

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

Adopted: January 12, 2001

Released: January 17, 2001

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration a Petition for Reconsideration filed on July 12, 2000, by Martin N. Eleazer on behalf of Danville Television Partnership (“DTP”), licensee of station WDRL-TV, Danville, Virginia. DTP seeks reconsideration of our decision in *Danville Television Partnership*, 15 FCC Rcd 10628 (MMB 2000) (*Danville Order*), denying DTP’s request for reduction or rescission of the ten thousand dollar (\$10,000) forfeiture assessed against it in *Danville Television Partnership (WDRL-TV)*, 12 FCC Rcd 1351 (MMB 1997) (*WDRL-TV NAL*)<sup>1</sup>, for the station’s 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 *Danville Order*, we rejected DTP’s showing that it is financially unable to pay the \$10,000 forfeiture. We noted that when the Commission has previously considered a licensee’s claim of financial inability to pay a forfeiture, 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on the information provided to us, we were not persuaded that the forfeiture assessed in *WDRL-TV NAL* should have been rescinded or reduced due to DTP’s financial condition. Rather, we found that the material filed in DTP’s Response to *WDRL-TV NAL* requesting elimination or reduction of the forfeiture (“Response”) was inadequate, in part because it failed to include the licensee’s profit and loss information which demonstrates actual financial condition. In addition, we cited Commission records indicating that Caroline Powley (“Powley”), the 51 percent partner of DTP, and Melvin N. Eleazer (“Eleazer”), the 49 percent general partner of DTP, are the only two partners of the licensee. Based on those records, we found that the submission of Eleazer’s personal tax returns,

<sup>1</sup> At the time *WDRL-TV NAL* was issued, the station’s call sign was WDRG(TV).

without the submission of Powley's personal tax returns, was insufficient for determining DTP's inability to pay a \$10,000 forfeiture. Accordingly, we determined that rescission or reduction of the \$10,000 forfeiture was not warranted.

3. On reconsideration, DTP argues that we erred in concluding that DTP had submitted insufficient information to support its request for elimination or reduction of the forfeiture. DTP argues that the Commission failed to take into consideration the "unusual circumstances" concerning the licensee's legal and financial position in *Danville Order*. According to DTP, Eleazer and Powley have been involved in litigation for five years regarding the issue of whether Powley is a partner in DTP and whether the partnership exists as a legal entity. DTP states that Eleazer is in individual bankruptcy and that Powley also petitioned for voluntary bankruptcy on behalf of the partnership. According to DTP, the U.S. Bankruptcy Court for the Western District of Virginia, Danville Division found in both Eleazer's case (Case No. 98-01160-WA4-13) and in DTP's case (Case No. 98-01248-WA4-11) that Powley did not fulfill her obligations as a partner, and therefore, no partnership exists under Virginia law. In light of the finding that DTP was not a legal entity for bankruptcy purposes, DTP asserts that Powley's petition for voluntary bankruptcy on behalf of DTP was dismissed. DTP states that the Bankruptcy Court's decision was appealed to the U.S. District Court, Western District of Virginia, Danville, Virginia, which affirmed. DTP notes, however, that an appeal in the U.S. Circuit Court for the 4th Circuit, Richmond Division is still pending. DTP claims that the Commission in *Danville Order* failed to take into consideration the litigation between Powley and Eleazer. Moreover, DTP claims that the Commission treated DTP as though it was a *bona fide* partnership and that the partnership profited from the operation of the station. DTP argues that it is inequitable to require, as a basis for elimination or reduction of the forfeiture, information for a partnership whose existence has been legally denied under Virginia law.

4. DTP also points out that the ongoing dispute over the status of the partnership and Powley's status as a partner is the primary reason the station WDRL-TV has been operating under an LMA agreement<sup>2</sup> and that DTP has no financial records to submit. DTP notes that Eleazer has been unable to obtain Powley's consent to a voluntary transfer of the station's license to another entity, or conversely, obtain a final court order which would allow him to effectuate an involuntary transfer of control.

5. DTP claims that Eleazer has provided to the Commission all of the financial information

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<sup>2</sup> In its petition for reconsideration, DTP provided some background information regarding the operations of station WDRL-TV. According to DTP, Eleazer was the sole person responsible for operating station WDRL-TV during its construction and start-up period. Eleazer then arranged on behalf of DTP for the management of the station to be operated by a company which he owned, TMC, Inc. Subsequently the LMA rights were transferred to BIP/Channel 24 Productions, Inc. ("BIP") in which Eleazer holds no interest. DTP states that Eleazer remained the general manager of the station, but for several years, took no salary. DTP further states that under the LMA Agreement between DTP and TMC, Inc./BIP, DTP is entitled only to a percentage of net profits. DTP claims that neither TMC, Inc. nor BIP have generated a profit, and therefore, DTP has never had any income. Rather, DTP asserts that its only asset is the station itself. DTP states that the station's equipment is owned and leased from BIP, and DTP is deeply indebted to BIP with respect to lease payments. Moreover, DTP states that Eleazer's personal tax records demonstrate that he has not profited from operation of station WDRL-TV.

relating to the operation of station WDRL-TV that he has available to him at this time. DTP argues that station WDRL-TV does not generate sufficient revenue to pay down its existing long-term debts and that Eleazer is in personal bankruptcy. Ultimately, DTP claims that Eleazer will “bear the full burden” of paying the forfeiture because Powley is unlikely to share in any forfeiture payment. Finally, DTP argues that the forfeiture threatens the continuing economic viability of station WDRL-TV and that the public benefits by the continued operation of the station.

6. *Discussion.* Given the facts before us in *Danville Order*, we believe we acted appropriately and in a manner consistent with Commission precedent when we denied the request of DTP for rescission or reduction of the forfeiture assessed against it. In *Danville Order*, we found that because Commission records indicate that Powley and Eleazer are the only two partners of the licensee, the submission of Eleazer’s personal tax returns, without the submission of Powley’s personal tax returns, was insufficient for determining DTP’s inability to pay a \$10,000 forfeiture.<sup>3</sup> We affirm that holding. On reconsideration, DTP argues that Powley should not be considered a *bona fide* partner in DTP based upon the findings of U.S. Bankruptcy Court for the Western District of Virginia, Danville Division. However, we note that the Bankruptcy Court’s holding is currently on appeal in the U.S. Circuit Court for the 4th Circuit, Richmond Division. Accordingly, with respect to Powley’s status as a partner in DTP, there has been no final resolution in this matter. Moreover, according to Commission records, Powley is still a partner in DTP and until such time that an appropriate transfer of control or assignment application is filed and granted, Powley remains a Commission licensee. Thus, Powley’s personal tax returns are germane to DTP’s ability to pay the forfeiture assessed against it. In addition, as we noted in *Danville Order*, no data exists demonstrating DTP’s current cash flows and actual financial condition.<sup>4</sup> As such, we affirm the denial of DTP’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 petition for reconsideration requesting reduction or rescission of the ten thousand dollar (\$10,000) forfeiture assessed against it IS DENIED.

8. IT IS FURTHER ORDERED THAT the Mass Media Bureau send by Certified Mail -

Return Receipt Requested - a copy of this Memorandum Opinion and Order to Danville Television

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<sup>3</sup> On November 9, 1999, pursuant to Commission staff’s informal request for further information indicative of the licensee’s own financial condition, DTP filed balance sheets, operating statements and federal tax returns for BIP for the years 1997 and 1998. Because these documents related to BIP, the station’s LMA operator, and not to DTP, the staff made another informal request for further information relating to DTP’s finances. In response to that request, Eleazer filed his personal tax returns for the years 1995 and through and including 1998. In lieu of her personal tax documents, Powley filed a letter requesting that any submission of her personal tax documents be delayed until the issue of whether a partnership exists between Powley and Eleazer has been resolved on appeal.

<sup>4</sup> We note that the balance sheet submitted by DTP only covered a period of only nine months. In addition, the majority of the remaining documents filed in DTP’s Response pertained to the finances of parties other than the licensee. For example, DTP submitted the balance sheets, operating statements and federal tax returns for BIP; however, such documents are not relevant to DTP’s financial inability to pay the forfeiture.

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Partnership.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

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