



Federal Communications Commission
Washington, D.C. 20554

December 23, 2005

DA 05-3282

Released: December 23, 2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

S&E Network Inc.
WKPV(TV)
LIN Television Corporation
4 Richmond Square
Suite 200
Providence, RI 02906

Re: S&E Network Inc.
WKPV(TV), Ponce, PR
Facility ID No. 58341
File No. BRCT-20041001AWA
NAL/Acct. No. 0641420027
FRN: 0001833052

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each television broadcast licensee to publicize the existence and location of the Children's Television Programming Reports.

Under the Commission's rules implementing the Children's Television Act of 1990 (CTA),¹ each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).² The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Section 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the

¹ Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394.

² 47 C.F.R. § 73.671.

educational needs of children. As set forth in Section 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports. 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 (FCC Form 323) filed with the Commission. In addition, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter by the tenth day of the succeeding calendar quarter.

On October 1, 2004, you filed a license renewal application (FCC Form 303-S) for station WKPV(TV), Ponce, Puerto Rico (File No. BRCT-20041001AWA). In response to Section IV, Question 10 of that application, you certified that, station WKPV(TV) failed to publicize the existence and location of the station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24 to station WKPV(TV)'s renewal application, you indicated that the licensee discovered that the station did not publicize the existence and location of its Children's Television Programming Reports. Moreover, you claim that the licensee took corrective measures in September 2004.

In addition, in Exhibit 17 to station WKPV(TV)'s renewal application, you indicated that LIN Television Corporation acquired control of the licensee of station WKPV(TV), S&E Network Inc., following grant of a transfer of control application in 2001. You claim that the licensee discovered that station WKPV(TV)'s TV issues/programs lists had not been placed in the station's public inspection file during the "pre- and post- consummation periods." Further, you state that the most recent Biennial Ownership Reports, filed in 2003, were not placed in the station's public inspection file in a timely manner. You maintain that the licensee has re-created the TV issues/programs lists and has placed these lists and the 2003 Biennial Ownership Reports in the station's public inspection file. You assert that station WKPV(TV)'s public inspection file is now being maintained and will continue to be maintained consistent with the Commission's rules.

Our records confirm that on July 20, 2001, the Commission granted an application to transfer control of S&E Network Inc. (S&E), the licensee of station WKPV(TV) from Paxson Communications of San Juan, Inc., to LIN Television Corporation (LIN Television) (BTCCT-20000530ABY). That transfer of control transaction was consummated on August 2, 2001. Accordingly, we will not consider the violations reported in station WKPV(TV)'s renewal application which occurred prior to the date on which LIN Television acquired the license for station WKPV(TV).

On the other hand, WKPV(TV)'s failure to publicize the existence and location of the station's Children's Television Programming Reports constitutes a willful and repeated violation of Section 73.3526(e)(11)(iii). While the licensee may have belatedly implemented policies and procedures to prevent subsequent violations, that does not relieve it of liability for the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply

substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ In determining the appropriate forfeiture amount, we must consider 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.”⁴

The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement) and Section 1.80 of the Rules set a base forfeiture amount of \$10,000 for public file violations. As explained above, the licensee has failed to comply with Section 73.3526(e)(11)(iii) of the Rules. We note also that this violation apparently continued for approximately three years of the license term. Based on the record before us, we believe that a \$3,000 forfeiture is appropriate for the licensee’s apparent violation of Section 73.3526(e)(11)(iii). Finally, we think an admonition is warranted for the licensee’s failure to place TV issues/programs lists in the public file.

In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act.⁵ Section 309(k) 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 Communications Act or the Commission’s Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁶ 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 – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum

³ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term “willful”, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

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.” 47 U.S.C. § 312(f)(2).

⁴ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 309(k).

⁶ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

otherwise permitted.”⁷

On balance, we find that WKPV(TV)’s violation of Section 73.3526 does not constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WKPV(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act, and Sections 0.283 and 1.80 of the Rules, S&E Network Inc is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violations of Section 73.3526(e)(11)(iii) of the Rules.

IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release date of this Notice of Apparent Liability, S&E Network Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁸

IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to S&E Network Inc. at the address listed above, and to Marcia L. Greene, Esquire, LIN Television Corporation, 11 Dupont Circle, Suite 365, Washington, D.C. 20036.

⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁸ See 47 C.F.R. § 1.1914.

Finally, IT IS ORDERED that, the application (File No. BRCT-20041001AWA) of S&E Network Inc. for renewal of license for station WKPV(TV), Ponce, Puerto Rico, IS GRANTED.

Sincerely,

Donna C. Gregg
Chief, Media Bureau