

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

In the Matter of)	
)	
TELEMUNDO OF PUERTO RICO LICENSE)	File No. EB-00-IH-0149, GS
CORP.)	Station ID No. 64983
)	NAL/Acct. No. 200132080009
Licensee of Station WKAQ-TV, San Juan, Puerto Rico		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 18, 2000

Released: December 19, 2000

By the Chief, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture, we find that Telemundo of Puerto Rico License Corp. (“Telemundo”), licensee of Station WKAQ-TV, San Juan, Puerto Rico, broadcast an excessive number of minutes of commercial matter during children’s programming on two occasions, in apparent willful and repeated violation of Section 73.670 of the Commission’s rules, 47 C.F.R. § 73.670. For the reasons below, we conclude that Telemundo is apparently liable for a forfeiture in the amount of \$16,000.

II. Background

2. For more than 10 years, Station WKAQ-TV has produced the two-hour *Telecomicas* children’s program. The *Telecomicas* program is intended for youngsters ages five through nine and consists of in-studio segments wrapped around children’s cartoons and commercial matter. From time to time, the in-studio segments include contests in which participants are awarded prizes. Currently, the program is broadcast by WKAQ-TV on Saturday mornings from 8:00am to 10:00am.

3. In March 2000, personnel from the FCC’s Enforcement Bureau conducted a nationwide investigation to determine commercial television stations’ compliance with Section 73.670 of the Commission’s rules. Section 73.670 states:

No commercial television broadcast station licensee shall broadcast more than 10.5 minutes of commercial matter per hour during children’s programming on weekends, or more than 12 minutes of commercial matter per hour during weekdays.

4. Our investigation of Station WKAQ-TV revealed that between 9:00am and 10:00am on March 11, 2000, and again between 9:00am and 10:00am on March 18, 2000, Station WKAQ-TV broadcast two in-studio contest segments during its *Telecomicas* program. The segments consisted of a clown-dunk contest and a remote-controlled toy car race. They were sponsored, respectively, by Carmela Sausages (“Carmela”) and Kentucky Fried Chicken (“KFC”). Each segment was preceded by a

sponsorship identification and contained images of the company's logo and product lines (in the case of the KFC-sponsored contest segments, there also appeared images of the KFC Chicken) during the competition and prize-presentation portions of the segment. The combined duration of the two contest segments that were broadcast each hour was approximately four minutes. The combined duration of the routine commercial matter that was broadcast each hour was approximately nine minutes.

5. By letter, dated July 7, 2000, the Enforcement Bureau's Investigations & Hearings Division requested Telemundo to provide information about the contest segments. The letter informed Telemundo that if the contests were added to the routine commercial matter broadcast during each of the hours in question, the total amount of commercial matter broadcast by Station WKAQ-TV during its children's programming might exceed 10.5 minutes, and thereby apparently violate Section 73.670 of the Commission's rules. On August 3, 2000, Telemundo responded to the letter of inquiry. Telemundo confirmed that the contest segments were sponsored by Carmela and KFC, but denied that they constituted commercial matter for purposes of the Commission's commercial limits because they did not promote the sponsors' products.

6. On September 15, 2000, the Investigations & Hearings Division directed a follow-up letter of inquiry to Telemundo requesting additional information about the contests. By letter, dated October 6, 2000, Telemundo stated, among other things, that, following an extensive review of its *Telecomicas* episodes, it had discovered that the Carmela-sponsored contest segment broadcast on March 11, 2000, did in fact display Carmela products and showed the contest hostess wearing an apron bearing the Carmela company logo during the competition. Telemundo acknowledged that these displays effectively rendered the entire segment commercial matter. Telemundo continued to deny that the KFC-sponsored contest segments constituted commercial matter.

7. Thereafter, on November 6, 2000, Telemundo supplemented its two previous responses. Telemundo stated that, while the prize presentation portions of the Carmela and KFC-sponsored contests may have violated the Commission's "host-selling" policy, they did not render the *Telecomicas* program a program-length commercial because none of the contest segments promoted, directly or indirectly, any products related to *Telecomicas*. Telemundo also indicated that Station WKAQ-TV has suspended the practice of broadcasting game segments during *Telecomicas*.

III. Discussion

8. Section 73.670, the text of which appears above, became effective on January 1, 1992. The Commission adopted it in response to the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000 ("CTA"), *codified at* 47 U.S.C. §§ 303a, 303b, and 394. Under the CTA and Section 73.670, the amount of commercial matter that a television station may broadcast during children's programming is unambiguous.

9. Pursuant to the CTA and Section 73.670, Telemundo is required to limit the amount of commercial matter that it broadcasts during its children's programming on weekends to 10.5 minutes per hour. Telemundo concedes that its *Telecomicas* program was intended for children and was broadcast between 8:00am and 10:00am on both Saturday morning, March 11, 2000, and Saturday morning, March 18, 2000. Thus, during each of those hours, Telemundo was not permitted to broadcast more than 10.5 minutes of commercial matter.

10. We find, based on the information before us, that the repeated appearance of Carmela and KFC logos, products, and characters throughout the contest segments that were broadcast between 9:00am

and 10:00am on March 11 and March 18, 2000, appear to have rendered those *contest segments* commercial matter. Telemundo has conceded as much with respect to one contest segment broadcast on March 11, 2000. We believe, however, that the same conclusion should obtain with respect to the remaining three contest segments broadcast during the hours in question. Indeed, given the pervasive presence of sponsor-related information during the competition and prize-presentation portions of the contest segments, few, if any children, 12 years old and under would be able to distinguish the commercial messages from the entertainment content within each segment. When the *contest segments* are combined with other commercial matter broadcast during each of the two hours in question, the total amount of commercial matter broadcast by Station WKAQ-TV approximates 13 minutes -- a number that exceeds the 10.5 minutes per hour limit imposed by Section 73.670 of the Commission's rules.

11. The Commission's *Forfeiture Policy Statement*,¹ which became effective for violations occurring after October 14, 1997, sets a base forfeiture amount of \$8,000 for each violation of Section 73.670. In setting the base forfeiture amount at this relatively high level, the Commission viewed violations of its children's television commercialization requirements as among the more serious transgressions that a broadcaster may commit. We affirm our commitment to enforcing the requirements embodied in Section 73.670. We find that Telemundo apparently twice exceeded the commercial limits established in Section 73.670 during the relatively short period covered by the Bureau investigation. Under these circumstances, we believe a forfeiture in the amount of \$16,000 is appropriate.

IV. Ordering Clauses

12. ACCORDINGLY, IT IS ORDERED pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Sections 0.111, 0.311 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80, that TELEMUNDO OF PUERTO RICO LICENSE CORP. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of sixteen thousand dollars (\$16,000) for willfully and repeatedly violating Section 73.670 of the Commission's rules.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, TELEMUNDO OF PUERTO RICO LICENSE CORP. SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. The response, if any, must be directed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W, Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner 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 petitioner'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. Requests for payment of the full amount of this Notice of

¹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail -- Return Receipt Requested, to counsel for Telemundo of Puerto Rico License Corp.: Kevin P. Latek, Esq., Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau