

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

In the Matter of)
)
Reclassification of License of)
Class A Television Station WFEM-LP) Facility ID No. 25769
Heiskell, Tennessee)
)

ORDER TO SHOW CAUSE

Adopted: February 23, 2012

Released: February 28, 2012

By the Chief, Video Division, Media Bureau:

1. This is with respect to station WFEM-LP, Heiskell, Tennessee, licensed to H. Earl Marlar (“Marlar”). This station is currently licensed as a Class A television station, which are accorded primary spectrum use status pursuant to the Community Broadcasters Protection Act of 1999 (“CBPA”).¹

2. By letters dated March 24, 2011 and August 18, 2011, the Video Division of the Media Bureau requested information from Marlar regarding his apparent failure to make the required filing of quarterly FCC Form 398 (Children’s Television Programming Report) for the station. As the March 24, 2011 letter set forth, beginning on the date of its application for Class A license and thereafter, the CBPA requires that a station must be “in compliance with the Commission’s operating rules for full-power television stations.”² In implementing the CBPA and establishing the Class A television service,³ the Commission applied to Class A licensees all Part 73 regulations except for those that could not apply for technical or other reasons. Among the Part 73 requirements that apply to Class A licensees are the Commission’s main studio requirements; rules governing informational and educational children’s programming and the limits on commercialization during children’s programming; the requirement to identify a children’s programming liaison at the station and to provide information regarding “core” educational and informational programming aired by the station to publishers of television program guides; the public inspection file rule, including preparing and placing in the public inspection file on a quarterly basis an issues/programs list and the station’s quarterly-filed Children’s Television Programming Report; the political programming rules; station identification requirements; and the Emergency Alert System (EAS) rules.⁴

3. WFEM-LP was granted Class A status in 2001,⁵ and Commission records show that Marlar failed to file Children’s Television Programming Reports for all four quarters in 2006, 2007, 2008, 2009, 2010 and 2011. Accordingly, the Video Division asked for information, supported by the declaration of a person with personal knowledge, identifying quarters for which reports were prepared

¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336.

² 47 U.S.C. § 336(f)(2)(A)(ii).

³ *In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000)(“*R & O*”), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8254-56 (2001).

⁴ *R & O*, 15 FCC Rcd at 6366.

⁵ FCC File No. BLTVA-20010308AAC, granted April 25, 2001.

and placed in the station's public file and the location of the public file. Both letters required that the information be provided within 30 days of the date of the letter, and cautioned that failure to provide the information would result in a change of the station's status from Class A television status to low power television status. Marlar failed to respond to the Division's letters and also continues to fail to file the required Children's Television Programming Reports.

4. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest.⁶ Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and to afford the licensee at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's Rules.⁷

5. IT IS THEREFORE ORDERED, That, H. Earl Marlar show cause why his authorization for Class A television station WFEM-LP, Heiskell, Tennessee, should not be modified to specify the station as a low power television station.

6. Pursuant to Section 1.87 of the Commission's Rules, H. Earl Marlar may, no later than March 30, 2012, file a written statement why the above-captioned license should not be modified as proposed herein. The written statement, 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. An electronic copy should also be sent to joyce.bernstein@fcc.gov. Upon review of the statement and/or additional information, the Commission may grant the modification, deny the modification, or set the matter for hearing. If no written statement is filed by March 30, 2012, the licensee will be deemed to have consented to the modification of its license from Class A television status to low power television status, and the modification proposed in this *Order to Show Cause* will be deemed to serve the public interest.

7. IT IS FURTHER ORDERED, That a copy of this *Order to Show Cause* shall be sent by Certified Mail, Return Receipt Requested, to H. Earl Marlar as indicated below:

H. Earl Marlar
P. O. Box 121
Heiskell, Tennessee 37754

8. For further information concerning the proceeding, contact Joyce L. Bernstein, Video Division, Media Bureau, at Joyce.Bernstein@fcc.gov or (202) 418-1647.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁶ 47 U.S.C. § 316(a).

⁷ 47 C.F.R. § 1.87.