

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

In the Matter of)	
)	
Channel Eleven, Inc.)	Facility I.D. No. 10324
Licensee of Station WETV-LP)	NAL/Acct. No. 0841420052
Murfreesboro, Tennessee)	FRN: 0007632904

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: June 30, 2008

Released: July 2, 2008

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”),¹ by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that Channel Eleven, Inc. (the “Licensee”), licensee of Station WETV-LP, Murfreesboro, Tennessee (the “Station”), apparently willfully and repeatedly violated Section 73.671 of the Rules, by failing to air programming specifically designed to serve the educational and informational needs of children.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 twenty thousand dollars (\$20,000).

II. BACKGROUND

2. Under the Commission’s rules implementing the Children’s Television Act of 1990 (CTA),⁴ each television broadcast station licensee has an obligation, during its license term, to serve the educational and informational needs of children through “programming specifically designed to serve such needs” (“core programming”).⁵ In the *1996 Children’s Television Order* revising the Commission’s rules and policies governing children’s programming, the Commission established a processing guideline of three hours of core programming a week.⁶ It also established Commission rules setting forth six criteria for evaluating whether a program qualifies as “core programming:” (1) the program has serving the educational and informational needs of children ages 16 and under as a significant purpose; (2) the program is aired between the hours of 7:00 a.m. and 10:00 p.m.; (3) the program is a regularly-scheduled weekly program; (4) the program is a least 30 minutes in length; (5) the educational objective and the

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

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. § 73.671.

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

⁵ 47 C.F.R. § 73.671.

⁶ *Re Policies and Rules Concerning Children’s Television Programming: Revision of Programming Policies for Television Broadcast Stations*, 11 FCC Rcd 10660, 10718 (1996) (“*1996 Children’s Television Order*”).

target child audience are specified in writing in the licensee's Children's Television Programming Report; and (6) instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides.⁷

3. On March 31, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station WETV-LP (the "Application") (File No. BRTVA-20050331AQR). In response to Section IV, Question 7 of the Application, the Licensee stated that, the Station failed to broadcast three hours or more of core programming per week.⁸ In Exhibit 21, the Licensee indicated that after it was licensed to operate as a Class A television station, it sought to find "good children's programming." The Licensee reported that as a result of its efforts, the Station began airing children's programming during the second quarter of 2004.

III. DISCUSSION

4. The Licensee's failure to broadcast three hours per week of core programming constitutes an apparent willful and repeated violation of Section 73.671. 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.⁹ 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.¹⁰ 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,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² 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."¹³

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$8,000 for violation of children's programming requirements.¹⁴ 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."¹⁵

⁷ *Id.* at 10696. *See, also*, 47 C.F.R. § 73.671(c) (2005).

⁸ The Licensee notes that its application to convert its LPTV facilities to Class A facilities was granted on September 10, 2001. (BLTVA-20010710ABZ)

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

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹² *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹³ 47 U.S.C. § 312(f)(2).

¹⁴ *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.

¹⁵ 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.

6. In this case, the Licensee acknowledged that it failed to air core programming during a portion of its license term. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$20,000 for its apparent willful and repeated violation of Section 73.671.

IV. ORDERING CLAUSES

7. 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 Eleven, 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 violation of Section 73.671 of the Commission's Rules.

8. 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 Eleven, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. 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 in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the *NAL*/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

10. 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.

11. 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.

12. 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. 20554.¹⁶

¹⁶ See 47 C.F.R. § 1.1914.

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Channel Eleven, Inc., 1617 Lebanon Road, Nashville, Tennessee 37210, and to its counsel, Richard F. Swift, Esquire, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau