

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

In the Matter of)	
)	
KNVL-TV, Inc.)	Facility I.D. No. 35283
Licensee of Station KJEP-CA)	NAL/Acct. No. 0941420008
Nashville, Arkansas)	FRN: 0004374252

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: December 17, 2008

Released: December 19, 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 KNVL-TV, Inc. (the “Licensee”), licensee of Station KJEP-CA, Nashville, Arkansas (the “Station”), apparently willfully and repeatedly violated Section 73.673 of the Rules, by failing to provide information identifying programming specifically designed to educate and inform children to program guide publishers.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 four thousand dollars (\$4,000).

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 *Policies and Rules Concerning the Children’s Television Programming, Revision of Programming Policies for Television Broadcast Stations*,⁶ the Commission adopted several public information initiatives to improve the information to the public regarding programming broadcasters air to fulfill their statutory obligation. One of the public information initiatives requires licensees to provide to publishers of program guides, information identifying programming specifically designed to educate and inform children, including an indication of the age group for which the program is intended.⁷ In the *Children’s Television Programming Order*, 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. § 73.673.

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 11 FCC Rcd 10660 (1996) (*Children’s Television Programming Order*).

⁷ 47 C.F.R. § 73.673.

Commission stated its belief that “program guides are an effective means of providing parents with advance notice of scheduling of educational programs.”⁸ Moreover, the Commission indicated that this information would help parents to find appropriate programs for their children and others who want to monitor a station’s compliance with the CTA.⁹ The Commission acknowledged, however, that broadcasters cannot require program guide publishers to print this information.¹⁰ Nonetheless, the Commission concluded that the information is more likely to be included in program listings if broadcasters regularly provide it.

3. On January 26, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station KJEP-CA (the “Application”) (File No. BRTTA-20050126AKB).¹¹ In Exhibit 24 of the Application and in a January 23, 2008 supplement to its Application, the Licensee indicated that it did not provide information identifying its core programming to program guide publishers. The Licensee asserted that it did not believe that it was required to submit such information to program guide publishers if the Station’s program schedule was never published. The Licensee suggested that it began sending its program schedule to publishers of program guides in approximately 2005, when it discovered that it was required to submit this information to publishers. The Licensee also argued that in previous cases, Licensees were admonished for failure to comply with Section 73.673.¹² Specifically, in *Paxson*, the Commission admonished the Licensee for failure to provide program guide publishers with each program’s target age-range on its station’s core programming schedule it provided to them. In *Bethany*, the Commission admonished the Licensee for failure to provide information identifying each core program aired on its station to program guide publishers.

III. DISCUSSION

4. The Licensee’s failure to provide publishers of program guides with information identifying each core program aired on Station KJEP-CA, including an indication of the target child audience constitutes an apparent willful and repeated violation of Section 73.673. 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.¹³ 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.¹⁴ 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,¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ 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

⁸ *Children’s Television Programming Order*, 11 FCC Rcd at 10689.

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Commission’s records reflect that the Licensee’s application to convert its LPTV facilities to Class A facilities was granted on October 13, 2000. (BLTTA-20000802AED).

¹² In support of its contention, the Licensee cited, *Paxson Communications License Co., LLC*, 21 FCC Rcd 2213 (Media Bureau 2006) (*Paxson*); *Bethany World Prayer Center, Inc.*, 21 FCC Rcd 1704 (Media Bureau 2006) (*Bethany*).

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

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

omission is continuous, for more than one day.”¹⁷

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 Section 73.673.¹⁸ 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.”¹⁹

6. In this case, the Licensee acknowledged that it did not provide the required information to program guide publishers. Further, the Licensee contended that the Commission has admonished licensees in prior cases for failure to comply with Section 73.673. However, these cases are inapposite since in *Paxson*, the licensee did not include the target-age range in its submissions to program guide publishers. Moreover, it appears that in this case, the violation lasted for a longer period of time than the length of the violation involved in *Bethany*. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violation of Section 73.673.

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 KNVL-TV, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated violation of Section 73.673 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*, KNVL-TV, 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-

¹⁷ 47 U.S.C. § 312(f)(2).

¹⁸ 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.

¹⁹ 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.

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. 20554.²⁰

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to KNVL-TV, Inc. P.O. Box 1020, Nashville, Arkansas 71852-1020, and to its counsel, Joseph E. Dunne III, Esquire, P.O. Box 9203, Durango, Colorado 81302-9203.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁰ See 47 C.F.R. § 1.1914.