

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

In the Matter of	)	
	)	
Channel 11 License, Inc.	)	Facility I.D. No. 82698
Licensee of Station KRII(TV)	)	NAL/Acct. No. 0741420025
Chisholm, Minnesota	)	FRN: 0006383087

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: April 23, 2007**

**Released: April 25, 2007**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Channel 11 License, Inc., (the “Licensee”), licensee of Station KRII(TV), Chisholm, Minnesota (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules, by failing to file with the Commission, place in the Station’s public inspection file, and publicize the existence and location of the Station’s Children’s Television Programming Reports.<sup>3</sup> Moreover, we find that the Licensee apparently willfully and repeatedly violated Section 73.3526(e)(11)(i) of the Rules, by failing to prepare and place in the Station’s public inspection file TV issues/programs lists.<sup>4</sup> 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 twenty thousand dollars (\$20,000).

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>5</sup> 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. 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. As set forth in subsection 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. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>4</sup> See 47 C.F.R. § 73.3526(e)(11)(i).

<sup>5</sup> See 47 C.F.R. § 73.3526.

station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.<sup>6</sup>

3. On December 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station KRII(TV) (the "Application") (File No. BRCT-20051201BTM). In response to Section IV, Question 6 of the Application, the Licensee stated that, during the previous license term, it had failed to file with the Commission, Children's Television Programming Reports. In Exhibit 20, it indicated that Station KRII(TV) operates as a satellite of Station KBJR(TV), Superior, Wisconsin. Consequently, the Licensee stated, Station KRII(TV)'s children's television programming is identical to the children's television programming broadcast by Station KBJR(TV). The Licensee indicated, however, that during preparation of its Application, it determined that it had not prepared, filed with the Commission, and placed in its public inspection file separate Children's Television Programming Reports for Station KRII(TV) from the date it signed on the air until November 2005.<sup>7</sup> The Licensee stated that all Children's Television Programming Reports were subsequently prepared and filed with the Commission and placed in the public inspection file in November 2005. In addition, in Exhibit 17, the Licensee stated that in preparing its Application it discovered that its TV issues/programs lists had not been prepared or placed in the public inspection file. The Licensee reported that upon discovery of this omission, it prepared these documents, based upon its programming records and placed them in the public inspection file in November 2005.

4. Further, in Exhibit 24, the Licensee stated that Station KBJR(TV) publicized the existence and location of the Children's Television Programming Reports filed by KBJR(TV), and that these reports are identical to the reports filed by Station KRII(TV) in November 2005. The Licensee also stated, however, that Station KRII(TV) could not publicize the existence and location of its Children's Television Programming Reports until after it prepared and filed such reports in November 2005.

### III. DISCUSSION

5. The Licensee's failure to prepare and place in its Station's public inspection file Children's Television Programming Reports and TV issues/programs lists constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i) and (iii) of the Rules. Further, the Licensee's failure to file with the Commission and publicize the existence and location of the Children's Television Programming Reports constitutes another apparent willful and repeated violation of Section 73.3526(e)(11)(iii).

6. 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.<sup>8</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>9</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>10</sup> and the Commission has so interpreted the term in the Section

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<sup>6</sup> 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).

<sup>7</sup> The Licensee reported that Station KRII(TV) signed on the air on November 27, 2002.

<sup>8</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

503(b) context.<sup>11</sup> 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.”<sup>12</sup>

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.<sup>13</sup> Also, the Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations. In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering 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.”<sup>14</sup>

8. In this case, the Licensee acknowledged that it failed to prepare and place in the Station’s public inspection file Children’s Television Programming Reports and TV issues/programs lists until November 2005. Additionally, the Licensee reported that did not file with the Commission, and publicize the existence and location of the Station’s Children’s Television Programming Reports until November 2005. Based on the record before us, we believe that a forfeiture in the amount of \$10,000 is appropriate for the Licensee’s apparent willful and repeated failure to place all required TV issues/programs lists and Children’s Television Programming Reports in the Station’s public inspection file in violation of Sections 73.3526(e)(11)(i) and (iii) and that a forfeiture in the amount of \$10,000 is warranted for its apparent willful and repeated failure to file Children’s Television Programming Reports with the Commission and to publicize the existence and location of the Station’s Children’s Television Programming Reports in violation of Section 73.3526(e)(11)(iii), for a total forfeiture in the amount of \$20,000.

#### IV. ORDERING CLAUSES

9. 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 Channel 11 License, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i) and (iii) of the Commission’s Rules.

10. 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*, Channel 11 License, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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,

<sup>11</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>12</sup> 47 U.S.C. § 312(f)(2).

<sup>13</sup> 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.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

12. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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.

13. 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.

14. 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 1-A625, Washington, D.C. 20554.<sup>15</sup>

15. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Channel 11 License, Inc., c/o Granite Broadcasting Corporation, 767 Third Avenue, 34<sup>th</sup> Floor, New York, New York 10017, and to its counsel, Tom W. Davidson, Esquire, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue., N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</sup> See 47 C.F.R. § 1.1914.