

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

In the Matter of	)	
	)	
WRNN License Company, LLC	)	Facility I.D. No. 74156
Licensee of Station WRNN-TV	)	NAL/Acct. No.: 201641420002
Kingston, New York	)	FRN: 0010622041

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

**Adopted: January 20, 2016**

**Released: January 20, 2016**

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> the Commission finds that WRNN License Company, LLC (the “Licensee”), licensee of Station KRNN-TV, Kingston, New York (the “Station”), apparently willfully and/or repeatedly violated: (1) Section 73.671 of the Rules by failing to properly identify children’s programming through display of the “E/I” symbol on the television screen<sup>2</sup> and (2) Section 73.3514(a) of the Rules for failing to report in its license renewal application its failure to properly display the “E/I” symbol.<sup>3</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 six thousand dollars (\$6,000).

**II. BACKGROUND:**

2. The Children’s Television Act of 1990 (“CTA”) provides television broadcast licensees with an affirmative obligation to offer programming that meets the educational and informational needs of children (“Core Programming”).<sup>4</sup> Section 73.671 of the Rules requires television broadcast licensees to meet certain criteria in order to demonstrate compliance with the children’s programming obligations set forth by the CTA.<sup>5</sup> In furtherance of the children’s programming obligations established by the CTA, broadcasters are also required to provide certain information to the public and programmers about the children’s programming they air. For example, subsection (c)(5) of the rule requires broadcasters to identify Core Programming by displaying the “E/I” symbol on the television screen throughout the

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

<sup>2</sup> 47 C.F.R. § 73.671.

<sup>3</sup> 47 C.F.R. § 73.3514(a).

<sup>4</sup> Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303(a), 303(b), and 394.

<sup>5</sup> Section 73.671 implements the provisions of the CTA by establishing a process for evaluating compliance as part of a broadcaster’s license renewal proceeding. 47 C.F.R. § 73.671(d),(e)(1). Licensees that fail to meet the Commission’s processing guidelines must be referred to the Commission for approval of the CTA portion of their renewal applications. 47 C.F.R. § 73.671(d),(e)(1). The Commission has established specific criteria for determining whether a program qualifies as Core Programming. 47 C.F.R. § 73.671(c).

program.<sup>6</sup>

3. Section 73.3514(a) of the Rules provides that “[e]ach application shall include all information called for by the particular form on which the application is required to be filed. . . .”<sup>7</sup> Section IV, Question 8 of the license renewal application requires licensees to certify that it properly identified “each CORE program aired at the beginning of the airing of each program.”<sup>8</sup> If the Licensee has failed to do so it must submit a statement of explanation as an exhibit.<sup>9</sup> Here the Licensee failed to submit such an exhibit and properly report its failure to display the “E/I” symbol on two of its digital multicast streams.

4. On February 2, 2015, the Licensee filed its license renewal application for the Station.<sup>10</sup> A Video Division staff review of the Station’s Children’s Television Programming Reports revealed that the Station failed to display the E/I symbol when airing children’s programming on its fourth and fifth multicast channels since the start of second quarter of 2012 (July 1, 2012).<sup>11</sup> On January 7, 2016, the Licensee amended its license renewal application, acknowledging this ongoing violation and stating that the E/I symbol was properly displayed as of January 1, 2016.<sup>12</sup>

### III. DISCUSSION

5. The Licensee did not identify children’s programming on two of its digital multicast channels, 48.4 and 48.5 by failing displaying the “E/I” symbol from July 1, 2012 through December 31, 2015. Failing to display the “E/I” symbol for two and one-half years constitutes an apparent willful and/or repeated violation of Section 73.671(c)(5) of the Rules.<sup>13</sup> Furthermore, the Licensee’s failure to properly report on its license renewal application its failure to properly display the “E/I” symbol is a violation of Section 73.3514(a) of the Rules.<sup>14</sup> As noted above, beginning on January 1, 2016, the Licensee has commenced airing the “E/I” symbol on all of the Station’s digital broadcast streams.

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 and/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>15</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>16</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies

<sup>6</sup> 47 C.F.R. § 73.671(c)(5); *Children’s Television Obligations of Digital Television Broadcasters, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 22943, 2259-60 (2004) (“2004 Report and Order”).

<sup>7</sup> 47 C.F.R. § 73.3514(a).

<sup>8</sup> FCC Form 303-S available at: <https://transition.fcc.gov/Forms/Form303-S/303s.pdf>.

<sup>9</sup> *Id.* at Section IV, Question 8.

<sup>10</sup> File No. BRCDT-20150202ADL (“WRNN-TV Renewal”). In Attachment 20 of the license renewal application the licensee reports several violations of the Commission’s public file rules. We find that these violations are *de minimis* and do not warrant any increase in the proposed forfeiture from what is proposed herein or independent sanction. *Id.* at Attachment 20.

<sup>11</sup> See e.g., Children’s Television Programming Report (FCC Form 398) for Station WRNN-TV (filed January 9, 2013) available at: [http://data.fcc.gov/mediabureau/v01/tv/application/KidVid\\_137846.html](http://data.fcc.gov/mediabureau/v01/tv/application/KidVid_137846.html). The shows listed as not having had the E/I symbol displayed properly included: *Super Rookie Ranger*, *Live Music Concert Nanjang*, *Begin Japanology*, *Science View* and *Somewhere Street*.

<sup>12</sup> WRNN-TV Renewal at Attachment 25.

<sup>13</sup> 47 C.F.R. § 73.671(c)(5).

<sup>14</sup> 47 C.F.R. § 73.3514(a).

<sup>15</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

<sup>16</sup> 47 U.S.C. § 312(f)(1).

to both Sections 312 and 503(b) of the Act,<sup>17</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>18</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>19</sup>

7. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of \$8,000 for violations of the Commission’s children’s requirements and of \$3,000 for failure to file a required form or information.<sup>20</sup> 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)(E) 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>21</sup> Based on our review of the facts and circumstances, including the duration of the violation, we find that the Licensee is liable for a forfeiture in the amount of \$3,000 for its failure to properly display the “E/I” symbol for a period of two and one-half years on two of the Station’s digital multicar streams. Furthermore, we find that a forfeiture in the amount of \$3,000 for the Licensee’s failure to report the aforementioned violations in its renewal application is warranted. Accordingly, we propose a total forfeiture in the amount of \$6,000 for the Licensee’s apparent willful and/or repeated violations of Sections 73.671 and 73.3514(a) of the Rules.<sup>22</sup>

8. We also find, pursuant to Section 309(k) of the Act,<sup>23</sup> that the Licensee’s apparent violation does not constitute a “serious violation” warranting designation for evidentiary hearing. Moreover, we find no evidence that the violations, when considered together, evidence a pattern of abuse.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission’s Rules, 47 C.F.R. § 1.80, that WRNN License Company, LLC, licensee of Station WRNN-TV, Kingston, New York, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars (\$6,000) for its apparent willful and/or repeated violations of Sections 73.671 and 73.3514(a) of the Commission’s Rules, 47 C.F.R. §§ 73.671 and 73.3514(a).

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*, WRNN License Company, LLC, SHALL PAY the

<sup>17</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>18</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>19</sup> 47 U.S.C. § 312(f)(2); see also *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001).

<sup>20</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), note to paragraph (b)(8), Section I.

<sup>21</sup> 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(8) and note to paragraph (b)(8), Section II.

<sup>22</sup> 47 C.F.R. §§ 73.671 and 73.3514(a).

<sup>23</sup> 47 U.S.C. § 309(k). Section 309(k) of the Act 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 which, taken together, constitute a pattern of abuse, we are to grant the renewal application. 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, 47 U.S.C. § 309(e)—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.” 47 U.S.C. § 309(k)(2).

full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payments of the proposed forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>24</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:<sup>25</sup>

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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: Evan Morris, Video Division, Media Bureau, Room 2-C827 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.<sup>26</sup>

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>27</sup>

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<sup>24</sup> Payment may be made at the Commission’s online Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Payment may also be made by FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>25</sup> For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>26</sup> See *San Jose State Univ.*, 26 F.C.C. Rcd. 5908 (2011) (noting that “[t]ypically, the Commission uses gross revenue as the primary measuring stick by which it evaluates a licensee’s ability to pay. Other financial indicators may be considered....”).

<sup>27</sup> See 47 C.F.R. § 1.1914.

15. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WRNN License Company, LLC, 800 Westchester Avenue, S-650, Rye Brook, NY 10573, and to its counsel, Ari Meltzer, Wiley Rein LLP, 1776 K Street, N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau