

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

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| In the Matter of |) | |
| |) | |
| Lincoln Broadcasting Company |) | Facility I.D. No. 37511 |
| Licensee of Station KTSF |) | NAL/Acct. No.: 201441420044 |
| San Francisco, California |) | FRN: 0009298266 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 7, 2015

Released: January 7, 2015

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 Lincoln Broadcasting Company (the “Licensee”), licensee of Station KTSF, San Francisco, California (the “Station”), apparently willfully and/or repeatedly violated Section 73.671 of the Rules by failing to properly identify children’s programming via display of the “E/I” symbol on the television screen. 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 three thousand dollars (\$3,000).

II. BACKGROUND:

2. The Children’s Television Act of 1990 (“CTA”) provides television broadcast licensees with an affirmative obligation to offer programming that meets the educational and informational needs of children (“Core Programming”).² Section 73.671 of the Rules requires television broadcast licensees to meet certain criteria in order to demonstrate compliance with the children’s programming obligations set forth by the CTA.³ In furtherance of the children’s programming obligations established by the CTA, broadcasters are also required to provide certain information to the public and programmers about the children’s programming they air. For example, subsection (c)(5) of the rule requires broadcasters to identify Core Programming by displaying the “E/I” symbol on the television screen throughout the program.⁴

3. On August 6, 2014, the Licensee filed its license renewal application for the Station.⁵ In response to Section IV, Question 8 the Licensee certified that it did not identify “each CORE program

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

² Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303(a), 303(b), and 394.

³ Section 73.671 implements the provisions of the CTA by establishing a process for evaluating compliance as part of a broadcaster’s license renewal proceeding. 47 C.F.R. § 73.671(d),(e)(1). Licensees that fail to meet the Commission’s processing guidelines must be referred to the Commission for approval of the CTA portion of their renewal applications. 47 C.F.R. § 73.671(d),(e)(1). The Commission has established specific criteria for determining whether a program qualifies as Core Programming. 47 C.F.R. § 73.671(c).

⁴ 47 C.F.R. § 73.671(c)(5); *Children’s Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, 2259-60 (2004) (“2004 Report and Order”).

⁵ File No. BRCDDT-20140806AFX (“KTSF Renewal”).

aired at the beginning of the airing of each program.” In Exhibit 25 of its license renewal application, the Licensee admits that the Station failed to properly display the “E/I” symbol during children’s programming broadcast on two of its digital multicast channels airing Korean-language programming.⁶

4. According to Exhibit 25, on sub-channel 26.2, the Station did not include E/I identification of its core children’s programming from February 2, 2008 through March 31, 2009.⁷ Additionally, on sub-channel 26.3, the Station did not include E/I identification of its core children’s programming from June 24, 2009 through October 1, 2013. The Station explained that the programming on these all-Korean language channels originated in Korea and was relayed to the Station via MBC America and KBS World North America’s offices in Los Angeles. The Station further explained that “the Korean language does not use the Roman alphabet and MBC [and KBS] did not have equipment to produce the characters.”⁸ The Station disclosed in its Children’s Programming Reports for the relevant quarters its belief that the E/I symbol would not make sense to the Korean speaking viewers because the Korean language does not use Roman alphabet characters.⁹ Furthermore, in Exhibit 25, the Station argued that a waiver of the Rules is warranted in light of this fact, and cites to a Commission *Report and Order* for support, claiming that it exempted non-Latin-based language programming from the Commission’s captioning requirements.

III. DISCUSSION

5. The Licensee failed to identify children’s programming on two of its Korean-language digital multicast channels, 26.2 and 26.3, by properly displaying the “E/I” symbol from February 2, 2008 through March 31, 2009 and from June 24, 2009 through October 1, 2013, respectively. Failing to display the “E/I” symbol constitutes an apparent willful and/or repeated violation of Section 73.671 of the Rules. The fact that the Station believed that identification of children’s programming using the E/I symbol would not make sense to its Korean speaking viewers does not relieve the Licensee of its duty to comply with Section 73.671 of the Rules. Furthermore, we find that a waiver of Section 73.671 of the Rules is not warranted in this situation. The *Report and Order* the Station cites to as support for its waiver contention deals with closed captioning requirements for the hearing impaired, which are separate rules not at issue here.¹⁰ It does not concern the display of the E/I symbol on core children’s programming. If the licensee believes that displaying the “E/I” symbol during foreign-language CORE programming would not be meaningful to viewers and compliance would be inconsistent with the public interest, the proper course of action is to request a waiver of the “E/I” requirement under Section 1.3 of the Commission’s rules.¹¹ Moreover, although the Station has worked to correct the problem, this does not

⁶ *Id.* at Exhibit 25 (Children’s Television Programming).

⁷ *Id.*

⁸ *Id.*

⁹ *See, for example*, Children’s Television Programming Report (Form 398) for the 2nd Quarter of 2009.

¹⁰ *See Closed Captioning and Video Description of Video Programming*, Report and Order, 13 FCC Rcd 3272, 3343 (explaining that “Section 713’s goal is to complete the process of making closed captioned video programming available so that viewers with hearing disabilities are afforded the same opportunities to understand and enjoy this programming as are other members of the public...[and] in enacting 713...Congress... provided for exemptions in instances where imposing a captioning obligation would be burdensome.”).

¹¹ 47 C.F.R. § 1.3; *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(noting that waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest). *See also KTVU, LLC, Licensee of Station KICU-TV, San Jose, California*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11693, 116964, n. 8 (Vid. Div. 2014). Such a waiver request should include why waiver is appropriate and propose an on-screen solution that will allow viewers of foreign-language programming to identify, in a meaningful way that is consistent with the underlying purpose of the “E/I” symbol requirement, programming that has been specifically designed to educate and inform children. *Id.*

relieve the Licensee of liability for the violations that have already occurred.¹²

6. 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.”¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ 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.”¹⁷

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$8,000 for violations of the Commission’s children’s requirements.¹⁸ 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)(E) 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.”¹⁹ Based on our review of the facts and circumstances, including the duration of the violation, we find that the Licensee is liable for a forfeiture in the amount of \$3,000 for its apparent willful and/or repeated violation of Section 73.671 of the Rules.

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 Lincoln Broadcasting Company, licensee of Station KTSF, San Francisco, California, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars (\$3,000) for its apparent willful and/or repeated violations of Section 73.671 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*, Lincoln Broadcasting Company, 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

¹² See *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969) (Permitting mitigation as an excuse based upon corrective action following a violation would “tend to encourage remedial rather than preventive action.”).

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

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁷ 47 U.S.C. § 312(f)(2); see also *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

¹⁸ 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.

¹⁹ 47 U.S.C. § 503(b)(2)(E); 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.

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 12th Street, S.W., Washington, D.C. 20554, ATTN: Alison Nemeth, Video Division, Media Bureau, Room 2-C827 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.²⁰

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. 20554.²¹

14. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Lincoln Broadcasting Company, A California Limited Partnership, 100 Valley Drive, Brisbane, CA 94005, and to its counsel, Erwin Krasnow, Garvey Schubert Barer, 1000 Potomac Street NW, Fifth Floor, Flour Mill Building, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁰ 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....").

²¹ See 47 C.F.R. § 1.1914.