

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

In the Matter of
Cranston Acquisition LLC
Licensee of Station KMCC(TV)
Laughlin, Nevada
File No. BRC DT-20140602BDT
NAL Acct. No.: 201741420001
Facility ID No.: 41237
FRN: 0016172108

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 1, 2017

Released: March 1, 2017

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 (Act), and Section 1.80 of the Federal Communications Commission's rules (Rules), we find that Cranston Acquisition, LLC (Licensee), licensee of Station KMCC(TV), Laughlin, Nevada (Station), apparently willfully and repeatedly violated Sections 73.3526(e)(11) and 73.3526(b)(2) of the Rules by failing to prepare and place in the Station's electronic public file (e-pif) required public file documents. 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 Seven Thousand Dollars (\$7,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires each commercial television licensee to maintain a public file containing information related to a station's operations. Section 73.3526(e)(11)(i) requires every commercial television licensee to place in its public file, on a quarterly basis, a TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three-month period and must include a brief narrative of the issue addressed, as well as the time, date, duration, and title of each program that addressed the issue. Section 73.3526(e)(11)(ii) requires each such licensee to prepare and place in its public inspection file, on a quarterly basis, records sufficient to substantiate the Station's certification, in its license renewal application, of compliance with the commercial limits on children's programming. Section 73.3526(e)(11)(iii) requires each such licensee 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. Licensees must file the reports with the Commission and place them in their public files by the

1 47 U.S.C. § 503(b); 47 CFR § 1.80.

2 47 CFR § 73.3526(e)(11).

3 47 CFR § 73.3526(b)(2).

4 47 CFR § 73.3526(e)(11)(i).

5 47 CFR § 73.3526(e)(11)(ii).

tenth day of the succeeding calendar quarter.<sup>6</sup> Copies of these public file documents must be retained until final action on the station's next license renewal application.

3. In 2012, the Commission adopted section 73.3526(b) of the Rules, which requires licensees to upload elements of Stations' physical public file to an on-line Commission hosted website (*i.e.*, a Station's e-pif).<sup>7</sup> The Commission's e-pif requirement was implemented as a means to modernize the way that television broadcasters "inform the public about how they are serving their communities...."<sup>8</sup> Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station's public file, with limited exception, to their e-pif on a going-forward basis. By February 4, 2013, stations were required with limited exception to upload to their e-pif those documents that were already in their physical public file prior to August 2, 2012.<sup>9</sup> Under section 73.3526(b)(2) of the Rules, copies of a Station's commercial limit certifications and TV issues/programs lists, among other items, were required to have been placed in the Station's e-pif.

4. On June 2, 2014, the Licensee filed its license renewal application (FCC Form 303-S) for the Station.<sup>10</sup> The licensee renewal application disclosed numerous public file violations, including late prepared and/or filed TV issues/programs lists and commercial limit certifications. Following discussions between Division staff and counsel for the Licensee, an amendment to the license renewal application was filed on January 10, 2017 further clarifying some of the violations. In its amended license renewal application, the Licensee disclosed the following violations: (1) failure to prepare in a timely manner the Station's commercial limit certifications prior to fourth quarter of 2012; (2) failure to timely place in the Station's e-pif copies of its quarterly commercial limit certifications for fourth quarter of 2012, fourth quarter of 2013 and second quarter 2015 through second quarter of 2016;<sup>11</sup> (3) failure to timely place in the Station's e-pif all TV issues/programs lists prior to and including fourth quarter 2012, and second quarter 2014; (4) failing to retain a copy of the Station's TV issues/programs list for first quarter of 2012; and (5) failing to file in a timely manner the Station's Children's Television Programming Report for first quarter of 2012.<sup>12</sup>

### III. DISCUSSION

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

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<sup>6</sup> 47 CFR § 73.3526(e)(11)(iii).

<sup>7</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) ("*Second R&O*") (requiring broadcast television stations to post their public inspection files, with limited exceptions, to an online Commission-hosted database).

<sup>8</sup> *Second R&O*, 27 FCC Rcd at 4536.

<sup>9</sup> See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing effective date of electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding station's to upload copies of existing public file documents to their electronic public file); *Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline*, Public Notice, 28 FCC Rcd 429 (2013) (providing a final remainder to broadcasters to upload copies of existing public file documents to their electronic public file); see *Second R&O*, 27 FCC Rcd at 4580 (establishing compliance periods for complying with broadcasters new electronic public file requirement).

<sup>10</sup> File No. BRCDDT-20140602BDT (KMCC Renewal).

<sup>11</sup> While these commercial limit certifications were not placed in the Station's electronic public, according to each certification they were prepared in a timely manner.

<sup>12</sup> KMCC Renewal at Exhibit 20.

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>13</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>14</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>15</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>16</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>17</sup>

6. The Commission’s *Forfeiture Policy Statement* and the note to Section 1.80(b)(8) of the Rules establishes a base forfeiture amount of \$10,000 for failure to maintain a station’s public file.<sup>18</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)(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.”<sup>19</sup> Based on our review of the facts and circumstances, we find that a forfeiture in the amount of \$7,000 is appropriate. We also find, pursuant to Section 309(k) of the Act,<sup>20</sup> that the Licensee’s apparent violations do not constitute “serious violation[s]” or when considered together, demonstrate a pattern of abuse warranting designation of the license renewal application for evidentiary hearing. During the subject license term we conclude that the Station has served the public interest, convenience, and necessity.

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission’s Rules, 47 C.F.R. § 1.80, that Cranston Acquisition, LLC, licensee of Station KMCC(TV), Laughlin, Nevada, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Seven Thousand Dollars (\$7,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11) and 73.3526(b)(2) of the Rules, 47 C.F.R. § 73.3526(e)(11) and 73.3526(b)(2).

8. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release date of this *NAL*, Cranston Acquisition, LLC, **SHALL PAY** the

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<sup>13</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

<sup>14</sup> 47 U.S.C. § 312(f)(1).

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

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

<sup>17</sup> 47 U.S.C. § 312(f)(2).

<sup>18</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)(8), note to paragraph (b)(8), Section I.

<sup>19</sup> 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); 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8), Section II.

<sup>20</sup> 47 U.S.C. § 309(k). Section 309(k) of the Act provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application. If, however, the licensee fails to meet that standard, the Commission may deny the application -- after notice and opportunity for a hearing under Section 309(e) of the Act, 47 U.S.C. § 309(e) -- or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.” 47 U.S.C. § 309(k)(2).

full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.<sup>21</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code).<sup>22</sup>

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

10. 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: 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.<sup>23</sup>

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.<sup>24</sup>

13. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and

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<sup>21</sup> Payment may be made at the Commission's online Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>22</sup> Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>23</sup> 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...").

<sup>24</sup> See 47 C.F.R. § 1.1914.

Certified Mail, Return Receipt Requested, to Cranston Acquisition, Inc., 3680 South Maryland Parkway, Suite 102, Las Vegas, NV 89169, and to its counsel, David G. O'Neil, Esq., Rini O'Neil, PC, 1200 New Hampshire Avenue, NW, Suite 600, Washington D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau