

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

In the Matter of
Views on Learning, Inc.
File No. EB-IHD-19-00029561
NAL/Acct. No.: 202132080002
FRN: 0006035380

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 6, 2021

Released: January 7, 2021

By the Commission: Commissioners Rosenworcel and Starks dissenting and issuing separate statements.

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I. INTRODUCTION

1. Under the Federal Communications Commission’s (FCC or Commission) antecedent rules, an Educational Broadband Service (EBS) licensee that leased its spectrum had to reserve a minimum of 5% of its spectrum capacity and provide 20 hours minimum of educational use per channel per week;¹ a licensee was also required to establish a local program committee (Local Program Committee) in each community where it did not have a local presence.² Today, the Commission affirms that it will hold EBS licensees accountable for fulfilling these public interest obligations that were an integral part of their authorizations. In this Notice of Apparent Liability for Forfeiture, we propose a forfeiture penalty of \$2,745,000 against Views on Learning, Inc. (Views, VOL, or the Company) for its apparently willful violations of the Commission’s EBS rules.

¹ 47 CFR § 27.1214(b)(1) (2019).

² 47 CFR § 27.1201(a)(4) (2019).

2. While the Commission's rules permitted EBS licensees to rely on the provision of broadband or video service in fulfilling the 20-hour requirement,<sup>3</sup> based on our investigation,<sup>4</sup> we find Views is apparently unable to demonstrate that the broadband service it offered to educational institutions ultimately met the Commission's threshold requirement to provide 20 hours of educational use for all of its licenses. Additionally, Views apparently failed to comply with the Commission's long-standing rule requiring the maintenance of a Local Program Committee in each of the non-local communities it serves. In short, Views appears to have taken on EBS licenses and enjoyed the flexibility afforded by the Commission to lease out most of the licensed spectrum for non-educational purposes—but did not act with the same diligence concerning its educational obligations. Instead, Views reaped financial benefits from the leasing of its EBS licenses while failing to meet its requirements under the Commission's rules for holding these licenses.<sup>5</sup>

## II. BACKGROUND

3. In 1963, the Commission established the Instructional Television Fixed Service (ITFS), the precursor to EBS, to enhance the educational experiences and opportunities for millions of America's students.<sup>6</sup> In creating the ITFS, the Commission envisioned the 2500-2690 MHz band would be used for the transmission of "visual and accompanying aural instructional material to accredited public and private schools, colleges and universities for the formal education of students."<sup>7</sup> In 2004, the Commission reorganized the ITFS as the EBS and updated the rules to allow for greater technical flexibility in the use of this spectrum—while retaining specific educational obligations.<sup>8</sup> The primary purpose of the service remained to "further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students" through video, data, or voice transmissions.<sup>9</sup>

4. The FCC encumbered EBS licenses with unique eligibility and other regulatory requirements to ensure that this spectrum would be used to achieve those educational purposes. To ensure the continuity of the ITFS's educational purpose, the Commission imposed the existing ITFS requirements upon EBS licensees, including the establishment of a Local Program Committee in each

<sup>3</sup> See, e.g., 47 CFR § 27.1201(a)(3) (2019).

<sup>4</sup> In July 2019, Commissioner Brendan Carr sent a letter to Views requesting information regarding its compliance with these requirements for EBS licensees. Letter from Brendan Carr, Commissioner, Federal Communications Commission, to Tim Tahara, President, Views on Learning, Inc. (July 17, 2019) (on file in EB-IHD-19-00029561) (Carr Letter). The Enforcement Bureau subsequently issued a Letter of Inquiry (LOI) to Views, initiating an investigation into whether it violated the Commission's rules governing EBS licensing requirements. Letter of Inquiry from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau to Tim Tahara, President, Views on Learning, Inc. (Aug. 6, 2019) (on file in EB-IHD-19-00029561) (Views LOI).

<sup>5</sup> According to Views, as of December 31, 2018, the current value of the Company's net assets was \$2,772,839. Response to Letter of Inquiry, from Leslie R. Turner, Executive Director, Views on Learning Inc., to Pam Slipakoff, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, at 3 (Oct. 2, 2019) (on file in EB-19-00029561) (Views Response). Views' lease revenue has been the predominant source of its funding, and thus most, if not all of Views assets are attributable to EBS Lease Revenue. *Id.*

<sup>6</sup> See *Amendment of Parts 2 and 4 of the Commission Rules and Regulations to Establish a New Class of Educational Television Service for the Transmission of Instructional and Cultural Material to Multiple Receiving Locations on Channels in the 1990-2110 MC/S or 2500-2690 MC/S Frequency Band et al.*, Report and Order, 39 F.C.C. 846, 852-53, para. 25 (1963) (*Educational TV Order*), *recons. denied*, 39 F.C.C. 873 (1964).

<sup>7</sup> *Educational TV Order*, 39 F.C.C. at 852-53, para. 25.

<sup>8</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al.*, WT Docket No. 03-66, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*2004 EBS Order*).

<sup>9</sup> 47 CFR § 27.1203(b) (2019).

community where the licensee does not have a local presence (the Local Program Committee requirement),<sup>10</sup> and the requirement that a licensee entering into any spectrum lease must reserve a minimum of 5% of its spectrum capacity and provide 20 hours minimum of educational use per channel per week (the 20-hour requirement).<sup>11</sup> Upon obtaining their licenses, EBS licensees took on the responsibility to ensure that the EBS educational mission would be faithfully administered and delivered to the appropriate educational institutions and their students.

#### A. Legal Framework

##### 1. EBS Minimum Educational Use Requirements

5. For over 50 years, from 1963<sup>12</sup> until repeal of the requirement effective April 27, 2020,<sup>13</sup> the Commission's rules imposed an educational use requirement on all EBS licensees (or their ITFS predecessors). When the Commission established ITFS in the 2500-2690 MHz band,<sup>14</sup> it envisioned that the band would be used for transmission of instructional material to accredited public and private schools, colleges, and universities for the formal education of students.<sup>15</sup> The Commission also permitted ITFS licensees to use the channels to transmit cultural and entertainment material to educational institutions, and to transmit instructional material to non-educational institutions such as hospitals, nursing homes, training centers, clinics, rehabilitation centers, commercial and industrial establishments, and professional groups.<sup>16</sup> ITFS licensees were also allowed to use their systems to perform related services directly concerned with formal or informal instruction and training, and to carry administrative traffic when not being used for educational purposes.<sup>17</sup>

6. The Commission expanded the kinds of services that would qualify as "educational use" over the years. For example, in light of the "increasing use of the Internet for educational purposes," the Commission permitted ITFS/EBS licensees of all types to take advantage of changes in technology, including the introduction of broadband.<sup>18</sup> The Commission similarly no longer limited permitted services to "in-classroom instruction."<sup>19</sup> In expanding permitted use, however, the Commission retained

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<sup>10</sup> See *2004 EBS Order*, 19 FCC Rcd at 14222, 14234, paras. 152, 181; see also 47 CFR § 27.1201(a)(4) (2019); *Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service*, MM Docket No. 83-523, Second Report and Order, 101 F.C.C.2d 49, 62, paras. 28-29 (1985) (*1985 ITFS Report and Order*).

<sup>11</sup> See *2004 EBS Order*, 19 FCC Rcd at 14234, para. 181; see also 47 CFR § 27.1214(b)(1) (2019).

<sup>12</sup> See *Educational TV Order*, 39 F.C.C. at 852-53, para. 25.

<sup>13</sup> See *Transforming the 2.5 GHz Band*, 84 Fed. Reg. 57343 (Oct. 25, 2019) (*2.5 GHz Fed. Reg. Notice*); see also *Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446, 5489-90, paras. 117, 124 (2019) (*2019 EBS Order*).

<sup>14</sup> See generally *Educational TV Order*.

<sup>15</sup> See *Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service et al.*, GN Docket No. 80-112, Report and Order, 94 F.C.C.2d 1203, 1208, para. 9 (1983) (*1983 R&O*) (citing *Educational TV Order*, 39 F.C.C. at 853, para. 25).

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> *2004 EBS Order*, 19 FCC Rcd at 14222, para. 151.

<sup>19</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5718, para. 273 (2006) (*2006 EBS Order*); see also 47 CFR § 27.1203(c) (2019); *Amendment of Parts 21 and 74 to Enable Multipoint*

(continued....)

its “content restrictions,” and emphasized that the purpose of this spectrum assignment would be to “maintain the traditional educational purposes” of the original ITFS service.<sup>20</sup> Thus, the Commission continued to require channels to be used to “further the educational mission of accredited schools offering formal educational courses to enrolled students.”<sup>21</sup> The Commission repeatedly reaffirmed the applicability of the educational use requirement as a means of “safeguarding the primary educational purpose” of the spectrum.<sup>22</sup>

7. In the 2000s, a series of Commission Orders rebranded ITFS to EBS and changed certain technical rules to better reflect the likely use of the band going forward.<sup>23</sup> Significant changes were made to the EBS band plan in 2004, in part because the existing band plan had been designed for broadcast services as opposed to broadband.<sup>24</sup> The Commission explicitly declined to relax the educational requirements or eligibility restrictions then in place, however, citing the public interest in the educational purpose of the band.<sup>25</sup> In 2006, the Commission made further changes to the band plan transition rules and mechanisms but declined to make changes to any educational requirements.<sup>26</sup> The Commission again revisited certain issues regarding the band plan transition in 2008, and made a number of other small changes to the rules, but did not amend the educational use requirements.<sup>27</sup>

8. Despite these modifications and revisions to this band, the Commission’s rules included a specific mandate for EBS licensees leasing their excess capacity and using digital transmissions to “provide at least 20 hours per licensed channel per week of EBS educational usage.”<sup>28</sup> This 20-hour requirement is “appl[ied] spectrally over the licensee’s whole actual service area.”<sup>29</sup> Although the mandate applied “before leasing excess capacity,” i.e., as a prerequisite to any such lease, it extended throughout the lease term as well.<sup>30</sup>

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*Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, MM Docket No. 97-217, Report and Order, 13 FCC Rcd 19112, 19154-55, para. 81 (1998) (*Two-Way Order*).

<sup>20</sup> *2004 EBS Order*, 19 FCC Rcd at 14222, 14234, paras. 152, 181; *accord Two-Way Order*, 13 FCC Rcd at 19159-60, paras. 89-90.

<sup>21</sup> 47 CFR § 27.1203(b) (2019); *see also Two-Way Order*, 13 FCC Rcd at 19154, para. 81 & n.189 (noting that the transmissions also could be in furtherance of the educational mission of “other eligible institution[s]”).

<sup>22</sup> *Two-Way Order*, 13 FCC Rcd at 19159-60, paras. 89-90; *accord 2006 EBS Order*, 21 FCC Rcd at 5701, para. 227; *2004 EBS Order*, 19 FCC Rcd at 14222, 14234, paras. 152, 181.

<sup>23</sup> *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al.*, WT Docket No. 03-66, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, 23 FCC Rcd 5992, 5996 (2008) (*2008 EBS Order*). *See 2006 EBS Order*, 21 FCC Rcd at 5612, para. 4; *2004 EBS Order*, 19 FCC Rcd at 14169, para. 6.

<sup>24</sup> *See 2004 EBS Order*, 19 FCC Rcd at 14177, 14182-84, paras. 22, 36-39.

<sup>25</sup> *See id.* at 14223, para. 152; *see also id.* at 14234, para. 181.

<sup>26</sup> *See 2006 EBS Order*, 21 FCC Rcd at 5699-701, paras. 223-28 (rejecting a proposal to increase the minimum educational use requirements and to provide guidance on meeting those requirements).

<sup>27</sup> *See 2008 EBS Order*, 23 FCC Rcd at 6048-50, paras. 146-49.

<sup>28</sup> 47 CFR § 27.1214(b)(1) (2019).

<sup>29</sup> *Id.*

<sup>30</sup> *See, e.g., id.* § 27.1214(b)(2) (2019); *2019 EBS Order*, 34 FCC Rcd at 5448, para. 7; *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands et al.*, WT Docket No. 03-

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9. The Commission has long been loath to substitute its judgment for that of educational authorities concerning what content or use is regarded as educational, where such use otherwise complies with Commission requirements.<sup>31</sup> Instead, the Commission stated that it would rely on the “good-faith efforts” of licensees to ensure compliance with the educational use requirements.<sup>32</sup> The Commission cautioned, however, that licensees may bear the burden of proving compliance with the educational use requirements in audits and other situations.<sup>33</sup> In those situations, “licensees must be ready and able to describe *and document* how they complied with [the educational-use] requirements.”<sup>34</sup> The Commission’s rules also recognized that the services required of EBS licensees should be provided “in a manner and in a setting conducive to educational usage.”<sup>35</sup>

## 2. EBS Local Program Committee Requirement

10. As part of ensuring that the educational purpose of the ITFS/EBS band was carried out, the Commission limited eligibility for ITFS licenses to entities meeting certain qualifications. The *Educational TV Order* limited eligibility to “institutional or governmental organization[s] engaged in the formal education of enrolled students or to a nonprofit organization formed for the purpose of providing instructional television material to such institutional or governmental organizations.”<sup>36</sup> The Commission declined to expand the categories of entities eligible to obtain licenses to include either “commercial organizations such as private vocational schools, professional associations, lang[ua]ge schools, dancing academies, etc.,” or municipal services such as training police officers or public health workers, in order to ensure adequate spectrum availability to meet educational demands.<sup>37</sup> The strong focus on direct education of students was thus a cornerstone of the Commission’s eligibility requirements from the beginning of the ITFS/EBS service.

11. In 1985, the Commission reexamined the eligibility requirements for the band.<sup>38</sup> At the time, many commenters asked the Commission to limit eligibility for ITFS licenses to local applicants.<sup>39</sup> The Commission recognized that “[l]ocally based educational entities have been convincingly demonstrated by the comment[e]rs to be the best authorities for evaluating their educational needs and the needs of others they propose to serve in their communities, for designing courses to suit those needs, and for scheduling courses during the school year.”<sup>40</sup> But because the Commission believed that national organizations could “have a significant role to play in the development and delivery of ITFS service,” the Commission did not ban non-local applicants.<sup>41</sup> Instead, recognizing the importance of ensuring adequate educational use of the service, the Commission established special requirements for non-local applicants, including a requirement to provide letters from local accredited educational institutions demonstrating

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66, Notice of Proposed Rulemaking, 33 FCC Rcd 4687, 4689, para. 4 (2018); *2004 EBS Order*, 19 FCC Rcd at 14234, para. 181.

<sup>31</sup> *Two-Way Order*, 13 FCC Rcd at 19154, para. 81 n.188; *see also 1985 ITFS Report and Order*, 101 F.C.C.2d at 80, para. 75.

<sup>32</sup> *Two-Way Order*, 13 FCC Rcd at 19162, para. 94; *see also 2006 EBS Order*, 21 FCC Rcd at 5701, para. 227.

<sup>33</sup> *See Two-Way Order*, 13 FCC Rcd at 19154, 19162, paras. 81 n.188, 94.

<sup>34</sup> *Id.* at 19162, para. 94 (emphasis added).

<sup>35</sup> 47 CFR § 27.1201(a)(3) (2019).

<sup>36</sup> *See Educational TV Order*, 39 F.C.C. at 864; *see also id.* at 853-54, paras. 27-29.

<sup>37</sup> *See id.* at 854, para. 28.

<sup>38</sup> *See 1985 ITFS Report and Order*, 101 F.C.C.2d at 62, paras. 28-29.

<sup>39</sup> *Id.* at 54, para. 8.

<sup>40</sup> *Id.* at 56, para. 16.

<sup>41</sup> *Id.* at para. 17.

that the applicant's programming would be incorporated into the institution's curriculum<sup>42</sup> and a requirement to establish a Local Program Committee.<sup>43</sup>

12. The Commission established the Local Program Committee requirement in the *1985 ITFS Report and Order* as part of an effort to adequately support and preserve the educational nature of the ITFS band.<sup>44</sup> The rule required that "[n]onlocal applicants, in addition to submitting letters from proposed receive sites, must demonstrate the establishment of a local program committee in each community where they apply."<sup>45</sup> Each receive site letter was required to include confirmation that a member of the institution's staff would serve on the Local Program Committee and show that the representative would aid in the selection, scheduling, and production of the programming received over the system.<sup>46</sup> The Commission established this requirement to ensure that, when a licensee was not an accredited local educational institution, the licensee's spectrum nonetheless was used for educational purposes appropriate to the local community.<sup>47</sup>

13. The Local Program Committee requirement remained in effect even while other alterations were made to reflect the changed regulatory circumstances of the band. In 2004, the Commission reorganized the original Part 74 rules into Part 27, but made no modifications to the rule text.<sup>48</sup> When the Commission modified several rules relating to EBS educational requirements in 2008, including certain other requirements for non-local licensees, it did not alter the Local Program Committee requirement.<sup>49</sup> Instead, the Commission modified section 27.1201(a)(3) of the rules to better accommodate both technological and regulatory developments.<sup>50</sup> While the expansion of services available through EBS licenses and spectrum has grown to include broadband and data services, EBS licensees remained obligated to use their channels to "further the educational mission of accredited schools offering formal educational courses to enrolled students."<sup>51</sup> EBS licensees were thus obligated to ensure they were meeting their requirement to deliver the content and educational use that was relevant to the local communities they serve.

## B. Factual Background

14. Views is an Indiana not-for-profit corporation which was incorporated on December 20, 1990.<sup>52</sup> Per Views' 2008 bylaws, "the corporation is organized exclusively for education, religious, literary, scientific and charitable purposes . . ."<sup>53</sup> Views holds 24 EBS licenses and has entered into spectrum leasing agreements for all 24 of its licenses.<sup>54</sup> All of the spectrum leasing agreements are with

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<sup>42</sup> *Id.* at 60-62, paras. 25-27.

<sup>43</sup> *Id.* at 62, para. 28.

<sup>44</sup> *See id.* at 62, paras. 28-29.

<sup>45</sup> *See id.* at 110; 47 CFR § 74.932(a)(5) (1985); 47 CFR § 27.1201(a)(4) (2019).

<sup>46</sup> *See 1985 ITFS Report and Order*, 101 F.C.C.2d at 62, para. 29.

<sup>47</sup> *See id.* at 62, para. 28.

<sup>48</sup> *See 2004 EBS Order*, 19 FCC Rcd at 14236, para. 186.

<sup>49</sup> *See 2008 EBS Order*, 23 FCC Rcd at 6048-50, paras. 146-49.

<sup>50</sup> *Id.*

<sup>51</sup> 47 CFR § 27.1203(b) (2019); *see also id.* § 27.1201(a)(3) (stating that where broadband or data services are proposed, the receive-site letter "should indicate that the data services will be used in furtherance of the institution's educational mission and will be provided to enrolled students, faculty and staff in a manner and in a setting conducive to educational usage").

<sup>52</sup> Views Response at 1, 7. Views has no parent or affiliated organizations. As a nonprofit, non-stock organization, Views has no owners. *Id.* at 1.

<sup>53</sup> *Id.* at 7.

Sprint Corporation subsidiaries and affiliates.<sup>55</sup> Each lease agreement includes a provision that the lessee reserves a minimum channel capacity for educational use.<sup>56</sup>

15. While its mission is ostensibly educational and public in nature, Views does not claim to provide educational or otherwise public programming. Rather, Views asserts that it provides wireless broadband data service and equipment to its educational institution receive sites.<sup>57</sup> Specifically, Views states that equipment and service are provided to schools located within the Geographic Service Area for each of its EBS licenses, and the use by such schools is at least 20 hours per week, to help meet the schools' educational missions.<sup>58</sup> In addition, Views provides a single 96-page "Receive Site Report" which compiles its market areas and the educational institutions served in each area. Each of Views' licenses has a separate notation in the Receive Site Report where the Company provides details for each market. The format of the narrative and the level of detail varies significantly among the 24 licenses, and the details may include a market narrative, copies of grants, agreements, and communications with the receive site schools.<sup>59</sup>

16. Views' lease agreements are silent regarding the 20-hour requirement.<sup>60</sup> Views states that it complies with the programming requirements of section 27.1214 of the Rules by arranging for and providing equipment and/or service on the Sprint wireless system into which Views' channels are incorporated.<sup>61</sup> According to Views, the equipment and service is "provided to schools located with the Geographic Service Area of each of its EBS licenses, and the use by such schools of at least 20 hours per channel per week, to help meet the schools' educational missions."<sup>62</sup> However, Views' Receive Site Report fails to consistently provide adequate documentation of such use. In the instance of its receive site at Redwood Academy in Ukiah, California (WLX784), Views acknowledged that it was not upgraded in 2014 when Sprint upgraded the Clearwire WiMax network to LTE. Views, however, was unaware of this discrepancy for approximately five years, and only became aware of the problem because it began reviewing documentation in response to our LOI. It was not until October 2019 that Views began working with another school.<sup>63</sup>

17. Views, by its own admission, also failed to maintain any active Local Program Committees.<sup>64</sup> Views believes that a Local Program Committee was established in each community it

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<sup>54</sup> See *id.* at 11, VOL-LeaseDetails.pdf.

<sup>55</sup> Twenty-one of the twenty-four license spectrum leases are with Clearwire Spectrum Holdings III, LLC/Sprint (Clearwire). Two of these twenty-one leases (WLX586 and WLX453) have subleases with Alaska Wireless Network, LLC. The remaining three licenses are with American Telecasting/Sprint. See generally Views Response, VOL-AuthorizationDetails.pdf. T-Mobile has since acquired Sprint in a merger that was approved by the Commission in 2019. See *Applications of T-Mobile US, Inc., and Sprint Corporation, et al., for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578 (2019). According to Views, as of December 31, 2018, the current value of its net assets was \$2,772,839. Views Response at 3. Views' lease revenue has been the predominant source of its funding, and thus most, if not all of Views' assets are attributable to EBS Lease Revenue. *Id.*

<sup>56</sup> See Views Response at 11, VOL-AuthorizationDetails.pdf.

<sup>57</sup> Views Response at 7-8, VOL-PgmCoordRcvSiteReport.pdf. Views lists 36 receive sites in its report, which include schools, colleges, and school districts.

<sup>58</sup> Views Response at 11.

<sup>59</sup> *Id.* at 8, VOL-PgmCoordRcvSiteReport.pdf.

<sup>60</sup> 47 CFR § 27.1214(b)(1) (2019).

<sup>61</sup> Views Response at 11.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 9-10, VOL-PgmCoordRcvSiteReport.pdf at 90-91.

<sup>64</sup> Views Response at 10.

served where Views was a non-local applicant.<sup>65</sup> However, Views has no knowledge or records regarding the dates such committees were established, their composition, their meetings and their roles other than the documentation contained in Views' original applications for licenses.<sup>66</sup>

### III. DISCUSSION

#### A. Views Failed to Consistently Demonstrate Its Compliance with the Minimum Educational Use Requirement for EBS Licensees

18. Our LOI requested information regarding the status of Views' EBS licenses since 2009.<sup>67</sup> Nonetheless, the statute of limitations for this action is one year,<sup>68</sup> and accordingly we focus our review on the period from December 9, 2019 until April 27, 2020, when the educational use requirements were eliminated.<sup>69</sup> Views' violations, however, appear to extend back several years prior to this review period. During this period, the Commission's EBS rules gave licensees the flexibility to enter into a spectrum leasing arrangement to transmit material other than educational programming if the licensee: (1) reserved a minimum of 5% of the capacity of its channels for educational uses consistent with section 27.1203(b) and (c) of the Commission's rules,<sup>70</sup> and (2) provided at least 20 hours per licensed channel per week of EBS educational use.<sup>71</sup>

19. Based on our review of the record, the terms of Views' lease agreements, and the information provided in this investigation, Views failed to consistently provide sufficient documentation and information describing how it complied with and met the 20-hour requirement for leased spectrum.<sup>72</sup> Views claims that it fulfills its 20-hour requirement by arranging for and providing equipment and/or service on the Sprint wireless system into which Views' channels are incorporated.<sup>73</sup> Specifically, Views claims that the equipment and service is used by its receive site schools for at least 20 hours per week to help meet the schools' educational missions.<sup>74</sup> However, simply arranging for and providing service and/or equipment is not necessarily purchasing or providing anything that is definitively related to education. Rather, it is providing hardware and/or service without consistent follow-up to confirm that the equipment is used in furtherance of the site's educational mission or determine whether any educational value is derived from the provided hardware.

20. Under Views' plan, the access to broadband or data services did not occur unless and until an accredited institution or its enrolled students, faculty, or staff took actions to successfully connect to and use the Internet using the Sprint-provided connection devices (e.g., a modem, portable hotspot, or

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<sup>65</sup> *Id.* Views was a non-local applicant when it applied for its authorizations with the exception of WLX423 in South Bend, Indiana. The Company's corporate offices have always been within the GSA of WLX423.

<sup>66</sup> *Id.*

<sup>67</sup> *See generally* Views LOI.

<sup>68</sup> The applicable statute of limitations for these violations is one year. *See* 47 U.S.C. § 503(b)(6).

<sup>69</sup> Although the educational use requirements of section 27.1214(b)(1) of the Commission's rules were eliminated effective April 27, 2020, Views and the Enforcement Bureau entered into a tolling agreement regarding the Enforcement Bureau's investigation into Views EBS practices. *See* Tolling Agreement Executed between Views and Federal Communications Commission (executed Oct. 26, 2020) (on file in EB-IHD-19-00029561) (Tolling Agreement). The Tolling Agreement extended the relevant statute of limitations period for each potential violation for 30 calendar days. Thus, this Notice of Apparent Liability addresses apparent violations that occurred between December 9, 2019, and April 27, 2020.

<sup>70</sup> 47 CFR § 27.1203(b)-(c) (2019).

<sup>71</sup> 47 CFR § 27.1214(b)(1) (2019).

<sup>72</sup> *Id.*; *see Two-Way Order*, 13 FCC Rcd at 19162, para.94.

<sup>73</sup> Views Response at 11.

<sup>74</sup> *Id.*



router) and/or service. Under the Commission's rules, however, it is an educational institution's actual use of data services, not its mere ability to use them, that matters when determining whether an EBS licensee that leases its excess spectrum has satisfied the 20-hour requirement.

21. Views attempts to document educational use of its channels, but the evidence is spotty at best. As noted above, Views submitted one self-generated "Receive Site Report" to demonstrate how it satisfied the agency's 20-hour educational use requirement for each of its 24 EBS licenses.<sup>75</sup> For most of its 24 service areas, however, the Receive Site Report lacks both the required description and supporting documentation to show whether the receive sites were actually using the services or equipment at all, much less using them for the minimum 20 hours per week. We also note that Views created the Receive Site Report only after it received our LOI. Moreover, for most of the licenses, the Receive Site Report's information simply repeated information taken from email chains generated years ago when Views first provided grants of money and/or equipment to the receive sites. Critically, the Receive Site Report fails to provide adequate detail and/or documentation concerning the continuing educational use of Views' channels at receive sites after Views' initial set-up of equipment or provision of capacity.

22. With regard to a receive site WLX873 (Merced, California), Views was unable to locate even the initial application and receive site letters.<sup>76</sup> Views' apparent failure to comply with the 20-hour minimum educational use requirement in numerous instances is also illustrated by its admission that it was not operating at its Ukiah receive site for approximately five years.<sup>77</sup> Furthermore, Views acknowledged that it only began compiling detailed information in 2010 or 2011 for most of its markets and conceded that its records prior to 2010 are incomplete.<sup>78</sup>

23. Views makes more specific compliance claims for a handful of its licenses, but most are unpersuasive. For example, Views claims that its supply of capacity and equipment for four of its licensed service areas satisfy the 20-hour requirement because they support the operation of weather stations.<sup>79</sup> This assertion, however, lack sufficient documentation to demonstrate how a particular weather station or the information derived from it is serving an educational function. Similarly, providing the link to a website<sup>80</sup> and stating that the weather station is used for "educational reference and research, and data transmission that further the educational mission of the school system,"<sup>81</sup> without an analysis of how many hours of use are being provided at a time and for what purpose, does not adequately support a qualitative claim of at least 20 hours per week of educational use. General contentions that "teachers use the data for weather-based lesson plan and parents and students access the data for daily weather reports" and that the data is used to plan school activities<sup>82</sup> does not disguise the data deficiencies. For its Islamorada, Florida receive site, Views states, "This level of service provided by the Licensee meets or exceeds the minimum usage requirements of 20 hours per channel per week specified in 47 C.F.R. § 27.1214."<sup>83</sup> In the case of WNC899, the weather station is located over 30 miles away from the school in

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<sup>75</sup> Views Response, VOL-PgmCoordRcvSiteReport.pdf.

<sup>76</sup> *Id.* Views, however, has included a recent receive site letter for Merced, California.

<sup>77</sup> Views Response at 9-10, VOL-PgmCoordRcvSiteReport.pdf at 90-91.

<sup>78</sup> Views Response at 8.

<sup>79</sup> See Views Response, VOL-PgmCoordRcvSiteReport.pdf at 10-12, 26-28, 37-38, 66-68 (for stations WQCP379 (Casper, Wyoming), WLX453 (Fairbanks, Alaska), WNC899 (Islamorada, Florida), and WLX966 (Monterey, California)).

<sup>80</sup> *Id.* at 37, 66.

<sup>81</sup> *Id.* at 37.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

question.<sup>84</sup> Given the distance involved, it is not clear how the licensee's 2.5 GHz spectrum is used to connect the weather station to the school, or why the school would be using that weather station in connection with its curriculum. Accordingly, we cannot accept the licensee's claim of compliance based on the current record.

24. Views also states that WNC894 (Ukiah, California) uses one of its two modems "to provide access to a remote 24/7 security camera."<sup>85</sup> Views, however, failed to show how the security camera and/or its data is used by the school and/or its students to comply with our with the 20-hour requirement. Similarly, Views states that many of its receive sites use their modems and broadband service to access services such as Zoom or Lifesize videoconferencing,<sup>86</sup> and/or Learn 360 Licenses.<sup>87</sup> The availability of such programs to a school if actually used is laudable, but availability alone does not specifically demonstrate the actual hours of educational use. While the security camera may be operating well over 20 hours per week, without adequate documentation, it is not clear how the 20-hour requirement was being met. Similarly, without supporting documentation there is no indication that the additional equipment and services described by Views were being used enough to meet the 20-hour requirement.

25. In seven instances, Views did submit limited evidence of educational uses by schools and other institutions served by the Company.<sup>88</sup> For example, in its Receive Site Report for WQC528 (Des Moines, Iowa), Views specifically states, "The three devices are connected to computers that are available to and used by Educational Entity's administration, faculty, staff and students for school-related purposes at least 6 hours per day, 5 days per week, which equals 30 hours per device, or 90 hours of use." In addition, Views explains that, "an Educational Entity administrator uses a mobile device from home to check emails, access educational content and access the student management system."<sup>89</sup> Thus, for WQC528, Views was able to provide specific details describing how its devices are being used and the amount of hours per day each device is being used to meet the 20-hour requirement. Views provided a similar analysis for six other receive sites: WND292 (Fort Myers, Florida);<sup>90</sup> WLX833 (Fort Wayne,

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<sup>84</sup> The licensee school is located at 83400 Overseas Highway Islamorada, FL. The weather station is located at 54400 S Dixie Highway, Miami, FL. *Id.* at 37.

<sup>85</sup> *Id.* at 90-91. As discussed above, Views admitted that it was not operating at its Ukiah receive site for approximately five years and, therefore, Views could not have been consistently meeting the 20-hour requirement at its Ukiah receive site.

<sup>86</sup> Views Response, VOL-PgmCoordRcvSiteReport.pdf at 13, 23, 34, 39, 41, 45, 47, 49, 66, 73, 92, 93.

<sup>87</sup> *Id.* at 29, 35, 39, 41, 49, 66, 73, 93. Learn360 is a streaming multimedia resource for the K-12 educational market. Teachers, students, and parents can access more than 164,000 media resources on any Internet-enabled device, anytime, anywhere, and engaging content landing pages make it easy to find the wealth of videos, interactives, printables, audio content, and maps and flags. The entire site and all landing pages can be filtered by grade level (all grades, elementary, or middle/high) for targeted browsing. *See* <https://www.infobase.com/product/schools/learn360-subscription> (last visited Aug. 11, 2020).

<sup>88</sup> Views Response, VOL-PgmCoordRcvSiteReport.pdf at 17-18, 29-30, 34-35, 41-42, 45-46, 47-48, 71-72. (These receive sites reports cover the following licenses and receive site: WQC528 (two school in Des Moines, Iowa), WND292 (one school in Fort Myers, Florida), WLX833 (one school and one Regional educational Center in Fort Wayne, Indiana), WND334 (one school in Lansing, MI), WHR769 (one school in Louisville, Kentucky), WLX784 (one school in Madison/Rutledge, Georgia), WNC-905 (one Community College in Sebring, Florida)).

<sup>89</sup> *Id.* at 18.

<sup>90</sup> *Id.* at 29-30 (explaining that the six devices are connected to computers that are available to and used by the Educational Entity's administration, faculty, staff and students for school-related purposes. The six devices are connected to over 50 computers that are available to and used by the Educational Entity's administration, faculty, staff and students for school-related purposes for well over 80 hours per week cumulative over all devices).

Indiana);<sup>91</sup> WND334 (Lansing, Michigan);<sup>92</sup> WHR769 (Louisville, Kentucky);<sup>93</sup> WLX784 (Madison Rutledge, Georgia);<sup>94</sup> and WNC905 (Sebring, Florida).<sup>95</sup>

26. That Views was able to muster minimally-sufficient information to make a prima facie demonstration of compliance for seven of its licenses suggests that the Company has the ability to provide more information to the Commission regarding compliance with the 20-hour educational programming requirement for *all* of its licenses. The inconsistent record-keeping and poor or non-existent communication identified in Views' own Receive Site Report is troubling. For example, according to its Receive Site Report, Views asked three of its receive sites to "send a report to us regarding the success of your grant by December 31, 2016."<sup>96</sup> There appears to have been no response to Views' requests. Rather than elicit concern and additional inquiries regarding hardware and services that may have gone unused, the silence to Views' requests appear to have been met with nonchalance.

27. In addition to its Receive Site Report, Views submitted copies of its service agreements with two of its receive sites.<sup>97</sup> These agreements state that "Receive Site may occasionally be asked to substantiate their educational use of the Service. This information will be used by VOL to document 'Substantial Educational Use' of the license to the FCC. Failure to provide this information to VOL may result in the termination of this agreement."<sup>98</sup> While these agreements may show Views' initial effort to achieve compliance, the agreements tell us nothing with respect to the receive sites' actual use of the Company's service – either at the beginning of the agreement or at any point afterward. If Views had such agreements in place with all of its receive sites *and* regularly requested and received documentation of "Substantial Educational Use," Views might have been able demonstrate compliance with the 20-hour requirement. Instead, the vast majority of the Receive Site Report is a collection of emails and grant applications from 2011, with no requests for substantiation of educational use. The fact that the Receive Site Report had two of these service agreements again suggest that Views could have obtained information from the receive sites regarding how they were using Views' equipment and/or service. Views' failure to obtain such agreements from all of its receive sites and follow up by requesting documentation, suggests a sloppy disregard for the Commission's rules and its failure to comply with the Commission's 20-hour requirement.

28. In sum, Views states that the majority of the schools and other institutions it serves have been receiving equipment and data access since 2011, but in many instances the Company cannot tell us much about the current state of its operations and educational use at those institutions.<sup>99</sup> Without some

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<sup>91</sup> *Id.* at 34-36 (explaining that the three devices are connected to computers that are available to and used by the Educational Entity's administration, faculty, staff and students for school-related purposes. One device is used at least two hours per day, seven days per week, or 14 hours of use and the other two devices are in use at least eight hours per day, five days per week, which equals 40 hours per device or 80 hours of use.)

<sup>92</sup> *Id.* at 41-42 (explaining that the four devices are connected to at least 37 computers that are available to and used by the Educational Entity's administration, faculty, staff and students for school-related purposes at least four hours per day, five days per week, which equals 20 hours per device, or 80 hours of use per week.)

<sup>93</sup> *Id.* at 45-46 (explaining that the five devices are cumulatively used by Licensee's administration, faculty, staff and students for school-related purposes over 80 hours per week cumulative over all devices.)

<sup>94</sup> *Id.* at 47-48 (explaining that the two devices are cumulatively used by the Educational Entity's administration, faculty, staff and students for school-related purposes over 80 hours per week.)

<sup>95</sup> *Id.* at 73-89 (explaining that the four devices are in use at the satellite campus at least two hours per day, five days per week, for 80 hours of use per week.)

<sup>96</sup> *Id.* at 16, 21-22, 32.

<sup>97</sup> *Id.* at 42, 68. These agreements were signed in 2011.

<sup>98</sup> *Id.* at 42, 68.

<sup>99</sup> See generally Views Response, VOL-PgmCoordRcvSiteReport.pdf

form of contemporaneous records or other documentation or information to demonstrate how it meets how it meets its 20-hour requirement in its EBS licensed areas, Views cannot show that it satisfied its license obligations.

29. The Commission's reluctance to substitute its judgment for that of educational authorities concerning what content or use is regarded as educational does not excuse Views' conduct here because Views has not provided evidence sufficient to show that the educational institutions it purports to serve have actually received educational content or support for educational activities for 17 of its licenses. The Commission relies on the "good faith efforts" of licensees to comply with its educational use requirements.<sup>100</sup> But licensees bear the burden of proving compliance with the educational use—and "must be ready and able to describe *and document* how they complied with [the educational-use] requirements."<sup>101</sup> Without evidence or documentation of any use by the institutions in its licensed areas, Views was derelict in fulfilling its responsibility to comply with the Commission's 20-hour requirement. Furthermore, the Company apparently has no idea whether or how any of the associated educational institutions in these 17 licensed areas are currently using its services.

30. The Commission's rules contemplated that broadband and data services would be used to further the receive site's educational mission and would be provided to enrolled students, faculty, and staff in a manner and in a setting conducive to educational uses.<sup>102</sup> Views' mere distribution of hardware and/or transmission capacity to its educational institution receive sites failed to meet this requirement. It was incumbent upon Views, as the EBS licensee, to ensure that the hardware was being put towards that 20-hour requirement. For 17 of its licenses, however, Views could not sufficiently demonstrate that hardware and/or services were furthering any use, let alone an educational one. We find that Views has failed to demonstrate that it provided 20 hours per licensed channel, per week of EBS educational use, for 17 of its 24 licenses and was therefore in apparent violation of former section 27.1214(b)(1) of the Commission's rules.<sup>103</sup>

#### **B. Views Failed to Maintain Local Program Committees**

31. Beginning 25 years ago, the Commission's rules required non-local ITFS applicants to establish a Local Program Committee in each community they proposed to serve.<sup>104</sup> While the Commission created no "detailed regulatory requirements" concerning the composition of the committees, this did not permit them to dissolve.<sup>105</sup> Instead, the Commission made clear from the beginning that these committees must persist, noting that "[e]ach receive site, however, should have some representation so that its particular programming and scheduling needs will be considered."<sup>106</sup> Since its adoption in section 74.932(a)(5) note 3, and until recently as section 27.1201(a)(4), the language of the rule required the appointment of a member of the receive site's staff who "will serve" on the Local Program Committee and "will aid in the selection, scheduling and production of the programming."<sup>107</sup> The Commission relied upon this statement in the future tense, indicating an ongoing and continuing state of affairs, in approving these licenses. Moreover, the rule's reference to "scheduling" similarly indicates that the Commission intended for the Local Program Committee to provide ongoing assistance throughout the license term.

<sup>100</sup> *Two-Way Order*, 13 FCC Rcd at 19162, para.94; *see also 2006 EBS Order*, 21 FCC Rcd at 5701, para.227.

<sup>101</sup> *Two-Way Order*, 13 FCC Rcd at 19162, para. 94 (emphasis added).

<sup>102</sup> 47 CFR § 27.1201(a)(3) (2019).

<sup>103</sup> *Id.* § 27.1214(b)(1) (2019).

<sup>104</sup> *1985 ITFS Report and Order*, 101 F.C.C.2d at 62, para. 28.

<sup>105</sup> *Id.* at 62, para. 29.

<sup>106</sup> *Id.*

<sup>107</sup> 47 CFR § 27.1201(a)(4) (2019); 47 CFR § 74.932(a)(5), note 3 (1985).

32. According to Views, it “believes” that a Local Program Committee “was established” in each community for which Views was a non-local applicant.<sup>108</sup> Views, however, admits that it has “no active program committees . . .”<sup>109</sup> and provides no evidence that the Local Program Committees existed during the period under review in this investigation. Views’ apparent failure to comply with our requirement for Local Program Committees means that the local communities that Views was supposed to serve via its 23 non-local licenses lacked the mechanism for local input and feedback envisioned by the Commission’s rules. Indeed, were it the case that Views maintained Local Program Committees, it is possible that the Company would have also been more careful about its responsibility to confirm that the programming substitute was actually provided to the educational and public institutions instead of simply being offered without adequate follow-up.

33. Views claim that the Company “does not and is not required to provide broadcast-style video programming over any of its EBS stations”<sup>110</sup> is meritless. Specifically, Views contends that the Commission’s rules only require demonstration of the existence of Local Program Committees by applicants for licenses.<sup>111</sup> While the Commission has modified the EBS rules throughout the years,<sup>112</sup> the Commission did not alter or eliminate the requirement for Local Program Committees until recently.<sup>113</sup> Although modifications to the EBS rules in 2008 included adjustments to other requirements for non-local licensees, the Local Program Committee requirement remained intact.<sup>114</sup> The 2008 rule revisions demonstrated that the Commission was aware of the changed circumstances for the ITFS/EBS band since 1985, and nonetheless chose to retain the Local Program Committee requirement. Thus, Views’ failure to maintain Local Program Committees constituted an apparent violation of former section 27.1201(a)(4) of the Commission’s rules.<sup>115</sup> The Local Program Committee requirement cannot be “willed away” by Views or any other licensee because of a self-serving belief that the technological changes in the EBS service obviated an explicit requirement in the Commission’s rules. The responsibility for determining the elimination or modification of a Commission rule lies with the Commission, not a licensee.

34. Finally, Views’ creation of Local Program Committees as part of its original applications did not absolve Views from its continuing obligation to maintain and convene such committees. The purpose of the Local Program Committees was to ensure that each educational institution being served would have local representation so that its particular programming and scheduling needs would be considered. The educational content for a school in New York City, for example, may be different than what is useful to a school in Helena, Montana. As technology evolved, the input by members of the local community could have served as a valuable resource to ensure that the educational institution and overall community received services that reflected the needs of the community. Both the plain language of the rule and the policy justifications underlying adoption of the rule compelled Views to maintain a connection with its non-local educational institutions throughout the terms of its licenses.

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<sup>108</sup> Views Response at 10. Views provided copies of receive site letters establishing Local Program Committees with each application. Views, however, does not have receive site letters for WHR769 (Louisville, Kentucky) as that license was acquired from an organization that had already developed an extensive list of receive sites. Views provided this list of receive sites instead of the letters. *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *See, e.g., 2004 EBS Order.*

<sup>113</sup> *See 2019 EBS Order*, 34 FCC Rcd at 5456, para. 25.

<sup>114</sup> *See 2008 EBS Order*, 23 FCC Rcd at 6048-50, paras. 146-49.

<sup>115</sup> 47 CFR § 27.1201(a)(4) (2019).

**C. Rules in Effect at Time of Violation Govern Conduct in Question**

35. Commission precedent holds that the rules in effect at the time of an apparent violation govern the conduct in question, even if the rules are later revised.<sup>116</sup> The Commission's rules establish agency policy until such time as they are rescinded or amended in a notice-and-comment rulemaking.<sup>117</sup> The agency undertook a significant restructuring of the EBS band in 2019, including a new band plan, updated performance requirements, and a new geographic area licensing system for future licensees.<sup>118</sup> Under this new plan, incumbents retained their existing channels and service areas.<sup>119</sup> Additionally, all previous eligibility requirements, including the various educational use requirements and Local Program Committee obligations, ceased being effective on April 27, 2020.<sup>120</sup> Until the new rules established in the *2019 EBS Order* took effect, however, the Commission's previous rules governed the actions of EBS licensees.<sup>121</sup>

36. The former EBS rules required EBS licensees leasing their excess spectrum to provide "at least 20 hours per licensed channel per week of EBS educational usage" as well as maintain a Local Program Committee in areas where the licensee was considered a non-local applicant.<sup>122</sup> As the Commission's rule changes were forward-looking in nature, a change to the Commission's rules does not relieve Views of its original obligations to have complied with the rules in effect before the rule change.<sup>123</sup>

**D. Proposed Forfeiture**

37. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply substantially with the terms and conditions of any license, permit, certificate or other instrument or authorization issued by the Commission"<sup>124</sup> as well as against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."<sup>125</sup> Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Views of up to \$20,489 for each violation or each day of a continuing violation, up to a statutory maximum of \$153,669 for a single act or failure to act.<sup>126</sup> In

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<sup>116</sup> See, e.g., *Alarm Devices, Mfg. Co.*, Order to Show Cause, 49 F.C.C.2d 143, 145, para. 8 (1974); *1993 Annual Access Tariff Filings Phase I et al.*, CC Docket No. 93-193, Order Terminating Investigation, 20 FCC Rcd 7672, 7693, para. 49 (2005) (*1993 Access Tariff Order*).

<sup>117</sup> *1993 Access Tariff Order*, 20 FCC Rcd at 7693, para. 49; see also *Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 582 (D.C. Cir. 1994) (quoting *Reuters Ltd. v. FCC*, 781 F.2d 946, 950 (D.C. Cir. 1986) ("[I]t is elementary that an agency must adhere to its own rules and regulations.")).

<sup>118</sup> See *2019 EBS Order*, 34 FCC Rcd 5446.

<sup>119</sup> *Id.* at 5459, para. 36.

<sup>120</sup> *Id.* at 5450-58, paras. 13-31; see also *2.5 GHz Fed. Reg. Notice*, 84 Fed. Reg. at 57365.

<sup>121</sup> *2.5 GHz Fed. Reg. Notice*, 84 Fed. Reg. at 57360. The new EBS rules became effective on April 27, 2020. See *2019 EBS Order*, 34 FCC Rcd at 5489, para. 117 (deferring the effective date until six months from the date of the Order's publication in the Federal Register). See *contra* Views Response at 10 (asserting that "VOL does not currently have local program committees in the communities served by the EBS stations because VOL does not and is not required to provide broadcast-style video programming over any of its EBS stations.").

<sup>122</sup> 47 CFR §§ 27.1201(a)(4), 27.1214(b)(1) (2019).

<sup>123</sup> *Kenai Educational Media, Inc.*, Consent Decree, 34 FCC Rcd 4865, 4867 n.3 (2019) ("A recent rule change does not relieve a licensee from its obligation to comply with the rule while it is in effect.").

<sup>124</sup> 47 U.S.C. § 503(b)(1)(A).

<sup>125</sup> *Id.* § 503(b)(1)(B).

<sup>126</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(2). *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

exercising the Commission's forfeiture authority, we must consider 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>127</sup>

38. In determining a proposed forfeiture amount, the Commission starts with the base forfeiture amount for the apparent violation, as set forth in the Commission's forfeiture guidelines.<sup>128</sup> While section 1.80(b)(9) does not establish a specific base forfeiture amount for a violation of the Commission's EBS educational use requirement, we find that the base forfeiture amount of \$8,000 for a violation of the children's television commercialization or programming requirements is most analogous to the Commission's EBS educational use requirement since they govern the amount of children's programming to be provided within a prescribed time span.<sup>129</sup> Accordingly, we impose a forfeiture of \$8,000 for each week that Views failed to comply with the Commission's requirement that licensees supply 20 hours of educational use per channel per week for 17 of its EBS licenses. Using December 9, 2019 as the Commission's starting point until the Commission's EBS rules sunset on April 27, 2020, we impose a base forfeiture of \$8,000 multiplied by the 19 weeks that the violation occurred (\$152,000). We then multiply this by each of Views' 17 licenses in apparent violation, resulting in a base forfeiture amount of \$2,584,000 for failure to comply with the Commission's 20-hour requirement.

39. As to the failure to maintain a Local Program Committee, section 1.80(b)(8) does not establish a specific base forfeiture amount for a violation of that requirement. Again, in the absence of a specified base forfeiture, we select a base forfeiture for an analogous violation. We find that the violation is most analogous to a violation of the former main studio rule and will use that amount (\$7,000).<sup>130</sup> As with the Local Program Committee requirement, the Commission designed the former main studio rule to allow licensees to be responsive to the individual programming needs of their local communities. As Views holds 23 non-local licenses, none of which maintained a Local Program Committee between December 2019 and April 2020, we impose a base forfeiture of \$7,000 for each license for which Views failed to maintain a Local Program Committee, resulting in a base forfeiture amount of \$161,000 for failure to comply with the Commission's Local Program Committee requirement.

40. Based on the facts and record in this case, we have determined that Views apparently violated former sections 27.1201(a)(4) and 27.1214(b)(1) of the Commission's rules by: (1) failing to

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<sup>127</sup> *Id.* § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(9); *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>128</sup> *See* 47 CFR § 1.80, note to para. (b)(9); *Forfeiture Policy Statement*, 12 FCC Rcd at 17101, para. 27.

<sup>129</sup> If the Commission has not previously established a base forfeiture amount for that particular violation, "it has looked to the base forfeitures established or issued in analogous cases for guidance." *Cumulus Radio, LLC et al.*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7289, 7294, para. 14 (2019) (citing *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3304, para. 19 (2000)).

<sup>130</sup> *See* 47 CFR § 1.80(b)(8), note to para. (b)(8) (2017); *see also id.* § 73.1125(a) (2017). The main studio rule, which was eliminated in 2017, required the licensee of a broadcast station to maintain a main studio in order "to serve the needs and interests of the residents of the station's community of license." *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MM Docket No. 86-406, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 23 (1988) (*1988 Main Studio Order*); *see also Elimination of Main Studio Rule*, MB Docket No. 17-106, Report and Order, 32 FCC Rcd 8158, 8160-61, paras. 6-7 (2017). Among other things, the Commission required each broadcast station to "maintain a meaningful management and staff presence" at the main studio to "help expose stations to community activities, help them identify community needs and interests and thereby meet their community service requirements." *1988 Main Studio Order*, 3 FCC Rcd at 5026, para. 24; *see also Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MM Docket No. 86-406, Report and Order, 2 FCC Rcd 3215, 3218, para. 29 (1987) (stating that "[th[e]] interaction between the station and the community would foster responsive programming").

provide at least 20 hours per licensed channel per week of EBS educational use during a 19-week period at 17 of its 24 EBS licenses; and (2) failing to maintain its Local Program Committee obligations in the service area of 23 of its 24 EBS licenses. In total, the Views' apparent violations incurs a cumulative base forfeiture of \$2,745,000.

41. The Commission may also adjust the total proposed forfeiture by taking into account 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>131</sup> Based on the totality of the facts in the record, we have determined to not adjust this amount upwards or downwards. Accordingly, we find Views apparently liable for a forfeiture of \$2,745,000.<sup>132</sup>

#### IV. ORDERING CLAUSES

42. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and 1.80 of the Commission's rules,<sup>133</sup> Views on Learning, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million, seven hundred and forty-five thousand dollars (\$2,745,000) for apparently willfully and repeatedly violating former sections 27.1201(a)(4) and 27.1214(b)(1) of the Commission's rules.<sup>134</sup>

43. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>135</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Views **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 47 below.

44. Views on Learning, Inc., shall send electronic notification of payment to Pam Slipakoff, Enforcement Bureau, Federal Communications Commission, at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>136</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>137</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>138</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/fees/wire-transfer>.

<sup>131</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>132</sup> We note that any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>133</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>134</sup> 47 CFR §§ 27.1201(a)(4), 27.1214(b)(1) (2019).

<sup>135</sup> *Id.* § 1.80.

<sup>136</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>137</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>138</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

45. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.<sup>139</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

46. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the rules.<sup>140</sup> The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, and must include the NAL account number referenced in the caption. The written statement shall also be e-mailed to Jeffrey J. Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov) and to Pam Slipakoff at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov).

47. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting principles; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>141</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>142</sup>

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<sup>139</sup> See 47 CFR § 1.1914.

<sup>140</sup> *Id.* §§ 1.16, 1.80(f)(3).

<sup>141</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>142</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

48. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by first class mail and certified mail, return receipt requested to Leslie R. Turner, Executive Director, Views on Learning, Inc., 56535 Magnetic Drive, Mishawaka, IN 46545.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL  
DISSENTING**

Re: *In the Matter of Views on Learning, Inc.*, Notice of Apparent Liability for Forfeiture, File No. EB-IHD-19-00029561.

In this series of enforcement decisions, the Federal Communications Commission proposes novel fines totaling more than \$47 million on non-profit organizations for failing to comply with policies the agency eliminated from its rulebooks more than a year ago. These decisions suffer from a number of substantive and procedural infirmities. But most troubling is that the fines imposed here on the North American Catholic Educational Programming Foundation, the Hispanic Information and Telecommunications Network, Northern Arizona University Foundation, and other similar non-profit entities with programs to expand educational internet access lack any appropriate sense of proportion. Moreover, they are an unfortunate commentary on the priorities of this agency. During a pandemic when millions of people are struggling to get the connectivity they need to maintain some semblance of modern life, this is a strange use of agency resources. Instead of taking these unreasonably punitive actions, we should be leading with our humanity and finding ways to connect more people to the broadband services they need in crisis.

I dissent.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS  
DISSENTING**

Re: *In the Matter of Views on Learning, Inc.*, Notice of Apparent Liability for Forfeiture, File No. EB-IHD-19-00029561.

Today the Commission proposes extraordinary penalties against organizations whose mission is to help those most in need. For fifty years, schools and students around the country have received free communications service through the program that has become the Educational Broadband Service (EBS). Nearly 18 months ago, ignoring calls to reform and revitalize the EBS program, the majority at that time made the spectrum on which the program relies generally available for auction and assignment. Today's actions double down on that decision, proposing forfeitures that threaten the financial survival of some of the program's most visible participants. These decisions represent a waste of Commission resources in an unlawful and unfair attack on a program that has helped people around the country.

As an initial matter, the EBS licensees lacked sufficient notice of the legal interpretations underlying the Notices of Apparent Liability (NALs) to be subject to monetary penalties. Basic principles of administrative law establish that "an agency cannot sanction an individual for violating the agency's rules unless the individual had 'fair notice' of those rules."<sup>1</sup> Notice is fair when it allows regulated parties to identify, with "ascertainable certainty," the standards with which the agency expects them to conform.<sup>2</sup>

The EBS licensees lacked such fair notice of the majority's interpretation of the now-eliminated educational use<sup>3</sup> and Local Programming Committee rules.<sup>4</sup> When it authorized wireless broadband service for the EBS program, the Commission rejected requests from the EBS community to clarify its educational use rules<sup>5</sup>; instead, the agency said it would simply rely on the good faith efforts of licensees to "provide . . . educational usage." Thus, there are no ascertainable standards that EBS licensees could have followed to avoid liability.

Similarly, the Commission did not give fair notice of its current interpretation of the local programming committee rules. The plain language of the rules appears to apply only to the *formation* of a committee for application purposes, yet the NALs conclude that these committees must remain in place after license grant, even though their oversight of "programming" no longer makes sense in the wireless broadband context. Indeed, the NALs' legal interpretations generally do not make sense when applied to the services at issue.

The proposed forfeiture calculations are also fundamentally flawed. First, the NALs are based on the period from December 9, 2019 through April 27, 2020, the effective date of the Commission's elimination of the rules in question. But the NALs are based on Letters of Inquiry that covered the

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<sup>1</sup> *SNR Wireless License Co., LLC v. FCC*, 868 F.3d 1021, 1043 (D.C. Cir. 2017).

<sup>2</sup> *Id.*

<sup>3</sup> 47 C.F.R. § 27.1214(b)(2) (2019) (licensees must "provide at least 20 hours per licensed channel per week of EBS educational usage").

<sup>4</sup> 47 CFR § 27.1201(a)(4) (2019).

<sup>5</sup> See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5699-701, paras. 223-28 (2006) (rejecting a proposal to provide guidance on meeting the educational use requirements).

licensees' conduct only until August 26, 2019. Thus, we appear to have no evidence about the period subject to forfeiture penalty.

Moreover, because there is no base forfeiture for violations of the EBS rules, the NALs refer to the base forfeiture penalties for arguably analogous rules like the children's programming requirements and the main studio rule. But the NALs apply these penalties in a manner that is completely inconsistent with FCC precedent. Typical enforcement actions for violations of these rules propose forfeitures of hundreds of dollars per violation. In this case, however, the majority proposes penalties of \$8,000 per week for each license, resulting in proposed forfeitures ranging from nearly \$1.6 million to over \$14 million against a group of non-profit entities.

These eye-popping forfeitures are not only inconsistent with applicable precedent, but ignore numerous mitigating factors under our statute and rules.<sup>6</sup> While some of the NALs upwardly adjust the forfeitures, none of the items consider any mitigating factors, including the licensees' respective histories of compliance, the lack of any discernible harm, and the Commission's finding that the rules at issue no longer serve a good policy purpose.

Broadband access has never been more critical, and EBS licensees are on the front lines in our effort to close the digital divide that has become a monstrous COVID-19 divide. The pandemic has forced schools across the country to close, and many students have been engaging in distance learning for months. EBS service allows schools and their students to continue their educational instruction remotely. Targeting these organizations for a legally suspect, unnecessary, and excessive attack undermines their mission to provide an essential service to schools in need of a broadband connection. I dissent.

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<sup>6</sup> In proposing a forfeiture, the Communications Act requires the Commission to consider "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. 47 U.S.C. 503(b)(2)(E). *See also* 47 CFR 1.80(b)(9) ("In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations 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.").