

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

In the Matter of
Turner Broadcasting System, Inc.
File Nos.: EB-13-IH-0060; EB-13-IH-0617
NAL/Acct. No.: 201432080016
FRN: 0006873228

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 13, 2014

Released: January 14, 2014

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Turner Broadcasting System, Inc. (Turner) apparently willfully and repeatedly violated Section 325(a) of the Communications Act of 1934, as amended (Act), and Section 11.45 of the Commission's rules by transmitting or causing the transmission of Emergency Alert System (EAS) codes or simulations thereof 14 times over a six day period, in the absence of an actual national, state, or local area emergency or authorized test of the EAS. As a result, we find Turner apparently liable for a forfeiture in the amount of two hundred thousand dollars (\$200,000).

II. BACKGROUND

2. The EAS is a national public warning system that requires broadcasters, cable television operators, wireless cable operators, wireline video service providers, satellite digital audio radio service providers, and direct broadcast satellite providers to supply the communications capability to the President of the United States to address the American public during a national emergency. Federal, state, and local authorities may also use the EAS to deliver important emergency information, such as AMBER alerts and weather information targeted to specific areas. The EAS uses a four-part message for an emergency activation. The component sounds of an EAS message serve the purpose of gaining the listener's or viewer's attention and also conveying specially coded information for the equipment that is activated by the EAS message as part of an actual emergency or authorized test. In particular, the EAS codes consist of distinctive audible sounds in which encoded information concerning the particular alert may be embedded. The separate EAS Attention Signal that follows the EAS codes is composed of two tones that are transmitted simultaneously.

3. The Commission received two separate complaints, both dated January 18, 2013, alleging that on January 18, 2013, at approximately 10:00 p.m., Turner transmitted an advertisement that included

1 47 U.S.C. § 325(a).

2 47 C.F.R. § 11.45.

3 The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and, Preamble and EAS End Of Message (EOM) Codes. 47 C.F.R. § 11.31.

4 47 C.F.R. § 11.31(a)(2).

a simulation of the EAS Attention Signal or codes on its Cartoon Network channel.<sup>5</sup> Specifically, the First Complaint alleges that Turner transmitted “a Best Buy commercial for some product . . . which imitates an emergency broadcast signal . . . . It is so identical in pitch, duration and frequency to the official emergency broadcast sound that it is indistinguishable from the real thing.”<sup>6</sup> The First Complaint further notes that the complainant “rush[ed] to the television to end up finding a retail advertisement, which is a VERY disgusting tactic to draw someone’s attention to an advert. If that isn’t . . . designed to specifically play on training that American citizens have had to make themselves aware of emergency announcements just for the sake of selling something . . . I don’t know what is.”<sup>7</sup> The Second Complaint alleges the transmission by Turner of a commercial for a “music/rap artist” named A\$AP Rocky that included “the emergency broadcast system tones.”<sup>8</sup> The Second Complaint further contends that, “I think this is extremely wrong and misleading. [I] was afraid something bad was happening. [T]hose tones and tune should only be used by the EAS not some random commercial . . . .”<sup>9</sup>

4. In response to the Complaints, the Enforcement Bureau’s Investigations and Hearings Division sent a letter of inquiry to Turner directing Turner to submit, among other things, recordings of the alleged commercial and sworn written statements concerning these allegations.<sup>10</sup>

5. Turner responded to the LOI on May 17, 2013.<sup>11</sup> In general, Turner admits that it distributed on its Adult Swim Network (which shares channel airtime with Turner’s Cartoon Network)<sup>12</sup> an advertisement created by Sony Music Group for the purpose of promoting a new album release by the rap artist A\$AP Rocky and the availability of that album at Best Buy stores.<sup>13</sup> Turner states that it “aired” the commercial “a total of seven times from January 15, 2013 to January 20, 2013.”<sup>14</sup> Turner states that, based on a technical review of the advertisement conducted after it received the LOI, it determined that the advertisement did not include any portion of an actual EAS code, but that Turner was unable to determine the nature or source of the “sound effect” used in the audio portion of the advertisement.<sup>15</sup> In its LOI Response, Turner acknowledges that the advertisement was not made in connection with an actual national, state, or local emergency or authorized test of the EAS.<sup>16</sup>

---

<sup>5</sup> See Complaint, Form 2000A, Key No. 13-C00463454-1 (Jan. 18, 2013) (on file in EB-13-IH-0060) (First Complaint); Complaint, Form 2000A, Key No. 13-C00463451-1 (Jan. 18, 2013) (on file in EB-13-IH-0617) (Second Complaint) (collectively, the “Complaints”).

<sup>6</sup> First Complaint.

<sup>7</sup> *Id.*

<sup>8</sup> Second Complaint.

<sup>9</sup> *Id.*

<sup>10</sup> Letter from Jeffrey J. Gee, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Louise S. Sams, Executive Vice President, General Counsel and Secretary, Turner Broadcasting System, Inc. (Apr. 18, 2013) (on file in EB-13-IH-0060 and EB-13-IH-0617) (LOI).

<sup>11</sup> Letter from Louise S. Sams, Executive Vice President, General Counsel and Secretary, Turner Broadcasting System, Inc., to Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 17, 2013) (on file in EB-13-IH-0060 and EB-13-IH-0617) (LOI Response).

<sup>12</sup> Turner notes that, while the Complaint alleges that the advertisement was viewed on Cartoon Network, the advertisement was only distributed on the Adult Swim Network, which is a separate Turner network focused on young adults and shares channel space with Cartoon Network depending on the time of day. See *id.* at 3.

<sup>13</sup> See *id.* at 1–2.

<sup>14</sup> *Id.* at 1. See *infra* note 54.

<sup>15</sup> LOI Response at 2.

<sup>16</sup> *Id.*

### III. DISCUSSION

6. Pursuant to Section 503(b)(1)(B) of the Act, 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.<sup>17</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>18</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>19</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>20</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>21</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>22</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>23</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>24</sup> As described in greater detail below, we conclude under this procedure that Turner is apparently liable for a monetary forfeiture, for apparently willfully and repeatedly violating Section 325(a) of the Act and Section 11.45 of the Commission’s rules.<sup>25</sup>

7. Pursuant to Section 325(a) of the Act, “[n]o person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto.”<sup>26</sup> Under Section 11.45 of the Commission’s rules, “[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.”<sup>27</sup> It is noteworthy that Section 11.45 separately addresses “simulation” of the EAS codes or Attention Signal. It would be redundant to conclude that a “simulation” of the EAS codes or Attention Signal is limited to transmissions of actual EAS codes or Attention Signals or recordings thereof.<sup>28</sup> A “simulation” therefore means something other than a recording of the actual EAS sounds<sup>29</sup> and contemplates the transmission of sounds that mimic or are substantially similar to the sounds made by the transmission of EAS codes or the EAS Attention Signal.<sup>30</sup>

---

<sup>17</sup> 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(2).

<sup>18</sup> 47 U.S.C. § 312(f)(1).

<sup>19</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>20</sup> *See, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (*S. Cal. Broad. Co.*).

<sup>21</sup> *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (assessing a forfeiture for a cable television operator’s repeated signal leakage).

<sup>22</sup> *S. Cal. Broad. Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

<sup>23</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>24</sup> *See, e.g., SBC Communc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

<sup>25</sup> *See* 47 U.S.C. § 325(a); 47 C.F.R. § 11.45.

<sup>26</sup> 47 U.S.C. § 325(a).

<sup>27</sup> 47 C.F.R. § 11.45.

<sup>28</sup> *See* 47 C.F.R. § 11.31 (defining Attention Signal).

<sup>29</sup> *See United States Telecom Ass’n v. FCC*, 227 F.3d 450, 463 (D.C. Cir. 2000) (finding, in relevant part, that the FCC followed “the well-accepted principle of statutory construction that requires every provision of a statute to be

(continued....)

8. The record reflects that, although the A\$AP Rocky/Best Buy advertisement was produced by a third party, it was reviewed and approved by Turner before Turner inserted the advertisement into the Adult Swim Network programming.<sup>31</sup> It is our understanding that Adult Swim Network programming is delivered by Turner to various multichannel video programming distributors (MVPDs) throughout the country via satellite with the intent (indeed, the contractual obligation) that the network programming ultimately be transmitted by the MVPDs to the MVPDs' subscribers.<sup>32</sup> It is our further understanding that Turner actually delivers two feeds of its network programming in this manner—an East Coast feed and an essentially identical West Coast feed, which is the same programming time-shifted by three hours.<sup>33</sup> Based on the foregoing, we find that Turner transmitted, or caused to be transmitted, the A\$AP Rocky/Best Buy advertisement 14 times over a period of six days, i.e., from January 15, 2013 to January 20, 2013.

9. Based on our review of the recording provided by Turner in the LOI Response, we find that the A\$AP Rocky/Best Buy advertisement includes audio material that constitutes a simulation of the EAS codes. Although Turner asserts that none of the material includes embedded EAS data,<sup>34</sup> as noted above, a “simulation” need not be an exact copy or recording of the EAS codes.<sup>35</sup> Nor does the rule require the inclusion of embedded EAS data.<sup>36</sup> Based on our review of the recording, we find that the sounds used in the material are substantially similar to the sounds made by the transmission of EAS codes such that an average audience member would reasonably mistake the sounds for the sounds made by actual EAS codes.<sup>37</sup> Turner admits that none of the material in question was transmitted in connection with an actual national, state, or local emergency or authorized test of the EAS.<sup>38</sup> Therefore, we find that the transmission of the A\$AP Rocky/Best Buy advertisement described herein apparently violated Section 11.45 of the Commission's rules.

10. In addition, misuse of the EAS codes or Attention Signal or simulations thereof may violate Section 325(a) of the Act, which prohibits transmission of false distress signals.<sup>39</sup> For example, in

(Continued from previous page) \_\_\_\_\_  
given effect”) (citing *Washington Market Co. v. Hoffman*, 101 U.S. 112, 115–16 (1879) (“We are not at liberty to construe any statute so as to deny effect to any part of its language.”)). See, e.g., *Black's Law Dictionary* 1389 (7th ed. 1999) (“simulation. 1. An assumption of an appearance that is feigned, false, or deceptive.”).

<sup>30</sup> *False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited*, Enforcement Advisory, 28 FCC Rcd 15438, 15440 (Enf. Bur. 2013).

<sup>31</sup> See LOI Response at 2–3.

<sup>32</sup> See Time Warner Inc., Annual Report 2012 (Form 10-K), at 2 (Feb. 22, 2013) (“Turner . . . generates revenues principally from providing programming to cable system operators, satellite service distributors, telephone companies and other distributors (known as affiliates) that have contracted to receive and distribute this programming to subscribers.”) (*Annual Report*).

<sup>33</sup> See Cable Television Advertising Bureau, *Live vs. Dual Feed Cable Networks*, <http://www.thecab.tv/main/resources/lvdFeeds/index.shtml> (last visited Nov. 26, 2013).

<sup>34</sup> See LOI Response at 2.

<sup>35</sup> See *supra* para. 7.

<sup>36</sup> See 47 C.F.R. § 11.45.

<sup>37</sup> In particular, audiences relying primarily on audio cues, such as those with visual impairments or those listening from another room, would reasonably focus on such sounds. See First Complaint (asserting that the sound broadcast in the A\$AP Rocky/Best Buy advertisement was “so identical in pitch, duration and frequency to the official emergency broadcast sound that it is indistinguishable from the real thing.”). See also *supra* para. 3.

<sup>38</sup> See LOI Response at 2.

<sup>39</sup> See 47 U.S.C. § 325(a) (“No person within the jurisdiction of the United States shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signals of distress, or communication relating thereto . . .”).

*Emmis Broadcasting Corp. of St. Louis*, the Commission found a radio station in Missouri apparently liable for a forfeiture for violating Section 325(a) after the station aired a hoax announcement claiming that the United States was under nuclear attack and broadcast a “bleep” that listeners mistook as the tone for an authentic emergency signal.<sup>40</sup> The Commission held that using the tone to “cry wolf” undermined the integrity of the Emergency Broadcast System (EBS) and endangered the effectiveness of the EBS warning tone as a method of alerting the public to danger in the first instance.<sup>41</sup> At that time, the Commission lacked a rule that explicitly prohibited misuse of emergency broadcast signals, and relied on Section 325(a), finding that such misuse of the emergency broadcast signals constituted a false distress signal.<sup>42</sup> The Commission pointed to the effect of the broadcast on the EBS (the predecessor to EAS) as an exacerbating factor, even though the station did not use the actual EBS attention signal.<sup>43</sup> Even as the Commission subsequently proposed and adopted the prohibition in Section 11.45, however, it continued to affirm that false use of the EAS codes and Attention Signal “will be considered a false distress communication.”<sup>44</sup>

11. In this case, we find that Turner’s repeated inclusion of simulated EAS codes caused the transmission of false distress signals in violation of Section 325(a) of the Act.<sup>45</sup> As noted above, the Commission has affirmed that such actions “will be considered a false distress communication.”<sup>46</sup> Since the origin of the EBS, and its evolution into the current EAS, preserving the integrity of the system has been of paramount importance.<sup>47</sup> It is imperative that the public not be desensitized to the serious implications of the EAS codes and Attention Signal or a simulation thereof.<sup>48</sup> By including in its network programming the EAS codes or simulations thereof, in non-emergency situations that are promotional or commercial in nature, Turner created a “cry wolf” scenario similar to that encountered in *Emmis*.<sup>49</sup>

---

<sup>40</sup> See *Emmis Broad. Corp. of St. Louis*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2289 (1991) (*Emmis*).

<sup>41</sup> See *id.* at 2289–90 (Emmis announced, with the sound of civil defense sirens in the background, that the tone was not a test and the United States was under nuclear attack).

<sup>42</sup> See *id.*

<sup>43</sup> *Id.* (noting that Emmis used a common “bleep” tone rather than the two-tone EBS warning and thus no EBS equipment was activated, but listeners mistook the tone for the authentic EBS signal). The Commission nevertheless noted that the airing of such sound-alike “mimic” tones conflicted with the underlying purpose of the EBS rules, i.e., “to ensure prior authentication of a true national emergency before activation of the tone for emergency cuing.” *Id.* at 2290.

<sup>44</sup> See *Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcasting System*, Notice of Proposed Rule Making/Further Notice of Proposed Rule Making, 7 FCC Rcd 6903, 6907–08, paras. 39–45 (1992) (*1992 EBS Notice*); Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 1786, 1815, para. 84 (1994) (*1994 EBS Order*) (subsequent history omitted) (stating “[s]uch false use and misconduct will be considered a false distress communication and will be subject to Commission penalties, such as monetary forfeiture or other appropriate sanctions”).

<sup>45</sup> See 47 U.S.C. § 325(a).

<sup>46</sup> See *1994 EBS Order* at 1815, para. 84.

<sup>47</sup> See *1992 EBS Notice*, 7 FCC Rcd at 6907, para. 39; *Emmis*, 6 FCC Rcd at 2290.

<sup>48</sup> See *1992 EBS Notice*, 7 FCC Rcd at 6907, paras. 39–40; *1994 EBS Order*, 10 FCC Rcd at 1815, paras. 83–84 (noting that several commenters stressed that any use of the EBS attention signal, other than for tests and activations, could be “an enormous detriment to the system.” And further stating that “[s]uch false use and misconduct will be considered a false distress communication, and will be subject to Commission penalties, such as monetary forfeiture or other appropriate sanctions”).

<sup>49</sup> See *Emmis*, *supra* note 40. Both of the complaints we received regarding the A\$AP Rocky/Best Buy advertisements specifically express concern that such transmissions created a false sense of emergency or have the

(continued....)

Indeed, as noted above, both complainants indicate that they were alarmed after hearing the commercial, thinking that it signified an actual emergency.<sup>50</sup>

12. Based upon the evidence before us, we find that Turner apparently willfully and repeatedly violated Section 11.45 of the Commission's rules and Section 325(a) of the Act. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of eight thousand dollars (\$8,000) for false distress communications.<sup>51</sup> In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act and Section 1.80 of the Commission's rules, which include 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 other such matters as justice may require.<sup>52</sup> We note that the forfeiture amount assessed here for the apparent violations does not exceed the maximum monetary forfeiture permissible under the Act and the Commission's rules.<sup>53</sup>

13. As noted above, the nature of EAS violations requires particularly serious consideration because such violations undermine the integrity of the EAS by desensitizing viewers to the potential importance of warning tones and therefore implicate substantial public safety concerns. When applying the statutory factors concerning the circumstances, extent, and gravity of an EAS violation, we review a number of specific factors, including: (1) the number of repetitions (i.e., the number of individual transmissions); (2) the duration the violation (i.e., the number of days over which the violation occurred); (3) the audience reach of the transmissions (e.g., nationwide, regional, or local); and (4) the extent of the public safety impact (e.g., whether an EAS activation is triggered).

14. As described above, Turner admits that it included seven A\$AP Rocky/Best Buy advertisements in its Adult Swim Network programming transmitted over a period of six days.<sup>54</sup> In addition, it is our understanding that Turner distributes dual feeds of the Adult Swim Network (i.e., East Coast and West Coast programming feeds) and nothing in the record indicates that the commercials at issue were removed from the second feed. Thus, Turner apparently transmitted, or caused the transmission of, simulated EAS codes, in circumstances other than an actual emergency or authorized test of the EAS 14 times. Moreover, Turner's parent company, Time Warner Inc. (Time Warner), states in its 2012 *Annual Report* that Time Warner's Cartoon Network along with Adult Swim (its "evening and overnight block of programming aimed at young adults") "reached approximately 98.8 million U.S. television households as of December 2012."<sup>55</sup> The fact that Turner's multiple apparent violations

(Continued from previous page) \_\_\_\_\_

potential to desensitize the public to the signal in a real national, state, or local area emergency. See First Complaint; Second Complaint.

<sup>50</sup> See *supra* para. 3.

<sup>51</sup> See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>52</sup> See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

<sup>53</sup> See 47 U.S.C. § 503(b)(2); 47 C.F.R. § 1.80(b). See also Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, *amended by* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321; 28 U.S.C. § 2461 note (4); *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008) (applicable for violations that occurred after September 2, 2008, but before September 13, 2013); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA 13-1615, 2013 WL 3963800 (Enf. Bur. 2013); *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (applicable for violations that occurred after September 13, 2013).

<sup>54</sup> See LOI Response at 1. Based on the record, we find that Turner's transmission of the advertisement on both the East Coast and West Coast feeds amounts to 14 transmissions in total. See *supra* para. 8.

<sup>55</sup> See *Annual Report* at 3.

reached such a potentially vast audience greatly increases the extent and gravity of the violations.

15. With respect to Turner's ability to pay, we note that Turner is part of Time Warner's Networks Division, which reported annual revenues in excess of \$14.2 billion dollars, as of December 31, 2012.<sup>56</sup> As the Commission made clear in the *Forfeiture Policy Statement*, companies with higher revenues, such as Turner, may expect the imposition of forfeitures higher than those reflected in the base amounts.<sup>57</sup>

16. Finally, we note that Turner's violations with respect to the Adult Swim Network occurred after Turner had received complaints concerning another Turner network, TBS, in 2012. As described in *Turner Broadcasting System, Inc.*, Turner received viewer complaints in May of 2012 about a promotion of the *Conan* show on the TBS Network that allegedly included simulations of the EAS codes and Attention Signal.<sup>58</sup> In response to those complaints, which also emphasized the potential impact on public safety of the transmission of such material, Turner represented to the Commission that it had changed certain of its internal review practices.<sup>59</sup> Nevertheless, another Turner-owned channel, less than one year later, transmitted the A\$AP Rocky/Best Buy advertisement 14 times over a six day period, which also contained simulations of the EAS codes.<sup>60</sup> Thus, despite its experience with the problem of misusing EAS codes and Attention Signals, Turner continued to violate Section 11.45 of the Commission's rules and Section 325(a) of the Act, indicating a higher degree of culpability in this instance. Therefore, based on the number of transmissions at issue, the amount of time over which the transmissions took place, the nationwide scope of Adult Swim Network's audience reach, Turner's degree of culpability, Turner's ability to pay, and the serious public safety implications of the violations, as well as the other factors as outlined in the Commission's *Forfeiture Policy Statement*, we find that a forfeiture of two hundred thousand dollars (\$200,000) is appropriate.<sup>61</sup>

---

<sup>56</sup> *See id.* at 54.

<sup>57</sup> Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violators, we recognize that for large or highly profitable communications entities, the base forfeiture amounts . . . are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level. For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts . . . we intend to take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

*Forfeiture Policy Statement*, 12 FCC Rcd at 17099–100, para. 24.

<sup>58</sup> *See Turner Broadcasting System, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15455, 15455–56, para. 3 (Enf. Bur. 2013).

<sup>59</sup> *Id.* at 15456, para. 4. *See* Letter from Louise S. Sams, Executive Vice President, General Counsel and Secretary, Turner Broadcasting System, Inc., to Jennifer A. Lewis, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, at 3 and Appendix D (Feb. 26, 2013) (on file in EB-12-IH-0874).

<sup>60</sup> *See* LOI Response at 1.

<sup>61</sup> *See SBC Communc'ns Inc. v. FCC*, 373 F.3d 140, 152 (D.C. Cir. 2004) (noting that “substantial and widespread” behavior with a national scope may warrant an increased forfeiture, and that it is “reasonable to expect that a larger fine might be necessary to deter a large company . . .”).

#### IV. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>62</sup> and Section 1.80 of the Commission's rules,<sup>63</sup> that Turner Broadcasting System, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of two hundred thousand dollars (\$200,000) for apparently willfully and repeatedly violating Section 11.45 of the Commission's rules<sup>64</sup> and Section 325(a) of the Act.<sup>65</sup>

18. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules,<sup>66</sup> that within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Turner Broadcasting System, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Turner Broadcasting System, Inc. shall send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov, on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>67</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). Below are additional instructions you should follow based on the form of payment you select:

- 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.

20. Any request to make full payment over time under an installment plan should be sent to: Chief, Financial Officer—Financial Operations, Federal Communications Commission, 445 12th

---

<sup>62</sup> 47 U.S.C. § 503(b).

<sup>63</sup> 47 C.F.R. § 1.80.

<sup>64</sup> 47 C.F.R. § 11.45.

<sup>65</sup> 47 U.S.C. § 325(a).

<sup>66</sup> 47 C.F.R. § 1.80.

<sup>67</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>68</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

21. The response, if any, must be mailed to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C330, Washington, D.C. 20554, and **SHALL INCLUDE** the NAL/Acct. Number referenced above. In addition, to the extent practicable, a copy of the response, if any, should also be transmitted via e-mail to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kenneth M. Scheibel at Kenneth.Scheibel@fcc.gov, and Jennifer A. Lewis at Jennifer.Lewis@fcc.gov.

22. 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.

23. **IT IS FURTHER ORDERED**, that the Complaints referenced in this proceeding **ARE GRANTED** to the extent indicated herein and **ARE OTHERWISE DENIED**, and the complaint proceeding **IS HEREBY TERMINATED**.<sup>69</sup>

24. **IT IS FURTHER ORDERED**, that copies of this Notice of Apparent Liability for Forfeiture shall be sent, by First Class Mail and Certified Mail, to Susan A. Mort, Assistant General Counsel, Time Warner Inc., 800 Connecticut Avenue, NW, Suite 800, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>68</sup> See 47 C.F.R. § 1.1914.

<sup>69</sup> For purposes of the forfeiture proceeding initiated by this Notice of Apparent Liability for Forfeiture, Turner Broadcasting System, Inc. shall be the only party to this proceeding.