

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

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| In re Application of |) | |
| |) | |
| Springfield Broadcasting Partners |) | Facility I.D. No. 62009 |
| |) | NAL/Acct. No. 0641420045 |
| For Renewal of License for Station WRSP-TV |) | FRN: 0005017900 |
| Springfield, Illinois |) | File No. BRCT-20050728AEC |

**MEMORANDUM OPINION AND ORDER
AND NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: June 2, 2006

Released: June 6, 2006

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it the above-captioned license renewal application of Springfield Broadcasting Partners (the "Licensee") for Station WRSP-TV, Springfield, Illinois (the "Station"). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* ("NAL") issued pursuant to Sections 309(k) and 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 Commission, by the Chief, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that the Licensee apparently violated Sections 73.3526(e)(11)(i)-(iii) of the Rules, by failing to place in the Station's public inspection file all required TV issues/programs lists, records concerning its compliance with the children's programming commercial limits, and Children's Television Programming 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 ten thousand dollars (\$10,000) and we grant the license renewal application.

II. BACKGROUND

2. In the Children's Television Act of 1990, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits.⁴ Accordingly, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.⁵ The

¹ 47 U.S.C. §§ 309(k), 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.3526(e)(11)(i)-(iii).

⁴ Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394.

⁵ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991); 47 C.F.R. § 73.670.

commercial limitations became effective on January 1, 1992.⁶

3. Further, Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁷ Subsection 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. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee's certification, in its renewal application, of its compliance with the children's television commercial limits imposed by Section 73.670 of the Rules. Moreover, as set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it has made during the quarter to serve the educational and informational needs of children. These subsections of Section 73.3526 require licensees to place TV issues/programs lists, records concerning commercial limits and Children's Television Programming Reports for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.⁸

4. On July 28, 2005, the Licensee filed its above-captioned license renewal application (FCC Form 303-S) for Station WRSP-TV (the "Application"). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee indicated that all required documents were placed in the public inspection file at the appropriate times, but that in its recent review of the public file, it discovered that some of these documents had been inadvertently removed and were missing from the public file. Specifically, it stated that its records concerning compliance with the children's programming commercial limits for the fourth quarter of 1997 and all of 1998, the Children's Television Programming Reports for the fourth quarter of 1997, all of 1998, and the second quarter of 2000, and the TV issues/programs list for the fourth quarter of 1998 were missing from the public file. The Licensee claimed that upon discovering that these records were missing, it located the missing documents and placed copies in the public file. The Licensee argued that it has a history of overall compliance and that the reported omissions were not willful. Further, the Licensee requested that the Commission take no action with respect to the missing records.

5. Moreover, in response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, it failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee stated that Station WRSP-TV exceeded the children's television commercial limits by 30 seconds on November 24, 1999. The Licensee attributed the overage to human error in airing a commercial make-good during a children's program, and maintained that it took corrective actions to prevent further overages.

⁶ *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991); 47 C.F.R. § 73.670.

⁷ See 47 C.F.R. § 73.3526.

⁸ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

III. DISCUSSION

6. The Licensee's failure to retain in its Station WRSP-TV public inspection file all of the required documentation constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(ii), and 73.3526(e)(11)(iii) of the Rules.⁹ 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.¹⁰ 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.¹¹ 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,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ 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."¹⁴

7. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.¹⁵ 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."¹⁶

8. In this case, the Licensee admitted that records concerning compliance with the children's programming commercial limits for the fourth quarter of 1997 and all of 1998, the Children's Television Programming Reports for the fourth quarter of 1997, all of 1998, and the second quarter of 2000, and the TV issues/programs list for the fourth quarter of 1998 were missing from the public file. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii).

9. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁷ Section 309(k)(1) 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 Act or the Rules; and (3) there have been no other violations

⁹ It appears from the information before us that the advertising overage in question was an isolated and inadvertent violation of Section 73.670 of the Rules and, as such, does not warrant further Commission action.

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

¹¹ 47 U.S.C. § 312(f)(1).

¹² *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁴ 47 U.S.C. § 312(f)(2).

¹⁵ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁶ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

¹⁷ 47 U.S.C. § 309(k).

which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁸ 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 otherwise permitted.”¹⁹

10. On balance, we find that the Licensee’s violations of Section 73.3526 and 73.670 do not constitute “serious violations” of the 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 WRSP-TV served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

11. 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 Springfield Broadcasting Partners is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violation of Sections 73.3526(e)(11)(i)-(iii) of the Commission’s Rules.

12. 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*, Springfield Broadcasting Partners SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. 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.

15. 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.

16. 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

¹⁸ 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 *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996, Order*, 11 FCC Rcd 6363 (1996).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

1-A625, Washington, D.C. 20554.²⁰

17. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the application (File No. BRCT-20050728AEC) of Springfield Broadcasting Partners for renewal of license for Station WRSP-TV, Springfield, Illinois, IS GRANTED.

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Springfield Broadcasting Partners, c/o Brooks, Pierce, McLendon, Humphrey & Leonard LLP, P.O. Box 1800, Raleigh, North Carolina 27602, and to its counsel, Coe W. Ramsey, Esquire, Brooks, Pierce, McLendon, Humphrey & Leonard LLP, P.O. Box 1800, Raleigh, North Carolina 27602.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

²⁰ See 47 C.F.R. § 1.1914.