

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

In the Matter of)	
)	
FISHER BROADCASTING, INC.)	File No. EB-00-IH-0190, GS
)	Station ID No. 56028
Licensee of Station KIDK-TV, Idaho Falls, ID)	NAL/Acct. No. 200132080010

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 Fisher Broadcasting, Inc. ("Fisher"), licensee of Station KIDK-TV, Idaho Falls, Idaho, broadcast an excessive number of minutes of commercial matter during children's programming on multiple 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 Fisher is apparently liable for a forfeiture in the amount of \$25,000.

II. Background

2. Fisher is a Seattle-based communications company. On July 1, 1999, Fisher acquired KIDK(TV) from Retlaw Enterprises, LLC. Several months after acquiring KIDK(TV), Fisher conducted a review of the station's practices and procedures. As part of that review, the company audited samples of KIDK(TV)'s program logs. According to Fisher, the audit raised concerns about compliance with Section 73.670 of the Commission's rules, which establishes limits on the number of minutes of commercial matter that a television station may broadcast during children's programming. Specifically, 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.

Fisher immediately directed KIDK(TV)'s management to conduct a comprehensive internal investigation, including an examination of commercial logs for the station.

3. On July 17, 2000, Fisher voluntarily submitted to the Enforcement Bureau an analysis of the results of its internal investigation. According to Fisher, KIDK(TV), a CBS affiliate, apparently began to exceed the commercial limitations in 1997, approximately two years before Fisher acquired the station. Fisher states that this coincided with a change by CBS in its procedures relating to children's programming. Prior to the change, CBS reserved one 30-second commercial slot in each half-hour children's program for local use. Subsequent to the change, CBS formatted each program to contain only network advertising. In order to fill the time between programs and continue to meet FCC commercial

limitations, CBS inserted network promotional material. Fisher states that despite the change in network practices, KIDK(TV) continued to place local commercial spots in network children's programming. In order to accommodate the local commercial material, the station deleted the network's promotional announcements, a practice to which station control room and traffic personnel were accustomed. Although Fisher did not initiate the practice at KIDK(TV), the company acknowledges that it continued substituting local commercial spots for network promotional announcements during network children's programming after it acquired the station in July 1999, unaware that the practice caused the station to exceed the Commission's commercial limits. Fisher discontinued the practice in February 2000 when its internal investigation raised compliance questions.

4. Fisher concedes that Station KIDK(TV) exceeded commercial limitations during 38 clock hours over 20 days during the period from July 1999 (when Fisher acquired the station) through February 2000. In each of twenty-six clock hours, the station exceeded commercial limits by 30 seconds; in each of eleven clock hour periods, the station exceeded commercial limits by 60 seconds; and in one clock hour, the station exceeded commercial limits by 90 seconds. Fisher states that it has since made personnel changes at Station KIDK(TV) and has provided instructions to the staff to ensure future compliance with Section 73.670. Fisher also states that it has implemented measures at its other commercial television stations to ensure their compliance with Section 73.670. According to Fisher, Station KIDK(TV) has not exceeded the Commission's commercial limits since February 2000.

III. Discussion

5. 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. The CTA and Section 73.670 required Fisher, during all relevant times, to limit the amount of commercial matter that it broadcast during its children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.

6. Fisher concedes that it exceeded the Commission's commercial limitations at KIDK(TV) on 38 occasions over 20 days spanning a seven month period. We find, based on this information, that Fisher apparently willfully¹ and repeatedly violated Section 73.670 of the Commission's rules.

7. The Commission's *Forfeiture Policy Statement*,² which became effective October 14, 1997, sets a base forfeiture amount of \$8,000 for violations of Section 73.670. The base forfeiture amount may be adjusted upward or downward, depending upon the existence of aggravating or mitigating factors. Although all 38 of Fisher's apparent violations took place after October 14, 1997, and are, therefore subject to the *Forfeiture Policy Statement*, we believe that there exist a number of mitigating factors that should be taken into account. These consist of Fisher's disclosure of the transgressions immediately upon discovering them as a result of an independent analysis of its children's programming conducted after its

¹ The Commission has held that an act or omission is "willful" if it is a conscious act or omission, whether or not there is any intent to violate the rule. *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991) (the definition of willfulness contained in 47 U.S.C. § 312(f) applies equally to 47 U.S.C. § 503).

² *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).

acquisition of KIDK-TV; an erroneous station practice (begun by the predecessor licensee) relating to the substitution of local commercial spots for network promotional announcements which inadvertently caused the broadcast of excessive commercial matter; Fisher's implementation of curative measures at KIDK-TV and at its other commercial television stations; and the lack of any evidence of prior adjudicated FCC-related misconduct by Fisher. In addition, we have taken into account the sanctions handed down against other similarly situated licensees. On balance, we believe a forfeiture in the amount of \$25,000 is appropriate.

IV. Ordering Clauses

8. 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 FISHER BROADCASTING, INC. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating Section 73.670 of the Commission's rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, FISHER BROADCASTING, INC. 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.

10. 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 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.

11. IT IS FURTHER ORDERED that a copy of this Notice shall be sent, by Certified Mail -- Return Receipt Requested, to counsel for Fisher Broadcasting, Inc.: Clifford M. Harrington, Esq., Shaw Pittman, 2300 N Street, NW, Washington, DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau