

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

In the Matter of Liability of)
)
DANVILLE TELEVISION PARTNERSHIP)
)
Licensee of Television Station)
WDRL-TV, Danville, Virginia)
Facility I.D. No. 15507)
)
for a Forfeiture)

**MEMORANDUM OPINION AND ORDER
AND FORFEITURE ORDER**

Adopted: June 8, 2000

Released: June 13, 2000

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, 47 C.F.R. § 0.283, has before it for consideration the following documents: (1) a Notice of Apparent Liability for forfeiture in the amount of ten thousand dollars (\$10,000) issued against Danville Television Partnership (Danville TV), licensee of station WDRL-TV, Danville, Virginia, in *Danville Television Partnership (WDRL-TV)*, 12 FCC Rcd 1351 (MMB 1997) (*WDRL-TV NAL*);¹ and (2) Danville TV's Response to *WDRL-TV NAL* requesting elimination or reduction of the forfeiture (Response). The forfeiture was assessed for station WDRL-TV's apparent repeated violation of Section 73.670 of the Commission's Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter that may be aired during children's television programming.

2. In *WDRL-TV NAL*, we found that station WDRL-TV's record of exceeding the children's television commercial limits on 49 occasions during the last license term constituted a repeated violation of Section 73.670 of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Danville TV was advised of its apparent liability for forfeiture in the amount of \$10,000. That amount was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act, and, in particular, the five criteria consisting of: (1) the number of instances of commercial overages; (2) the length of each overage; (3) the period of time over which the overages occurred; (4) whether or not the licensee established an effective program to ensure compliance; and (5) the specific reasons that the licensee gave for the overages. We applied these criteria to the facts of station WDRL-TV's case in our

¹ At the time *WDRL-TV NAL* was issued, the station's call sign was WDRG(TV).

consideration of the 49 30-second overages reported by Danville TV. Based on the number and type of violations, which occurred over a six-month period, we concluded that children had been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children's Television Act of 1990.² We also referred to the Commission's statement made at the time it delayed the effective date of Section 73.670 of the Rules from October 1, 1991, until January 1, 1992, that "giving the additional time to broadcasters and cable operators before compliance with the commercial limits is required will have the effect of enabling broadcasters and cable operators to hone their plans to ensure compliance"³ In doing so, we rejected the reasons Danville TV gave to explain the overages, namely inadvertent error and reliance upon program producers for compliance with the commercial limits, as bases for excusing station WDRL-TV's violations of the commercial limits. We noted, too, that though station WDRL-TV implemented procedures to prevent future violations of the children's television commercial limitations, this did not relieve Danville TV of liability for the violations which had occurred.

3. In its Response, Danville TV requests elimination or reduction of the forfeiture amount assessed in *WDRL-TV NAL* based on financial hardship. To this end, Danville TV maintains that station WDRL-TV had been in operation just over two years maintains at the time the forfeiture was assessed, and describes the revenues derived from the "small Danville Market" during that time as "disappointingly low." Danville TV also asserts that station WDRL-TV is the only station it owns, and that it has no other assets or sources of income. Since station WDRL-TV has not yet "broken even," Danville TV contends that imposition of the forfeiture threatens its future economic stability and could result in the eventual failure of the station. The impact of that failure would be felt by Danville, Virginia and the region along the southern border of Virginia, the licensee claims, because station WDRL-TV is the only station licensed to that area, which does not receive adequate service from other stations in the Roanoke and Lynchburg markets due to mountainous terrain between those markets and Danville. Therefore, Danville TV asks that the Commission rescind the forfeiture, or substantially reduce it to no more than \$1,500.

4. In support of its alleged financial inability to pay the forfeiture, Danville TV submitted the following documents with its Response to *WDRL NAL*: (1) an Operating Statement as of December 31, 1995, for TMC, Inc., which operated station WDRL-TV pursuant to a local marketing agreement (LMA);⁴ (2) a balance sheet for Danville TV as of September 30, 1996; (3) a balance sheet as of September 30, 1996, for BIP/Channel 24 Productions, the current operator of station WDRL-TV pursuant to an LMA; and (4) an Operating statement for BIP/Channel 24 Productions for the first nine months of 1996. Danville TV also provided a statement regarding the total obligations it owes BIP, Inc., the licensee of low power station W54BT, Roanoke, Virginia, as of November 1, 1996.⁵

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

³ *Children's Television Programming*, 6 FCC Rcd 5529, 5530 n.10 (1991).

⁴ Danville TV states that its 49 percent general partner, Melvin N. Eleazer, *see infra* ¶ 5, was the 100 percent stockholder and sole officer and director of TMC, Inc.

⁵ In its Response, Danville TV explains that it has contracted to use BIP, Inc.'s low power station to retransmit

5. On November 9, 1999, pursuant to Commission staff's informal request for further information indicative of the licensee's own financial condition, Danville TV filed balance sheets, operating statements and federal tax returns for BIP/Channel 24 Productions for the years 1997 and 1998. Because these documents related to BIP/Channel 24 Productions, the station's LMA operator, and not to Danville TV, the staff made another informal request for further information relating to Danville TV's finances. In response to that request, Melvin N. Eleazer, the 49 percent general partner of Danville TV, filed his personal tax returns for the years 1995 and through and including 1998. In lieu of her personal tax documents, Caroline Powley, the 51 percent partner of Danville TV, filed a letter requesting that any submission of her personal tax documents be delayed until after the United States District Court, Western District of Virginia, Danville, Virginia, acts on an appeal of an order finding that no partnership exists between Powley and Eleazer.

DISCUSSION

6. The Commission has previously considered a licensee's claim of financial inability to pay as a basis for reducing a forfeiture. In doing so, the Commission has required the submission of data to support that claim, including, but not limited to, a profit and loss statement for the licensee which has been prepared under generally accepted accounting principles. Based on the information before us, we are not persuaded that the forfeiture assessed in *WDRL-TV NAL* should be rescinded or reduced due to Danville TV's financial condition. The material filed by Danville TV in response to *WDRL-TV NAL* was inadequate at the time of submission, as it failed to include the licensee's profit and loss information which demonstrates actual financial condition. We note, too, that the balance sheet for Danville TV covered a period of only nine months. In addition, the majority of the remaining documents filed with the Response pertained to the finances of parties other than the licensee. Thus, neither those documents, nor the additional information filed on November 9, 1999, consisting of balance sheets, operating statements and federal tax returns for BIP/Channel 24 Productions, are relevant to Danville TV's financial inability to pay the forfeiture. Finally, because Commission records indicate that Powley and Eleazer are the only two partners of the licensee, we find the submission of Eleazer's personal tax returns, without the submission of Powley's personal tax returns, insufficient for determining Danville TV's inability to pay a \$10,000 forfeiture. As a consequence, beyond the licensee's claim of financial hardship, there is no accompanying data to demonstrate current cash flows and other indicia of actual financial condition, and no basis for determining Danville TV's inability to pay. Therefore, we deny Danville TV's request that the forfeiture amount be eliminated or reduced because of the licensee's financial inability to pay.

7. Accordingly, IT IS ORDERED THAT Danville Television Partnership's request that the forfeiture assessed in *Danville Television Partnership (WDRL-TV)*, 12 FCC Rcd 1351 (MMB 1997),

station *WDRL-TV*'s signal, enabling it to be carried on the Roanoke cable systems, and that station *W54BT* went into operation with station *WDRL(TV)*'s signal in 1996. Danville TV also indicates that its leases equipment used for station *W54BT*'s facilities from BIP, Inc., and has also included the management and operation of that low power station into its LMA with BIP/Channel 24 Productions. Danville TV claims that no payment has been made on the equipment lease, and that its obligations to BIP, Inc. as of Nov. 1, 1996, totaled \$143,410.75.

be eliminated or reduced IS DENIED.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Danville Television Partnership, licensee of television station WDRL-TV, Danville, Virginia, FORFEIT to the United States the sum of ten thousand dollars (\$10,000) for repeated violations of Section 73.670 of the Commission's Rules, 47 C.F.R. § 73.670. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission. With regard to this forfeiture proceeding, Danville Television Partnership, may take any of the actions set forth in Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, as summarized in the attachment to this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

cc: Vincent Curtis, Jr., Esq.
Denise Moline, Esq.