

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

| | | |
|-----------------------------|---|--------------------------|
| In the Matter of |) | |
| |) | |
| Lenfest Broadcasting, LLC |) | Facility I.D. No. 9739 |
| Licensee of Station WMCN-TV |) | NAL/Acct. No. 0841420058 |
| Atlantic City, New Jersey |) | FRN: 0004999017 |

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: August 5, 2008

Released: August 7, 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 Lenfest Broadcasting, LLC (the “Licensee”), licensee of Station WMCN-TV, Atlantic City, New Jersey (the “Station”), apparently willfully and repeatedly violated Section 73.3615 of the Rules, by failing to file Biennial Ownership 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 six thousand dollars (\$6,000).

II. BACKGROUND

2. Section 73.3615 of the Commission’s Rules requires commercial broadcast licensees to file an Ownership Report (FCC Form 323) when filing the station’s application for renewal of license and every two years thereafter on the anniversary of the date its renewal application is due to be filed.⁴ Section 73.3526(e)(5) of the Rules also requires each licensee of a commercial broadcast station to place in the public inspection file for its station, a copy of the most recent, complete ownership report filed with the Commission.

3. On February 1, 2007, the Licensee filed its license renewal application (FCC Form 303-S) for Station WMCN-TV (the “Application”) (File No. BRCDT-20070201BGD). In Exhibit 17, the Licensee indicated that due to an administrative oversight it failed to file with the Commission the 2001 and 2003 Biennial Ownership Reports. Further, the Licensee stated that its 2005 Biennial Ownership Report was neither timely filed with the Commission, nor timely placed in its public inspection file. The Licensee maintained that it has implemented procedures to ensure future compliance.

III. DISCUSSION

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. § 73.3615.

⁴ 47 C.F.R. § 73.3615.

4. The Licensee's failure to file Biennial Ownership Reports for 2001 and 2003 and to timely submit its 2005 Biennial Ownership Report constitutes an apparent willful and repeated violation of Section 73.3615. 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.⁵ 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.⁶ 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,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ 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."⁹

5. 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. 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."¹⁰

6. In this case, the Licensee acknowledged its failure to comply with the Commission's biennial ownership reporting requirements. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$6,000.

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 Lenfest Broadcasting, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of six thousand dollars (\$6,000) for its apparent willful and repeated violation of Section 73.3615 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*, Lenfest Broadcasting, 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

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

⁶ 47 U.S.C. § 312(f)(1).

⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁸ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁹ 47 U.S.C. § 312(f)(2).

¹⁰ 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.

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 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. 20554.¹¹

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Lenfest Broadcasting, LLC, 19 South New York Avenue, Atlantic City, New Jersey 08401, and to its counsel, John M. Burgett, Esquire, Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹¹ See 47 C.F.R. § 1.1914.