be included in advertising agreements for those sponsored text crawls until several months after the rule went into effect, but is now in full compliance with the rule. 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 implementation of this requirement.

<sup>8</sup> File Nos. BLSTA-20101203ABB; BLSTA-20110617ACM.

<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.*, 6 FCC Rcd at 4388.

<sup>13</sup> 47 U.S.C. § 312(f)(2).

8. 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 or information.<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> In this case, the Licensee repeatedly failed to file its Children's Television Programming Reports with the Commission in a timely manner, and we therefore conclude that the Licensee is apparently liable for a \$6,000 forfeiture for these apparent violations. We also find that the Licensee failed to provide correct information in its certifications of continuing Class A eligibility and thus conclude that the Licensee is apparently liable for a \$3,000 forfeiture for these apparent violations. We thus conclude that the Licensee is liable for a total forfeiture of \$9,000 for these apparent violations.

#### IV. ORDERING CLAUSES

9. 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 Billy Ray Evangelical Association is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of nine thousand dollars (\$9,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(iii) and 1.17 of the Commission's Rules.

10. 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*, that Billy Ray Locklear Evangelical Association SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. In the event that the Licensee wishes to revert WLPS-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>16</sup> Should the Licensee elect to revert the station to low power status, the Licensee would no longer be apparently liable for the forfeiture amount described herein.

12. 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).

13. 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.

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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) and note to paragraph (b)(4), Section II.

<sup>16</sup> See 47 C.F.R. § 73.6001(d).

14. 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. 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>17</sup>

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Billy Ray Locklear Evangelical Association, 3463 Oak Grove Church Road, Lumberton, North Carolina, 28360, and to its counsel, Marcus Trathen, Brooks, Pierce, et al., P.O. Box 1800, Raleigh, North Carolina, 27602.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>17</sup> See 47 C.F.R. § 1.1914.